

# **CITY OF HAYWARD**

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **Agenda**

**Tuesday, July 14, 2020**

**7:00 PM**

**Remote Participation**

**City Council**

**SPECIAL CITY COUNCIL MEETING**

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

*How to observe the Meeting:*

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

*How to submit written Public Comment:*

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

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

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

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

**CALL TO ORDER Pledge of Allegiance: Mayor Halliday**

**ROLL CALL**

**CLOSED SESSION ANNOUNCEMENT**

**Monday, July 13, 2020**

**Tuesday, July 14, 2020**

**PUBLIC COMMENTS**

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

**ACTION ITEMS**

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

**CONSENT**

1. [MIN 20-077](#) Approve City Council Minutes of the Special City Council Meeting on June 30, 2020

**Attachments:** [Attachment I Minutes of 6/30/2020](#)

2. [CONS 20-370](#) Adopt an Ordinance Amending Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), Section 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments, of the Hayward Municipal Code

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Summary of Published Ordinance](#)  
[Attachment III 2020 Redline Ordinance](#)

3. [CONS 20-372](#) Adopt an Ordinance Amending the Hayward Zoning Map and Chapter 10, Article 1 (Zoning Ordinance), Article 7 (Sign Regulations), Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Corridor Form Based Code) of the Hayward Municipal Code Related to the Comprehensive Update of the Mission Boulevard Code

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Summary of Published Ordinance](#)

4.        [CONS 20-356](#)     Adopt a Resolution Confirming the Report and Special Assessment for Delinquent Sewer Bills and Water Bills Incurred by Property Owners

**Attachments:**    [Attachment I Staff Report](#)  
[Attachment II Resolution](#)  
[Attachment III List of Parcels](#)  
[Attachment IV Legal Notice Special Assessment](#)

#### **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.*

5.        [WS 20-032](#)        East Bay Community Energy Potential Rate Increase: Review and Comment on a Potential Rate Increase for Electricity from East Bay Community Energy (Report from Public Works Director Ameri)

**Attachments:**    [Attachment I Staff Report](#)

**LEGISLATIVE BUSINESS**

6. [LB 20-035](#) Residential Rent Stabilization and Tenant Protections: (1) Introduce an Ordinance Amending Chapter 12, Article 1 of the Hayward Municipal Code Relating to Residential Rent Stabilization and Tenant Protections; (2) Introduce an Ordinance Adding Chapter 12 Article 2 of the Hayward Municipal Code Related to Tenant Relocation Assistance; (3) Adopt a Resolution Authorizing Amendment to Resolution 20-060 City of Hayward Fiscal Year 2021 Master Fee Schedule to Establish an Amount of Relocation Assistance; and (4) Provide a Progress Report on Implementation of Residential Rent Stabilization and Tenant Protection Ordinance (Report from Deputy City Manager Ott)

**Attachments:**

[Attachment I Staff Report](#)

[Attachment II Amendment to RRSO](#)

[Attachment III Tenant Relocation Assistance Ordinance](#)

[Attachment IV Amendment to Master Fee Schedule](#)

[Attachment V RRSO Revisions Summary](#)

[Attachment VI Tenant Protection Act Analysis](#)

[Attachment VII Tenant Relocation Assistance Summary](#)

[Attachment VIII RRSO Marketing and Resources Summary](#)

7. [LB 20-038](#) Transient Occupancy Tax: Adopt Resolutions Establishing November 3, 2020 as the Date for a Proposed Ballot Measure Asking Hayward Voters to Approve an Increase in the City's Transient Occupancy Tax (Report from Finance Director Claussen)

**Attachments:**

[Attachment I Staff Report](#)

[Attachment II Resolution TOT Ballot Measure](#)

[Attachment III Resolution for Ballot Arguments](#)

[Attachment IV Ordinance Exhibit A for TOT](#)

[Attachment V Exhibit A Signature Statement](#)

8. [LB 20-037](#) Hayward City Charter: Adopt Resolutions Establishing November 3, 2020 as the Date for One Proposed Ballot Measure Asking Hayward Voters to Approve Amendments to the Hayward City Charter (Report from City Manager McAdoo, City Clerk Lens, and City Attorney Lawson)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Resolution for Charter Amendment](#)  
[Attachment III Resolution for Ballot Arguments](#)

### **CITY MANAGER'S COMMENTS**

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

### **COUNCIL REPORTS AND ANNOUNCEMENTS**

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

### **COUNCIL REFERRALS**

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

### **ADJOURNMENT**

**NEXT MEETING, July 21, 2020, 7:00 PM**

### **PUBLIC COMMENT RULES**

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

### **PLEASE TAKE NOTICE**

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

**PLEASE TAKE FURTHER NOTICE**

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

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

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

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

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



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
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**File #:** MIN 20-077

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Approve City Council Minutes of the Special City Council Meeting on June 30, 2020

**RECOMMENDATION**

That the City Council approves the special City Council meeting minutes of June 30, 2020.

**SUMMARY**

The City Council held a special meeting on June 30, 2020.

**ATTACHMENTS**

Attachment I      Draft Minutes of 6/30/2020





**SPECIAL CITY COUNCIL MEETING  
REMOTE PARTICIPATION  
Tuesday, June 30, 2020, 7:00 p.m.**

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

**CALL TO ORDER Pledge of Allegiance:** Mayor Halliday

**ROLL CALL**

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

**CLOSED SESSION ANNOUNCEMENT**

The City Council convened in closed session on June 30, 2020, at 5:30 p.m., regarding two items: 1) conference with legal counsel pursuant to Government Code 54957(a) regarding a discussion of matters posing a threat to the security of essential public services; and 2) conference with property negotiators pursuant to Government Code 54956.8 regarding Hayward MYL Restaurant Concepts, LLC (dba Playt), 1036 B Street; APN: 428-0061-051-02. City Attorney Lawson reported there was no reportable action related to the items.

**PUBLIC COMMENTS**

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

Ms. Katie Alvarez, Hayward resident, favored continuing remote participation for City Council meetings, supported Council Member Wahab's referral, and requested the community demands item be discussed on July 14, 2020.

Council Member Wahab shared remarks about former Alameda County Supervisor and Hayward City Council Member Gail Steele who had recently died and highlighted her work within the Afghan community regarding mental health and supporting foster youth.

Mayor Halliday shared that the meeting would be adjourned in memory of Ms. Gail Steele.

## CONSENT

1. Approve City Council Minutes of the Special City Council Meeting on June 16, 2020 **MIN 20-070**

It was moved by Council Member Lamnin, seconded by Council Member Mendall, and carried unanimously, to approve the minutes of the Special City Council meeting on June 16, 2020 with one correction to page 13 in the second to last paragraph as identified in the staff memo.

## LEGISLATIVE BUSINESS

2. Extension of Temporary Evictions Moratorium: Adoption of Emergency Ordinance Amending Temporary Moratorium on Residential and Commercial Evictions to Extend the Moratorium and the Repayment Period **LB 20-028**

Staff report submitted by Deputy City Manager Ott, dated June 30, 2020, was filed.

Housing Manager Morales provided a synopsis of the staff report.

Discussion ensued among Council Members and City staff regarding: repayment period upon expiration of the moratorium; increased cost for mediation services because of increased need; landlords' difficulty communicating with tenants; differences between City and County's Moratorium Ordinances; distribution of funds for one-time rent relief administered by Bay Area Community Services; feedback from landlords; and data updates regarding notices of default and foreclosures from the County on multifamily residences.

Mayor Halliday opened the public hearing at 7:27 p.m.

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

Ms. Alicia Lawrence, The Hayward Collective member, encouraged the Council to consider broadening the eviction protections to include all residents of Hayward.

Ms. Vanessa Sadsad, Hayward resident, suggested extending the moratorium on evictions for the duration of the COVID-19 pandemic to match the state of emergency timeline and expressed support for the Transient Occupancy Tax increase to generate revenue.

Mayor Halliday closed the public hearing at 7:35 p.m.

Council Member Mendall offered a motion per staff's recommendation.

Council Member Wahab seconded the motion and offered a friendly amendment to extend the eviction protections to all tenants.

Council Member Mendall did not accept the friendly amendment.



**SPECIAL CITY COUNCIL MEETING  
REMOTE PARTICIPATION  
Tuesday, June 30, 2020, 7:00 p.m.**

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Mayor Halliday noted that all tenants are covered under one of the moratorium ordinances that have been passed either at the local, county or state level.

Housing Manager Morales clarified for Council Member Lamnin that setting an exact date in the ordinance provides clarity for landlords and tenants as to when rents would become due.

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

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

Ordinance 20-11, “An Emergency Ordinance of the City Council of the City of Hayward Extending Ordinance No. 20-07, which Adopted a Temporary Moratorium on Residential and Commercial Evictions in the City of Hayward for Non-Payment of Rent or Mortgage Payments Caused by the Coronavirus (Covid-19) Pandemic, or for a No-Fault Reason Unless the Eviction is Necessary for the Imminent Health and Safety of the Tenant or Landlord, said Extension to Expire on September 30, 2020 Unless Repealed Earlier, and Extending the Repayment Period to 180 Days after the Expiration of the Moratorium, Unless Rental or Mortgage Payment Agreement Terms Negotiated During the Moratorium are Breached”

3. TOT (Hotel Tax) Ballot Measure: Direction on Potential November 2020 Transient Occupancy Tax Ballot Measure **LB 20-030**

Staff report submitted by Director of Finance Claussen, dated June 30, 2020, was filed.

Finance Director Claussen provided a synopsis of the staff report.

Discussion ensued among Council Members and City staff to clarify as follows: besides hotel and motels, the Transient Occupancy Tax (TOT) applies to properties rented via Vrbo (Vacation Rentals by Owner), Airbnb (AirBedandBreakfast.com) and bed and breakfast rentals as long as the stay is 30 days or less; the TOT is a general tax and requires 50%+1 voter approval to pass; the TOT revenue goes into the General Fund to fund City operations

and used at the discretion of Council; a frequently asked questions (FAQ) page could be created to indicate which establishments are affected by the TOT increase; since projections were based off existing hotels, data can be provided on number of rooms for planned hotels; and the increase was recommended to bring Hayward in line with surrounding cities and all provisions of the ordinance would remain unchanged; and room rates would be impacted by an increase of 3.5% over the current rate.

There being no public speakers, Mayor Halliday opened and closed the public hearing at 7:55 p.m.

Council Member Salinas offered a motion to move staff's recommendation.

Council Member Márquez seconded the motion and suggested increasing the rate to 12% to be more in line with neighboring cities as Union City's rate at 12.87% and San Leandro's at 14%.

In response to Council Member Salinas' inquiry regarding increasing the rate to 14%, City staff noted the proposal could include language up to a certain percentage and specify that the amount may increase or decrease based on factors such as the state of the economy.

Council Member Salinas restated his motion to increase the rate up to 14% and include appropriate language to enable Council the ability to adjust the rate.

Council Member Márquez continued to second the motion and recommended that language be made clear to voters.

City Manager McAdoo noted staff would collaborate with the polling consultant.

Council Member Lamnin supported the recommendation for a Q&A page as this would be helpful for residents.

Council Member Zermeño supported the motion and recommended the Q&A include language about how the rate may change in case of another state of emergency.

Council Member Mendall thanked the Council Budget and Finance Committee for doing the analysis and especially without spending funds on a poll; supported setting the rate up to 14% to maximize flexibility; noted that language could be added to the fine print to clarify that Vrbo properties would be affected if they were to become legal.

Council Member Wahab liked the flexibility of a sliding scale that depends on the economy and favored to consider including language for rentals under 30 days even though they are not allowed. City Manager McAdoo noted the City would have to create a regulatory scheme to tax these types of properties, and given the small number of these types of properties, staff had determined it was not worth the staff time or revenue.



**SPECIAL CITY COUNCIL MEETING  
REMOTE PARTICIPATION  
Tuesday, June 30, 2020, 7:00 p.m.**

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Council Member Wahab noted the City receives significant complaints about Airbnbs and asked staff to revisit the topic in the future.

Council Member Márquez supported following up with the polling consultant, echoed Council Member Lamnin’s comment to being sensitive to the current climate, and noted the allocations should reflect the commitment to the community’s wishes expressed in the most recent survey including fixing roads, economic development, job growth, and City aesthetics.

Mayor Halliday supported Council Member Márquez’s comments that the City should spend revenue from visitors visiting the City to help make Hayward more welcoming, noted short-term rental issues could be revisited at any time, and added it would be good to include information about short-term rentals in FAQs.

It was moved by Council Member Salinas, seconded by Council Member Márquez, and carried by the following roll call vote, to approve the staff recommendation with direction to staff to prepare the appropriate documents to place the Transient Occupancy Tax increase measure on the November 2020 ballot and recommend the new increase at up to 14%:

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

**PUBLIC HEARING**

4. FY2021 Gann Appropriation Limit: Adopt a Resolution Establishing a Gann Appropriations Limit for Fiscal Year 2021 **PH 20-053**

Staff report submitted by Finance Director Claussen, dated June 30, 2020, was filed.

Finance Director Claussen provided a synopsis of the staff report.

In response to Council Member Wahab’s inquiry, Finance Director Claussen clarified the Gann Appropriation Limit sets the limit for taxes based on a formula and usually establishes limits for rapidly developing communities and taxes applied to a community would not be adjusted without voter approval.

There being no public speakers, Mayor Halliday opened and closed the public hearing at 8:18 p.m.

Council Member Salinas offered a motion to move the item per staff's recommendation. Mayor Halliday seconded the motion.

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

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

Resolution 20-110, "Adoption of Appropriations Limit for Fiscal Year 2021 Pursuant to Article XIII B of the Constitution of the State of California"

### **CITY MANAGER'S COMMENTS**

City Manager McAdoo spoke about five items: 1) thanked businesses who participated in the downtown closure of B and Main Streets to expand outdoor dining and noted there would be another closure on July 11, 2020; 2) noted City offices, City's COVID-19 Testing Center and telephone hotline will be closed on July 3, 2020 in observance of the Fourth of July holiday; 3) mentioned Hayward Library services: curbside pickup of Hayward library materials, free summer meals from July 6 through August 7 in partnership with HUSD, and virtual Summer Learning Camp on July 6, 2020; 4) called attention to the recent high volume of COVID-19 testing and indicated information on the City's COVID-19 Testing Center could be accessed online; and 5) added that the Housing Division was accepting additional applications for the Rental Housing Relief Program to support residents.

In response to Council Member Wahab's inquiry, City Manager McAdoo noted HUSD Superintendent Wayne and she would be hosting a joint town hall with Police Chief Chaplin on July 13, 2020, to hear community input on the SRO (Student Resource Officer) program and added that a joint HUSD Board/City Council meeting would be planned thereafter.

### **COUNCIL REPORTS AND ANNOUNCEMENTS**

Council Member Wahab wished everyone a Happy Fourth of July and reminded them to be mindful of firework safety.

Mayor Halliday echoed the statement about firework safety, reminded all they were not permitted in Hayward, and added that some fireworks could be disturbing to pets and young children.



**SPECIAL CITY COUNCIL MEETING  
REMOTE PARTICIPATION  
Tuesday, June 30, 2020, 7:00 p.m.**

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**ADJOURNMENT**

Mayor Halliday adjourned the special meeting at 8:43 p.m., in memory of former Alameda County Supervisor Gail Steele who passed away on June 25, 2020. Members of the City Council spoke about Ms. Gail Steele's legacy seen through her commitment to the community by serving as a member of the City Council from 1974 to 1982, serving as a member of the Alameda County Board of Supervisors from 1992 until 2010, serving on the St. Rose Hospital Foundation Board, founding the Eden Youth and Family Center and serving as its executive director, advocating for children who were killed by violence, starting the Children's Memorial Statute Project and being instrumental in getting statutes placed in Oakland and Hayward in memory of children killed by violence, taught at Chabot College with her son, and starting the Hayward Volunteer Awards and Recognition Dinner. Ms. Steele was remembered for her commitment and support of children, for rehabilitating and transitioning troubled youth to better circumstances and her belief in the value of every human being. Ms. Steele was admired for her actions and it was noted that her legacy would be felt throughout Hayward and surrounding communities for generations.

**APPROVED**

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Barbara Halliday  
Mayor, City of Hayward

**ATTEST:**

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Miriam Lens  
City Clerk, City of Hayward



# CITY OF HAYWARD

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

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**File #:** CONS 20-370

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adopt an Ordinance Amending Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), Section 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments, of the Hayward Municipal Code

**RECOMMENDATION**

That the Council adopts the Ordinance introduced on July 7, 2020, by Council Member Mendall.

**SUMMARY**

The item entails adoption of an Ordinance amending Tobacco Retail Sales Establishments, Chapter 10, Article 1 of the Hayward Municipal Code, Section 10-1.2780 through 10-1.2797, and further modification of Section 10-2782, Section 10-1.2785(b)(5), Section 10-1.2794, and Section 10-1.2795.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Summary of Published Ordinance
Attachment III	Redlined Ordinance





**DATE:** July 14, 2020  
**TO:** Mayor and City Council  
**FROM:** City Clerk  
**SUBJECT:** Adopt an Ordinance Amending Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), Section 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments, of the Hayward Municipal Code

### **RECOMMENDATION**

That the Council adopts the Ordinance introduced on July 7, 2020, by Council Member Mendall.

### **SUMMARY**

The item entails adoption of an Ordinance amending Tobacco Retail Sales Establishments, Chapter 10, Article 1 of the Hayward Municipal Code, Section 10-1.2780 through 10-1.2797, and further modification of Section 10-2782, Section 10-1.2785(b)(5), Section 10-1.2794, and Section 10-1.2795.

### **BACKGROUND**

The Ordinance was introduced by Council Member Mendall at the July 7, 2020, meeting of the City Council with the following roll call vote:

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

The Ordinance was introduced with three amendments: 1) modify language in Section 10-1.2794(a) and Section 10-1.2785(b)(5) by replacing “three-year” with “five-year”; 2) review enforcement process and draft a mechanism for revocation of tobacco retailer licenses by the Planning Commission; and 3) ensure preparation of an annual report that includes information regarding the enforcement of updated regulations.

Amended sections are highlighted below and Attachment III includes a redlined version of the updated Ordinance.

**July 7 revisions shown in red text**  
**July 14 revisions shown in blue text**

**SECTION 10-1.2785 - TOBACCO RETAILER LICENSE (TRL).**

- b (5). The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last ~~three~~-five years.

**SEC. 10-1.~~2796~~2794 - REVOCATION OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS; APPEALS.**

- a. In addition to the remedies set forth in Section 10-1.2793, ~~A~~any Tobacco Retail Sales Establishment ~~in violation of that violates~~ these regulations three (3) times within a ~~five~~ ~~three~~-year period shall be subject to revocation of ~~the its~~ Tobacco Retail License ~~and/or its~~ Conditional Use Permit, unless the business can demonstrate by clear and convincing evidence that a lesser penalty is warranted.
- b. For Large-Format Tobacco Retail Sales Establishments, as defined in Section 10-1.2784.a, a written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 ~~of this Code~~ and/or Chapter 5, Article 7 of the Hayward Municipal Code.
- c. For any Tobacco Retail Sales Establishments found to be in violation of Section 10-1.2794.a operating with that have a Conditional Use Permit or deemed a that are legal nonconforming uses, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of ~~this~~ the Hayward Municipal Code. Appeals shall be governed by Section 10-1.2845 of ~~this~~ the Hayward Municipal Code.
- d. ~~The hearing officer in the case of administrative action under 10-1.27964. subsection (a), or the Planning Commission, in the case of administrative action under 10-1.27964 subsection (b), has the authority to order a suspension of the Tobacco Retail Sales Establishment's TRL and/or conditional use permit in lieu of revocation.~~

## **SECTION 10-1.2797 2795 – ANNUAL REPORT**

An annual report shall be provided to the City Council regarding the implementation enforcement of these provisions unless Council no longer requests such report- including but not limited to administrative and enforcement compliance data.

In addition, Section 10-1.2782(dd) has been amended to correct a typographical error reference. The correct subsection reference should be “h” located on the first sentence of the provision and not “f” as previously submitted.

## **SECTION 10-1.2782 – DEFINITIONS**

dd. “Vaping device” means as defined in Subsection ~~f.~~ h. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bong, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof, For purposes of these regulations, a vaping device does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

## **STRATEGIC ROADMAP**

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

## **FISCAL IMPACT**

There is no fiscal impact associated with this report.

## **PUBLIC CONTACT**

The summary of the Ordinance was published in the Hayward Daily Review on Friday, July 10, 2020. Adoption at this time is therefore appropriate.

## **NEXT STEPS**

The Hayward Municipal Code will be updated accordingly if the Ordinance is adopted.

*Prepared and Recommended by:*

Michael Lawson, City Attorney  
Laura Simpson, Development Services Director  
Miriam Lens, City Clerk

Approved by:

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

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Kelly McAdoo, City Manager

**PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE BY THE CITY  
COUNCIL OF THE CITY OF HAYWARD**

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, AMENDING CHAPTER 10 (PLANNING, ZONING, AND SUBDIVISIONS), ARTICLE 1 (ZONING ORDINANCE), SECTION 10-1.2780 THROUGH 10-1.2797, TOBACCO RETAIL SALES ESTABLISHMENTS, OF THE HAYWARD MUNICIPAL CODE

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

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 20-120 approving the text changes to the Hayward Municipal Code, Sections 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments Ordinance.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to tobacco retail sales establishments, introduced herewith and as specifically shown in this Ordinance.

Section 3. Severance. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

Introduced at a regular meeting of the City Council of the City of Hayward, held the 7<sup>th</sup> day of July 2020, by Council Member Mendall.

This Ordinance will be considered for adoption at the special meeting of the Hayward City Council, to be held on July 14, 2020. This meeting will be conducted via teleconference consistent with State of California Executive Order No. 29-20 regarding the COVID-19 pandemic. The full text of this Ordinance and the companion Resolution are available for examination by the public by contacting the Office of the City Clerk at [cityclerk@hayward-ca.gov](mailto:cityclerk@hayward-ca.gov) or (510) 583-4400.

Dated: July 10, 2020  
Miriam Lens, City Clerk  
City of Hayward

ORDINANCE NO. 20-\_\_\_\_\_

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, AMENDING CHAPTER 10 (PLANNING, ZONING, AND SUBDIVISIONS), ARTICLE 1 (ZONING ORDINANCE), SECTION 10-1.2780 THROUGH 10-1.2797, TOBACCO RETAIL SALES ESTABLISHMENTS, OF THE HAYWARD MUNICIPAL CODE

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

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 20-\_\_ approving the text changes to the Hayward Municipal Code, Sections 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments Ordinance.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to tobacco retail sales establishments, introduced herewith and as specifically shown in this Ordinance.

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Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 7<sup>th</sup> day of July 2020, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_th day of \_\_\_\_\_ 2020, 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

**EXHIBIT A**CHAPTER 10, PLANNING, ZONING, AND SUBDIVISIONS  
ARTICLE 1, ZONING ORDINANCE**SECTION 10-1.2780, TOBACCO RETAIL SALES ESTABLISHMENTS**

SEC. 10-1.2780-- FINDINGS AND PURPOSE.

~~In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Tobacco Retail Sales Establishments regulations is to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.~~

The City finds and declares as follows:

- a. According to the Centers for Disease Control and Prevention, each day about 1,600 U.S. youth under the age of 18 smoke their first cigarette. Each year, nearly half a million Americans die prematurely of smoking or exposure to secondhand smoke. Another 16 million live with a serious illness caused by smoking.
- b. There is local and nation-wide evidence from the California Department of Public Health and the Centers for Disease Control and Prevention that youth consumption and use of flavored tobacco products and electronic smoking devices are on the rise. The use of these products has been identified by the United States Surgeon General to pose significant health and safety risks to community at-large and youth individuals under the age of 18.
- c. The City of Hayward recognizes that the use of tobacco products and electronic smoking devices have devastating and have long-lasting effects on personal and public health. The City further recognizes in accordance with the Centers for Disease Control and Prevention, that tobacco use is the leading cause of preventable disease, disability, and death in the United States.



d. The purpose of the Tobacco Retail Sales Establishments Ordinance is to promote public health and provide regulatory protection for the City's youth from harmful tobacco and nicotine products. The Ordinance establishes a monitoring program that encourages responsible tobacco retailing and holds businesses accountable for selling and distributing harmful and addictive tobacco and nicotine products to underage individuals. It is intended to supplement relevant provisions of Federal and State law and is not intended nor shall it be interpreted to conflict, expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or alter the penalties provided therein.

#### SEC. 10-1.2781 - APPLICABILITY.

These regulations apply to all Tobacco Retail Sales Establishments, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, ~~electronic smoking devices~~ or tobacco paraphernalia, as defined herein. Tobacco Retailers legally existing prior to the adoption of these regulations may exist without the approval of a conditional use permit but must otherwise comply with all standards set forth in these regulations.

#### SEC. 10-1.2782 - DEFINITIONS.

For purposes of these regulations, certain words and terms have the following meaning:

- a. "Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."
- b. "CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.
- c. "Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.
- ad. "Cigar" means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of

this subsection, "Cigar" includes, but is not limited to, Tobacco Products known or labeled as "cigar," "cigarillo," "tiparillo," "little cigar," "blunt," "blunt wrap," or "cigar wrap."

- e. "Cigarette" means any roll of tobacco for smoking of any size or shape, made wholly or in part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) that weighs more than three pounds per thousand sticks are not cigarettes and are defined as Tobacco Products.
- bf. "Characterizing Flavor" means a ~~distinguishable~~ taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during ~~or consumption, or~~ any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, sweetener, sugar, herb, or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- c. ~~"Distinguishable" means perceivable by an ordinary consumer by either the sense of smell or taste.~~
- d.g. "Drug Paraphernalia" is as defined in California Health &and Safety Code section 11014.5, as that section may be amended from time to time.
- eh. "Electronic Smoking Device" means:
1. any electronic ~~and/or battery-operated~~ device, ~~the use of which may resemble smoking, which can be used to that~~ delivers an inhaled a dose of nicotine or other substances to the person inhaling, including but not limited to, ~~"Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an~~ electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, ~~an~~ electronic cigar,

~~an~~ electronic cigarillo, ~~an~~ electronic pipe, ~~an~~ electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.

2. Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts. "Electronic Smoking Device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

i. "Flavored Tobacco Product" means any tobacco product (including but not limited to other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. For purposes of this definition, "constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product. Furthermore, there shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

1. Made a public statement or claim that the tobacco product has, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/or

2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.

j. "Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.

- ~~g.k.~~ "Hookah bar" or "hookah lounge" means any facility, building, structure, or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.
- ~~h.l.~~ "Imitation Tobacco Product" means any edible or non-edible, non-tobacco product designed to resemble a tobacco product ~~or any non-edible non-tobacco product designed to resemble a tobacco product~~ that is often -intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.
- ~~i.m.~~ "Labeling" means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- ~~j.n.~~ "Licensee" means the holder of a valid, City-issued Tobacco Retailer License.
- ~~k.o.~~ "Manufacturer" means any person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, ~~or~~ labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- ~~l.p.~~ "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.
- ~~m.q.~~ "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- ~~r.~~ "Pharmacy" and "Drugstore" mean a retail establishment in which the profession of pharmacy is practiced by a pharmacist license by the State of California in accordance with the Business and Professions Code, and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods.

- s. “Property Owner” means any person, persons, organization, or legal entity owning real property and as it appears on the last equalized assessment roll for the City.
- nt. "Proprietor" means a person with an ownership or managerial interest in a Tobacco Retail Sales Establishment. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a Tobacco Retail Sales Establishment, other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a Tobacco Retail Sales Establishment.
- ou. "Residential District" is any area within City limits that is designated in the City's zoning ordinance as one of the following districts: RS; RNP; RM; RH; RO; MH; SMU; any residential Planned Development; T3, T4, T4-1, T4-2 or T-5 (in the City's Form-Based Code zoning districts); or any subsequently created zoning district whose primary use is residential in character.
- v. “Retail Price” means the price listed for the tobacco product on its packaging or any related shelving, advertising, or display where sold or offered for sale, and includes all applicable taxes and fees.
- pw. "Self-Service Display" means the open display of tobacco products, electronic smoking devices or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.
- qx. "Sensitive Receptors" are people that have an increased sensitivity to air pollution or environmental contaminants. For the purpose of this Ordinance, sensitive receptor locations include schools, pre-schools, parks and playgrounds, libraries, and day care ~~centers~~ facilities.
- ry. "Tobacco Retail Sales Establishment" or "Tobacco Retailer" means any establishment that sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, ~~electronic smoking devices~~, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.

- ~~sz.~~ "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items s or parts thereof designed or marketed for the smoking, ~~or~~ ingestion, preparation, storing, or consumption of tobacco products or other substances.
- ~~taa.~~ "Tobacco Product" means any product containing, made or derived from tobacco or ~~contains synthetically produced~~ nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, ~~or~~ electronic smoking devices (with or without nicotine), or any component, part, accessory intended or reasonably expected to be used with a Tobacco Product whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.
- ~~ubb.~~ "Tobacco Retailer License" means the license issued pursuant to Section 10-1.2785 that authorizes ~~electronic smoking device or~~ tobacco retail or wholesale sales at a certain, fixed approved location and by a certain Tobacco Retailer. Mobile vendors of tobacco products, ~~and~~ electronic smoking devices and tobacco paraphernalia are prohibited.
- ~~vcc.~~ "Vapor bar" or "vapor lounge" (also referred to as "smoking device bar" or "electronic smoking device lounge") means, but not limited to, any facility, building, structure or location where customers use tobacco products, an ~~an~~ electronic smoking devices or other apparatuses to deliver an inhaled dose of nicotine or other substance within the establishment.
- ~~dd.~~ "Vaping device" means as defined in Subsection ~~fh.~~ of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof. For purposes of these regulations, a vaping device

does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

SEC. 10-1.2783 - REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All ~~new and existing~~ Tobacco Retail Sales Establishments shall abide by all of the following requirements and operational standards:
1. All Tobacco Retail Sales Establishments shall comply with local, ~~S~~state, and/or ~~F~~federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including, but not limited to, posting prominently near the cash register or other point of sale and at the entrances to the establishment, the legal age to purchase tobacco products such items, and checking the identification of purchasers to ensure they are of legal age.
  2. All new Tobacco Retail Sales Establishments shall obtain a conditional use permit pursuant to Section 10-1.3200 prior to operation, unless exempt as provided hereinafter, and a Tobacco Retailer License. It shall be unlawful for any ~~P~~erson to operate ~~as~~ a Tobacco Retail Sales Establishment without first obtaining a conditional use permit, if one is required, and a Tobacco Retailer License.
  3. All Tobacco Retail Sales Establishments shall display their City of Hayward Tobacco Retail License and California Cigarette and Tobacco and Product Retailer License to sell tobacco products, ~~and their annual inspection certificate in a visible, in a~~ prominent location visible to the public at all times.
  4. It shall be a violation of these regulations for any Tobacco Retailer ~~Sales Establishment~~ to violate any local, ~~s~~State, or ~~F~~federal law applicable to tobacco products, electronic smoking devices or tobacco paraphernalia.

5. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment or any of the Tobacco Retail Sales Establishment's agents or employees to violate any local, ~~s~~State, or ~~F~~federal law regulating controlled substances or drug paraphernalia, ~~such as,~~ for example, California Health and Safety Code ~~s~~Section 11364.7, except that conduct authorized pursuant to the ~~s~~State ~~Medical Marijuana Program (California Health and Safety Code sections 11362.7 et seq.)~~ law shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell, ~~or transfer,~~ or in any form furnish tobacco products or tobacco paraphernalia ~~or electronic smoking devices~~ to an individual under the age of 21 in accordance with the California Penal Code 308, California STAKE Act, or any other applicable local, State or Federal law, or to ~~any individual person~~ who appears to be under twenty-seven (27) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under ~~s~~State and ~~F~~federal law to purchase and possess tobacco products ~~or electronic smoking devices~~.
7. No person who is younger than the minimum age established by ~~S~~state or ~~F~~federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. ~~All~~ tobacco products, ~~electronic smoking devices,~~ ~~imitation tobacco products~~ and/or tobacco paraphernalia shall be secured so that only store employees have immediate access to these items. Self-service displays of tobacco products, electronic smoking devices, and tobacco products are prohibited.
9. ~~All Tobacco Retail Sales Establishments that do not sell imitation tobacco products or flavored tobacco products as of the effective date of these regulations are prohibited from selling any imitation tobacco product or flavored tobacco product. The burden of proof to establish that sales of~~



~~imitation tobacco products and/or flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer. No Tobacco Retail Establishment shall sell imitation tobacco products or any imitation products that resemble cannabis or any drug or illegal substances.~~

10. No Tobacco Retail Sales Establishment shall sell tobacco products, or tobacco paraphernalia, ~~or electronic smoking devices~~ at a mobile location, ~~For example, sales of tobacco products, or tobacco paraphernalia, or electronic smoking devices~~ on foot or from vehicles, ~~are prohibited.~~

11. All sales of tobacco products and tobacco paraphernalia shall be conducted in person at the licensed Tobacco Retail Sales Establishment. No Tobacco Retail Sales Establishment shall offer or provide any delivery of tobacco products or tobacco paraphernalia to a consumer.

- b. Notwithstanding any other provision of law, it shall be a violation of these regulations for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:

1. Any single cigar, whether or not packaged for individual sale, ~~with a retail price of less than eight (\$8) dollars, including all applicable taxes and fees.~~
2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer, ~~;~~
3. Any package of cigars unless it contains at least five cigars or units in the manufacturer's original consumer package with a retail price of eight (\$8) dollars or more, including all applicable taxes and fees. ~~containing fewer than five (5) cigars. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars.~~
4. Single cigarettes or cigarettes packages of less than 20 cigarettes.
5. Cigarette packages of 20 cigarettes with a retail price of less than eight (\$8) dollars per package, including all applicable taxes and fees.

6. Any tobacco product for less than the retail price by honoring or redeeming discounts, multi-package discounts, free products, or any other form of discount.

7. Cigarette packages or tobacco products not in compliance with the Revenue and Taxation Code, Section 30165.1, Subdivisions (e)(1), (e)(2) and (e)(3); not listed as approved in the California Tobacco Directory.

The minimum prices established in this section shall be adjusted from time to time in proportion with the Consumer Price Index for the San Francisco/Oakland/Hayward area as reported by the U.S Labor of Statistics and after publicly being posted in the City's website for at least 60 calendar days.

c. ~~With the exception of Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of this Article, it shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, or exchange for any form of consideration any:~~

1. Flavored tobacco products, parts, components, or flavored tobacco paraphernalia.

2. Bidis or Beedies products.

3. Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components.

4. Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc.

5. CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption.

~~flavored tobacco product within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school. The burden of proof to establish that sales of flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.~~

d. Implementation: All existing legal Tobacco Retail Establishment owners shall have six (6) months from the effective date of these regulations to cease the sales of and remove all: (i) flavored tobacco products, including but not limited to any related flavored tobacco paraphernalia; (ii) electronic smoking devices, electronic nicotine delivery systems; and (iii) vaping devices, products and vaping paraphernalia; including but not limited to, devices, substances, parts and components. However, no grace period will be provided when a legal Tobacco Retail Establishment is sold or transferred. All Tobacco Retail Establishments shall abide by all Tobacco Retail Sales requirements and operational standards set forth herein.

~~d. A tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:~~

~~1. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product; or~~

~~2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.~~

e. Every Tobacco Retail Sales Establishment shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the establishment separately from the original packaging designed for retail sale to the consumer. ~~The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale and may be disposed of upon the sale of the entire contents of such package.~~

f. ~~Each application for a conditional use permit to operate a Tobacco Retail Sales Establishment shall include a plan for demonstrating the means by which the applicant will comply with the operating standards outlined in this section.~~

~~g.~~—Compliance with these regulations shall be enforced by the City's Development Services Planning Director or his/her designee, in conjunction with the City's Code Enforcement Division and the Hayward Police Department. The Code Enforcement ~~Supervisor~~ Manager or his/her designee shall use reasonable efforts to conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per twelve (12) month period to determine if the Tobacco Retail Sales Establishment is in compliance with these regulations; and any necessary follow-up inspections of non-compliant Tobacco Retailers. The Hayward Police Department shall use reasonable efforts to conduct decoy inspection operations throughout the year to verify the Tobacco Retailers are compliant and are not selling to minors at any time. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other ~~P~~person against the City or its agents ~~in conducting these annual inspections.~~

#### SEC. 10-1.2784 - LARGE-FORMAT TOBACCO RETAILERS.

- a. Retail establishments, such as grocery stores, big-box stores, ~~pharmacies~~, etc., that have 10,000 square feet or more of floor area and that devote not more than five (5%) percent of such floor area to the sale, display, sale and storage of tobacco products, ~~electronic smoking devices~~ or tobacco paraphernalia ("Large-Format Tobacco Retailers") are permitted in any zoning district in which retail sales are allowed, without the need to obtain a conditional use permit for tobacco sales, with the exception of subsection "c." of this section.
- b. Large-Format Tobacco Retailers are required to obtain a Tobacco Retailer License as set forth in Section 10-1.2785 and are subject to compliance with all requirements and operational standards as set forth in these regulations.
- c. The sale of tobacco products and tobacco paraphernalia in drugstores and pharmacies is hereby prohibited. Any existing drugstore or pharmacy with a valid City-issued Tobacco Retail License shall have six (6) months from the effective date of these regulations to cease the sales of all tobacco products and tobacco paraphernalia and remove all related products.

## SEC. 10-1.2785 - TOBACCO RETAILER LICENSE (TRL).

All new and existing Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 above and as follows:-

- a. Tobacco Retailer License Application Procedure:
  1. Application for a Tobacco Retailer License shall be submitted in the name of each ~~p~~Proprietor proposing to conduct tobacco retail sales and shall be signed by each ~~p~~Proprietor or an authorized agent thereof. It is the responsibility of each ~~p~~Proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No ~~p~~Proprietor may rely on the issuance of a TRL as a determination by the City that the ~~p~~Proprietor has complied with all laws applicable to tobacco retail sales. A TRL issued contrary to these regulations, contrary to any other law, or on the basis of false or misleading information supplied by a ~~p~~Proprietor shall be revoked pursuant to Section 10-1.279~~64~~ herein. Nothing in these regulations shall be construed to vest in any ~~P~~erson obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any provision of law.
  2. After approval of a conditional use permit, a completed and executed All applications for a TRL shall be submitted on a form supplied by the City and shall contain the following information, but not limited to:
    - i. The name, address, and telephone number, and driver's license or state issued I.D. number of each ~~p~~Proprietor of the business seeking a TRL;
    - ii. The business name, address, e-mail, and telephone number of the single fixed location for which a TRL is sought;
    - iii. A single name and mailing address authorized by each ~~p~~Proprietor to receive all communications and notices (the "authorized address"). If an authorized address is not supplied,

each ~~p~~Proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (b)(2).<sup>;</sup>

- iv. ~~Proof that the location for which a TRL is sought has been issued~~  
The valid state tobacco retailer's license number issued by the California Board of Equalization Department of Tax and Fee Administration. A copy of the California Cigarette and Tobacco Products Retailer's License and California Seller's Permit must be provided with the TRL application.<sup>;</sup>
  - v. Whether or not any ~~p~~Proprietor or any agent of the ~~p~~Proprietor has admitted violating, or has been found to have violated, these regulations and, if so, the dates and locations of all such violations within the previous five years.<sup>;</sup>
  - vi. A statement signed by each ~~p~~Proprietor that no drugs or drug paraphernalia is or will be sold at the location for which the TRL is sought.~~;~~and
  - vii. Such other information as the Planning Director or designee deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including however not limited to any proposed signage or artwork for the business premises to ensure that the signage/artwork does not encourage youth smoking.
3. All Tobacco Retail Sales Establishments shall inform the Planning Director or his/her designee in writing of any change in the information submitted on an application for a TRL within ten business days of a change.
  4. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law, subject to any applicable exemptions.
- b. Issuance of TRL: Upon the receipt of a complete application for a TRL and the license fee required hereunder, the Planning Director or his/her designee shall issue a

license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate, false or otherwise fails to comply with Section 10-1.2785(a)(2) above. Intentionally supplying inaccurate or false information shall be a violation of these regulations.;
2. The application seeks authorization for tobacco retail sales at a location for which the issuance of a TRL is prohibited under these regulations or does not qualify under any exemptions under these regulations, unless tobacco retail sales were being conducted at the proposed location prior to the effective date of these regulations and provided that such sales constitute a legal, nonconforming use.;
3. The application seeks authorization for tobacco retail sales that is prohibited under these regulations (e.g., mobile vending) or that is unlawful pursuant to this Article, including without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law.;
4. The location for which a TRL is sought lacks a valid state tobacco retailer's license by the California ~~Board of Equalization~~ Department of Tax and Fee Administration.;
5. The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last ~~three~~ five years.

c. TRL Renewal and Expiration:

1. Term and Renewal of TRL. A TRL is invalid if the appropriate fee has not been timely paid in full or if the term of the TRL has expired. The term of a TRL is one year, commencing the first day of each calendar year.
2. Expiration of TRL. A TRL that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license that was not timely renewed, the ~~P~~proprietor must complete all of the following:

- i. Submit the TRL fee, including any fees for late renewal, and application renewal form;~~and.~~
  - ii. Submit a signed affidavit affirming that the ~~p~~Proprietor has not sold and will not sell any tobacco product, ~~electronic smoking device~~ or tobacco paraphernalia after the TRL expiration date and before the TRL is renewed;~~and.~~
  - iii. ~~Pay Has\_ paid~~ all outstanding fines and resolved any outstanding violations of these regulations, before seeking renewal of the license.
- d. TRL Nontransferable: A TRL may not be transferred from one ~~p~~Person to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in ~~p~~Proprietor(s).
- e. TRL Conveys a Limited, Conditional Privilege: Nothing in these regulations shall be construed to grant any ~~p~~Person obtaining and maintaining a TRL any status or right other than the limited conditional privilege to act as a Tobacco Retail Sales Establishment at the location in the City identified on the face of the license. Nothing in these regulations shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including but not limited to, any provision of the Hayward Municipal Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. A TRL does not make the Tobacco Retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.
- f. Fee For TRL: The fees for the annual TRL shall be established by the City Council from time to time in the City's Master Fee ~~Schedule, and~~ Schedule and are payable at the time the establishment obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of these regulations, including but not limited to, issuing the TRL license, Tobacco Retailer inspections and compliance checks, documentation of violations and prosecution of violators. Annual fees shall not be pro-rated or refunded during the course of the calendar year.



## g. Compliance and Monitoring:

1. Compliance with these regulations shall be enforced by the Planning Director, in conjunction with the Code Enforcement Division and Hayward Police Department. The City Manager may designate any number of additional persons to monitor compliance with these regulations.
2. Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is in compliance with all laws regulating sales of tobacco products, electronic smoking devices, tobacco paraphernalia, and imitation tobacco products. City staff shall endeavor to perform compliance check inspections at least annually in addition to follow-up inspections for non-compliance on all Tobacco Retail Sales Establishments.
3. The City shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
  - i. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City~~;~~
  - ii. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations~~;~~~~or~~;
  - iii. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services or other governmental agency.

SEC. 10-1.2786 - CONDITIONAL USE PERMIT FOR NEW TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All new Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, ~~electronic smoking devices~~ or tobacco

paraphernalia are only allowed in the General Commercial (CG) Zoning District and shall apply for and obtain approval of a conditional use permit, as set forth in HMC Section 10-1.2815 and any other applicable City regulation, in addition to a Tobacco Retailer License.

- b. New Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, ~~electronic smoking devices~~ or tobacco paraphernalia are only allowed in the General Commercial (CG) Zoning District. In addition to obtaining a conditional use permit, new Tobacco Retail Sales Establishments shall be subject to the following ~~separation~~ requirements, but not limited to:

1. No new Tobacco Retail Sales Establishments shall be established or located within ~~500~~1,000 feet from any existing residential district or use, any sensitive receptors, or similar use as determined by the Planning Development Services Director, or within 500 feet of any other approved Tobacco Retail Sales Establishment.
2. The distances set forth above shall be measured as a radius from property line to property line without regard to intervening structures.
3. The applicant shall be required to submit:
  - i. ~~a~~a map, drawn to scale, showing how their proposed business location meets the ~~mentioned~~ location and separation requirements as part of the conditional use permit application.
  - ii. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other Person to whom a share or percentage of the income of the establishment is to be paid.
  - iii. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which

the applicant was convicted and the date and jurisdiction of the conviction.

iv. A plan for demonstrating the means by which the applicant will comply with Section 10-1.2783, Requirements and Operational Standards for Tobacco Retail Sales.

c. Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations will not be required to obtain a conditional use permit and will be deemed a legal non-conforming use for Zoning purposes as it pertains to the provisions this Section, 10-1.2786. Such legal non-conforming status will not apply to any other provisions of the Tobacco Retail Sales Establishment Ordinance requirements adopted herein. In order to maintain its legal zoning non-conforming status, each such Tobacco Retail Sales Establishment must comply with all Requirements and Operational Standards Section 2783 and the Non-Conforming Use regulations set forth in Section 10.1.2900 et seq.

SEC. 10-1.2787 - POSTING OF CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the Tobacco Retail Sales Establishment and posted in a place where it may readily be viewed by the general public.

SEC. 10-1.2788 - FINDINGS.

In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration of Tobacco Retail Sales Establishments in the area. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: ~~R~~ residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

~~SEC. 10-1.2789 - APPLICATION FOR CONDITIONAL USE PERMIT.~~

~~In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit for a new Tobacco Retail Sales Establishment shall set forth and include the following:~~

- ~~a.—A map showing that the proposed establishment meets all location and separation requirements as set forth in Section 10-1.2786; and~~
- ~~b.—The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and~~
- ~~c.—A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.~~

~~SEC. 10-1.2790-2789~~ - PROHIBITED LAND USES.

The following uses are prohibited in all zoning districts: ~~V~~vapor bars or vapor lounges; smoking device bars or electronic smoking device lounges; and hookah bars or hookah lounges.

~~SEC. 10-1.2791~~ - EXISTING TOBACCO RETAIL SALES ESTABLISHMENTS.

~~Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations shall be considered a legal non-conforming use and will be permitted to continue in operation as a Tobacco Retail Sales Establishment. In order to maintain its legal non-conforming status, each such Tobacco Retail Sales Establishment shall be required comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 and the Non-Conforming Use regulations set forth in Section 10-1.2900 et seq., and shall obtain an annual Tobacco Retailer License as set forth in Section 10-1.2785.~~

~~SEC. 10-1.2792~~2790 - LIABILITY FOR EXPENSES.

Any ~~p~~Person who is found to have violated the Tobacco Retail Sales Establishments regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or

administrative hearing on, the violation. Reinspection and penalty fees, and all costs and expenses to ascertain compliance with previously noticed violations shall be charged to the Proprietor(s) owner of the Tobacco Retail Sales Establishment, as ~~may be~~ set by the City Council in the Master Fee Schedule. However, the City reserves the right to recover any and all outstanding enforcement costs and charges incurred by the Tobacco Retail Sales Establishment from the Property Owner for non-compliance or non-payment pursuant to Chapter 5, Article 7 of the Hayward Municipal Code and Section 10-1.2793, or any other available legal remedy.

SEC. 10-1.~~2793~~2791 - INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Planning Director or his/her designees shall have the right to enter and inspect any Tobacco Retail Sales Establishment for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner, or whenever there is reason to suspect a violation of any of the provisions of the Tobacco Retail Sales Establishments regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 et seq., or any successor legislation thereto.

SEC. 10-1.~~2794~~2792 - PUBLIC NUISANCE.

It shall constitute a public nuisance for any ~~p~~Person to operate or allow to operate a Tobacco Retail Sales Establishment in violation of these regulations.

SEC. 10-1.~~2795~~2793 - CUMULATIVE REMEDIES.

Any ~~p~~Person who violates any provision of the Tobacco Retail Sales Establishment regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by

state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Tobacco Retail Sales Establishments regulations shall be established by the City Council in the Master Fee Schedule.

SEC. 10-1.27962794 - REVOCATION OF TOBACCO RETAILER LICENSES AND  
CONDITIONAL USE PERMITS; APPEALS.

- a. ~~In addition to the remedies set forth in Section 10-1.2793, A~~ny Tobacco Retail Sales Establishment ~~that violates in violation of~~ these regulations three (3) times within a ~~three~~five-year period shall be ~~subject to~~ ~~referred to the Planning Commission~~ ~~subject to~~for review. ~~A third violation within such five-year period shall result in~~ revocation of ~~its the~~ Tobacco Retail License ~~and/or its e~~Conditional Use Permit, ~~unless the business can demonstrate by clear and convincing evidence that a lesser penalty is warranted.~~
- b. For Large-Format Tobacco Retail Sales Establishments, ~~as defined in Section 10-1.2784.a, a~~ written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 ~~of this Code and/or Chapter 5, Article 7 of the Hayward Municipal Code.~~
- c. For ~~any~~ Tobacco Retail Sales Establishments ~~found to be in violation of Section 10-1.2794.a that have operating with~~ a Conditional Use Permit or ~~that are deemed~~ a legal nonconforming uses, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of ~~this the Hayward Municipal~~ Code. Appeals shall be governed by Section 10-1.2845 of ~~this the Hayward Municipal~~ Code.
- d. ~~The hearing officer in the case of administrative action under 10-1.27964 subsection (a), or the Planning Commission, in the case of administrative action under 10-1.27964 subsection (b), has the authority to order a suspension of the Tobacco Retail Sales Establishment's TRL and/or conditional use permit in lieu of revocation~~

SEC. 10-1.~~2797-2795~~ - ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the ~~implementation~~ enforcement of these provisions, ~~unless Council no longer requests such repo~~ including but not limited to, administrative and enforcement compliance data.



# CITY OF HAYWARD

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

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**File #:** CONS 20-372

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adopt an Ordinance Amending the Hayward Zoning Map and Chapter 10, Article 1 (Zoning Ordinance), Article 7 (Sign Regulations), Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Corridor Form Based Code) of the Hayward Municipal Code Related to the Comprehensive Update of the Mission Boulevard Code

**RECOMMENDATION**

That the Council adopts the Ordinance introduced on July 7, 2020, by Council Member Salinas.

**SUMMARY**

The item entails adoption of an Ordinance amending: 1) Hayward Zoning Map; and 2) Hayward Municipal Code Chapter 10, Article 1 (Zoning Ordinance), Article 7 (Sign Regulations), Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Corridor Form Based Code) related to an update of the Mission Boulevard Code.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Summary of Published Ordinance





**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT:** Adopt an Ordinance Amending the Hayward Zoning Map and Chapter 10, Article 1 (Zoning Ordinance), Article 7 (Sign Regulations), Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Corridor Form Based Code) of the Hayward Municipal Code Related to the Comprehensive Update of the Mission Boulevard Code

### **RECOMMENDATION**

That the Council adopts the Ordinance introduced on July 7, 2020, by Council Member Salinas.

### **SUMMARY**

The item entails adoption of Ordinance amending: 1) Hayward Zoning Map; and 2) Hayward Municipal Code Chapter 10, Article 1 (Zoning Ordinance), Article 7 (Sign Regulations), Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Corridor Form Based Code) related to an update of the Mission Boulevard Code.

### **BACKGROUND**

The Ordinance was introduced by Council Member Salinas at the July 7, 2020, meeting of the City Council with the following roll call vote:

**AYES:** COUNCIL MEMBERS: Lamnin, Márquez, Mendall, Salinas, Wahab, Zermeño  
MAYOR Halliday

**NOES:** NONE

**ABSENT:** NONE

**ABSTAIN:** NONE

### **STRATEGIC ROADMAP**

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

**FISCAL IMPACT**

There is no fiscal impact associated with this report.

**PUBLIC CONTACT**

The summary of the Ordinance was published in the Hayward Daily Review on Friday, July 10, 2020. Adoption at this time is therefore appropriate.

**NEXT STEPS**

The Hayward Municipal Code will be updated accordingly if the Ordinance is adopted.

*Prepared and Recommended by:* Miriam Lens, City Clerk

Approved by:

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

Kelly McAdoo, City Manager

## ATTACHMENT II

### PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF HAYWARD

AN ORDINANCE AMENDING THE HAYWARD ZONING MAP AND CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE), ARTICLE 7 (SIGN REGULATIONS), ARTICLE 24 (SOUTH HAYWARD BART/MISSION BOULEVARD FORM BASED CODE) AND ARTICLE 25 (MISSION BOULEVARD CORRIDOR FORM BASED CODE) OF THE HAYWARD MUNICIPAL CODE RELATED TO THE COMPREHENSIVE UPDATE OF THE MISSION BOULEVARD CODE

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

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 20-121 which support approving the Zoning Map and Zoning Text Amendments to the Hayward Municipal Code.

Section 2. The City of Hayward Zoning Map is hereby amended to rezone properties located within the South Hayward BART/Mission Boulevard Form Based Code and Mission Boulevard Corridor Form Based Code plan areas as provided herein and as indicated in Exhibit "A". The plan areas encompass approximately 480-acres, including areas east and west of the Mission Boulevard corridor, in two separate segments. The northernmost segment spans along Mission Boulevard from the northern City boundary (abutting the County of Alameda) southbound to "A" Street, and the southern segment extending along Mission Boulevard from Jackson Street southbound to Garin Avenue. This initiative involves updating the former zoning designations from MB-T3 (Suburban Zone), MB-T4-1 (Urban General Zone), MB-T4-2 (Urban General Zone), MB-T5 (Urban Center Zone), MB-CS (Civic Space), S-T4 (South Hayward – Urban General Zone), S-T5 (South Hayward – Urban Center), and S-CS (South Hayward – Civic Space) to the new zoning districts of MB-CN (Mission Boulevard – Corridor Neighborhood), MB-NN (Mission Boulevard – Neighborhood Node), MB-CC (Mission Boulevard – Corridor Center), and MBCS (Mission Boulevard – Civic Space); and to rezone 720 Simon Street from Central CityCommercial (CC-C) to Medium Density Residential (RM) and 926 Rose Street from Central City-Commercial (CC-C) to Mission Boulevard – Corridor Neighborhood (MB-CN) to be consistent with their underlying land use designations per the Hayward 2040 General Plan, as illustrated and listed in the attached Exhibit "A" – Proposed Zoning Map Amendments with Parcel List, introduced herewith and as specifically shown in this Ordinance.

Section 3. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) to Articles 1 (Zoning Ordinance) and 7 (Sign Regulations) as well as consolidate the former Article 24 (South Hayward Bart/Mission Boulevard Form Based Code) and Article 25 (Mission Boulevard Page 2 of Ordinance 20- Corridor Form Based Code) into Article 24 to be reclassified as the "Mission Boulevard Corridor Code" as shown within attached Exhibit "B", Proposed Zoning Text Amendments, introduced herewith and as specifically shown in this Ordinance.

## ATTACHMENT II

Section 4. Severance. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 5. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

Introduced at a regular meeting of the City Council of the City of Hayward, held the 7<sup>th</sup> day of July 2020, by Council Member Salinas.

This Ordinance will be considered for adoption at the special meeting of the Hayward City Council, to be held on July 14, 2020. This meeting will be conducted via teleconference consistent with State of California Executive Order No. 29-20 regarding the COVID-19 pandemic. The full text of this Ordinance and the companion Resolution are available for examination by the public by contacting the Office of the City Clerk at [cityclerk@hayward-ca.gov](mailto:cityclerk@hayward-ca.gov) or (510) 583-4400.

Dated: July 10, 2020  
Miriam Lens, City Clerk  
City of Hayward



# CITY OF HAYWARD

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

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**File #:** CONS 20-356

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt a Resolution Confirming the Report and Special Assessment for Delinquent Sewer Bills and Water Bills Incurred by Property Owners

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) confirming the report and assessment for delinquent water bills and sewer bills and authorizing the delinquent charges to become a special assessment against the properties if not paid by August 1, 2020.

**SUMMARY**

In November 2012, Council approved collection of delinquent water and sewer service charges by way of special assessments on property tax rolls for property owners that receive only sewer service from the City and from owners of multi-family properties. As of the date of this writing, a total of forty-nine affected property owners owe a total of \$48,394.72 in unpaid sewer and water charges, plus an additional \$2,450 in administrative fees to the City and \$864.36 in administrative fees to the County, as listed on Attachment III. Despite the impact of COVID-19 on the economy, this year's delinquent amount is actually less than the same time last year. It is anticipated that the final list of properties and amount of delinquent water and sewer charges will be smaller by the final due date of August 1, 2020. Recovery of these outstanding charges improves the fiscal health of the Water and Wastewater Operating Funds, which benefits all rate payers.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	List of Parcels
Attachment IV	Legal Notice



**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Confirming the Report and Special Assessment for Delinquent Sewer Bills and Water Bills Incurred by Property Owners

### **RECOMMENDATION**

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### **SUMMARY**

In November 2012, Council approved collection of delinquent water and sewer service charges by way of special assessments on property tax rolls for property owners that receive only sewer service from the City and from owners of multi-family properties. As of the date of this writing, a total of forty-nine affected property owners owe a total of \$48,394.72 in unpaid sewer and water charges, plus an additional \$2,450 in administrative fees to the City and \$864.36 in administrative fees to the County, as listed on Attachment III. Despite the impact of COVID-19 on the economy, this year's delinquent amount is actually less than the same time last year. It is anticipated that the final list of properties and amount of delinquent water and sewer charges will be smaller by the final due date of August 1, 2020. Recovery of these outstanding charges improves the fiscal health of the Water and Wastewater Operating Funds, which benefits all rate payers.

### **BACKGROUND**

The City provides water and sewer services to almost all residents and businesses within the City limits. The exceptions are a small number of properties that receive water service from the East Bay Municipal Utility District or sewer service from Oro Loma Sanitary District. In addition to in-City customers, Hayward provides sewer service to about 900 "sewer-only" customers, mainly located in unincorporated Alameda County, as well as other water or sewer service customers outside of the City limits. The Hayward Municipal Code states that responsibility for water and sewer bills lies with the person or entity that requested service, i.e., the account holder of record. For sewer-only accounts, however, ultimate responsibility rests with the property owner, regardless of the name on the account.

For accounts that become subject to collection, the most effective measure available to the City is to discontinue water service for unpaid charges. However, the City is unable to shut off water to sewer-only customers since water service is not provided by the City. With respect to multi-family customers, discontinuing water service would leave tenants without water, in most cases through no fault of their own. On November 27, 2012, Council approved ordinances allowing for the collection of delinquent water and sewer bills as special assessments on property tax bills. The ordinances apply to accounts that are at least sixty days in arrears as of March 1, and provides the City with a tool to collect delinquent charges from property owners that receive sewer service only from the City and from owners of multi-family properties. The ordinances are intended for use as a last resort, in addition to remedies that already exist.

## **DISCUSSION**

Delinquent water and sewer service charges that would be placed on the property tax rolls are comprised of all charges in arrears by sixty days or more as of March 1, 2020, a fifty-dollar administrative fee charged by the City, and a 1.7% administrative fee charged by the Alameda County Assessor's Office. As of the date of this writing, a total of forty-nine affected property owners owe a total of \$48,394.72 in unpaid sewer and water charges, plus an additional \$2,450 in administrative fees to the City and \$864.36 in administrative fees to the County, as listed on Attachment III. Most of the delinquent charges are from one property owner, owing a total of \$28,295.08. If not paid by August 1, 2020, the unpaid charges and administrative fees will become a special assessment against the property and will appear on each property owner's tax bill later this year.

To give the Council a sense of the impact of the ordinance, the first formal letter was sent to 102 account holders, with total delinquent charges of \$94,786.67. The attached list includes 49 parcels, with charges totaling \$51,709.08, including City and County fees, which means that \$43,077.59, or approximately 45% of the original amount, has been collected that otherwise may not have been paid. The largest share of this amount is owed by one customer, owing \$28,295.08 in total delinquent charges, or approximately 56% of the remaining outstanding delinquent charges.

By comparison, at this time last year, sixty-three property owners owed a total of \$69,090.55, and the previous year, fifty property owners owed a total of \$34,699.72, including all fees. As in previous years, some property owners paid off their delinquent balance after Council action, so that the final list transmitted to the County Assessor included fifty-one properties owing a total of \$37,722.60.

Staff mailed three formal notices to each affected property owner in March, April, and May. Property owners were provided with an opportunity to schedule an administrative hearing if they disagreed with the charges or their responsibility for paying them. No requests for hearings were received.

## ECONOMIC IMPACT

The properties that are affected by this action are summarized in the following table:

	Number of Parcels	Amount Owed
	40	Less than \$500
	4	\$500 - \$1,000
	2	\$1,000 - \$2,000
	2	\$2,000 - \$10,000
	1	More than \$10,000
<b>Total:</b>	<b>49</b>	<b>\$48,394.72</b>

To the extent that the City recovers and discourages delinquencies, all rate payers will benefit from slightly less overall future rate increase requirements.

## FISCAL IMPACT

There is no negative fiscal impact to the City as cost recovery occurs through administrative fees. Recovery of these outstanding charges improves the fiscal health of the Water and Wastewater Operating Funds, which benefits all rate payers.

## STRATEGIC ROADMAP

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

## SUSTAINABILITY FEATURES

There are no direct sustainability features associated with this report.

## PUBLIC CONTACT

In addition to the three notices sent directly to property owners, a notice of the City Council's scheduled confirmation of this report (Attachment IV) will be published in *The Daily Review* on July 3, 2020.

## NEXT STEPS

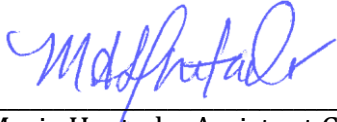
The City will continue to accept payments until August 1, 2020. After that date, the list will be finalized and forwarded to the Alameda County Assessor's Office by August 8, in accordance with the County's schedule.



*Prepared by:* Michelle Tran, Developmental Review Specialist

*Recommended by:* Alex Ameri, Director of Public Works

Approved by:



Maria Hurtado, Assistant City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION CONFIRMING THE REPORT AND SPECIAL ASSESSMENT LIST ASSOCIATED WITH DELINQUENT WATER AND SEWER BILLS AND AUTHORIZING THE DELINQUENT CHARGES TO BECOME A SPECIAL ASSESSMENT AGAINST THE PROPERTIES IF NOT PAID BY AUGUST 1, 2020

WHEREAS, the Director of Public Works and Director of Finance have rendered an itemized report in writing to this Council indicating certain property owners that receive water and/or sewer service from the City of Hayward who have incurred delinquent water and/or sewer bills, as required by Sections 11-2.50 and 11-3.463 of the Municipal Code of the City of Hayward; and

WHEREAS, the hour of 7 p.m. on Tuesday, July 14, 2020, in Hayward, California, was fixed as the time and place for this Council to receive and consider the report, and a copy of the report has been posted and published in the manner required by Section 5-1.31 of the Municipal Code; and; and

WHEREAS, the report was presented at the time and place fixed, and the City Council has considered the report and all comments with respect thereto.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that, except as may be amended by Council, the report from the Director of Public Works and Director of Finance of the City of Hayward listing certain property owners that receive water and/or sewer service from the City of Hayward who have incurred a delinquent water and/or sewer bill, a copy of which is attached hereto, is hereby confirmed.

BE IT FURTHER RESOLVED that payments of assessments confirmed hereby may be received by the City of Hayward Director of Finance up to the hour of 5 p.m. on August 1, 2020, and thereafter such official shall transmit the unpaid assessments to the County Auditor for collection on the property tax roll.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2020

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

**ATTACHMENT III**

**Utility Accounts Special Assessment List 2020**

Parcel	Owner Name	Account	Location	Description	Amount Due	COH Special Assessment Fee	Alameda County Fee (1.7% of amount due + COH fee)	Total to be Added to Property Tax Bill
431-0012-024-00	CRAWFORD JOANN L TR	61008	358 SMALLEY AVE #A	Sewer Only	\$198.26	\$50.00	\$4.22	\$252.48
431-0012-025-00	CRAWFORD JOANN L TR	61007	364 SMALLEY AVE #F	Sewer Only	\$299.66	\$50.00	\$5.94	\$355.60
431-0016-071-03	CARTER RONNIE R	61000	150 A ST	Sewer Only	\$822.30	\$50.00	\$14.83	\$887.13
441-0095-004-02	DEETS CONNIE	60933	23413 EDEN AVE	Sewer Only	\$459.67	\$50.00	\$8.66	\$518.33
429-0059-033-00	MERCADO PONCIANO M & SANCHEZ MELCHOR P ETAL	60894	234 SUNSET BLVD	Sewer Only	\$2,537.07	\$50.00	\$43.98	\$2,631.05
431-0016-064-00	KIM MAN S & ALICE Y TRS	60867	206 A ST	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
431-0107-049-00	MANALO SHAUN J	60798	1058 OLD OAK LN	Sewer Only	\$150.23	\$50.00	\$3.40	\$203.63
431-0107-035-00	MALAVIYA AMISH & AMIT N	60785	900 OLD OAK LN #3	Sewer Only	\$304.95	\$50.00	\$6.03	\$360.98
431-0106-035-00	RICHARD JAMES A II & RANDI R	60762	300 OLD OAK LN #1	Sewer Only	\$462.07	\$50.00	\$8.71	\$520.78
429-0055-004-00	HATTON RICK & JENNIFER	60748	21931 WESTERN BLVD	Sewer Only	\$123.67	\$50.00	\$2.95	\$176.62
429-0091-007-00	COCHINWALA ASAD	60733	221 SUNSET BLVD	Sewer Only	\$1,803.19	\$50.00	\$31.50	\$1,884.69
429-0055-017-00	CACANINDIN BOBBY E	60722	108 CHATTANOOGA ST	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
428-0001-065-00	NORIEGA JOSE M & SAINZ FERNANDO N	60705	696 SUNSET BLVD	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
428-0006-074-00	BORDA JUAN C & CORTES CLAUDIA A	60669	21660 MONTGOMERY ST	Sewer Only	\$528.25	\$50.00	\$9.83	\$588.08
429-0091-022-02	NAIDU RAMESHWARI	60657	284 POPLAR AVE	Sewer Only	\$280.95	\$50.00	\$5.63	\$336.58
429-0091-022-02	NAIDU RAMESHWARI	60656	290 POPLAR AVE	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
431-0008-001-02	WANG ZHI C & HUANG YA L	60607	385 LAUREL AVE	Sewer Only	\$690.90	\$50.00	\$12.60	\$753.50
431-0012-009-02	OTTOVICH HARVEY G TR	60601	303 LAUREL AVE	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
431-0016-110-00	MINDANAO SHIELA	60594	253 LAUREL AVE	Sewer Only	\$72.53	\$50.00	\$2.08	\$124.61
431-0012-038-00	MENDES GERALD W JR & SOLANGE M TRS	60551	315 SMALLEY AVE	Sewer Only	\$209.59	\$50.00	\$4.41	\$264.00
431-0016-104-00	HUMPHREY WADE	60543	257 SMALLEY AVE	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
431-0016-034-00	TRINIDAD JOSE B & FLORDELIZA P	60539	438 HACIENDA AVE	Sewer Only	\$485.84	\$50.00	\$9.11	\$544.95
431-0016-066-00	KIM MAN S & ALICE Y TRS	60531	192 A ST	Sewer Only	\$1,219.95	\$50.00	\$21.59	\$1,291.54
431-0016-043-00	DUENAS EVERARDO	60516	529 HEMLOCK AVE	Sewer Only	\$817.26	\$50.00	\$14.74	\$882.00
431-0016-043-00	DUENAS EVERARDO	60515	22380 MEEKLAND AVE	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
431-0016-043-00	DUENAS EVERARDO	60514	529 HEMLOCK AVE	Sewer Only	\$842.26	\$50.00	\$15.17	\$907.43
431-0012-015-00	NGUYEN HAN & TROY T	60507	22382 PRINCETON ST	Sewer Only	\$220.91	\$50.00	\$4.61	\$275.52
429-0091-019-00	CRUZ ROSA T	60499	22009 PRINCETON ST	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
429-0091-051-00	GRANILLO LUIS M	60490	22207 PRINCETON ST	Sewer Only	\$72.53	\$50.00	\$2.08	\$124.61
431-0016-024-00	GERARDO MAURICE & PATTY	60481	22385 PRINCETON ST	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72
428-0041-034-00	BUSO ROBERT A	60477	504 SIMON ST	Sewer Only	\$273.67	\$50.00	\$5.50	\$329.17
428-0041-092-00	JIMENEZ EMANUEL & JUANY L	60476	512 SIMON ST	Sewer Only	\$423.67	\$50.00	\$8.05	\$481.72

### Utility Accounts Special Assessment List 2019

416-0170-001-00	CAMACHO JOSE & GEMA S	60430	2233 KELLY ST	Sewer Only	\$359.67	\$50.00	\$6.96	\$416.63
416-0170-066-00	SEA WEST SERVICES LLC	60423	22756 LORAND WAY	Sewer Only	\$459.67	\$50.00	\$8.66	\$518.33
416-0170-056-00	HOLLAND ALLYSIA D	60415	22873 UPLAND WAY	Sewer Only	\$459.67	\$50.00	\$8.66	\$518.33
416-0170-033-00	ESPINOZA FRANCISCO G	60406	27010 GADING RD	Sewer Only	\$466.84	\$50.00	\$8.79	\$525.63
416-0170-033-00	ESPINOZA FRANCISCO G	60405	27010 GADING RD	Sewer Only	\$78.53	\$50.00	\$2.19	\$130.72
417-0030-021-00	BRANAUGH ALICE F	60357	22781 WILDWOOD	Sewer Only	\$78.53	\$50.00	\$2.19	\$130.72
417-0040-003-00	PABLO NOEL R	60345	22625 WILDWOOD ST	Sewer Only	\$316.80	\$50.00	\$6.24	\$373.04
417-0040-007-00	DORHAM RUTHELL C HEIRS OF EST	60341	22636 WILDWOOD ST	Sewer Only	\$528.25	\$50.00	\$9.83	\$588.08
425-0410-013-00	CAINES DANA E TR	60303	2563 CARISBROOK CT	Sewer Only	\$495.81	\$50.00	\$9.28	\$555.09
425-0380-020-00	LYONS RICHARD A	60290	2517 CARISBROOK CT	Sewer Only	\$453.81	\$50.00	\$8.56	\$512.37
425-0360-007-00	GAYLE STEVEN TR	60238	2443 LANCASTER CT	Sewer Only	\$62.69	\$50.00	\$1.92	\$114.61
425-0330-003-00	MASHRIQUE NAJIA	60190	PO BOX 3292	Sewer Only	\$417.81	\$50.00	\$7.95	\$475.76
425-0370-068-00	GOMEZ DENISE D & VINCENT E	60124	2535 OAKES DR	Sewer Only	\$453.81	\$50.00	\$8.56	\$512.37
428-0084-030-00	HAYWARD RENAISSANCE WALK CORPORATION	37483	1855 GATEWAY BLVD	Multifamily	\$268.26	\$50.00	\$5.41	\$323.67
427-0006-039-00	CEREMELLO MICHAEL J JR	23211	1565 MC CARTHY CT	Multifamily	\$5,047.68	\$50.00	\$86.66	\$5,184.34
453-0080-009-02	PARAISO APARTMENTS LLC	22932	PO BOX 179	Multifamily	\$21,095.07	\$50.00	\$359.47	\$21,504.54
431-0056-019-00	LOZA EXEQUIO & CIRA	2763	460 MEEK AVE	Multifamily	\$239.41	\$50.00	\$4.92	\$294.33

<b>Totals:</b>	<b>Parcels bring Specially Assessed</b>	<b>Amount Due</b>	<b>Special Assessment Fee</b>	<b>Alameda County Fee</b>	<b>Special Assessment</b>
	<b>49</b>	<b>\$48,394.72</b>	<b>\$2,450.00</b>	<b>\$864.36</b>	<b>\$51,709.08</b>

**OFFICIAL NOTICE  
HAYWARD CITY COUNCIL**

**DATE:** July 14, 2020  
**TIME:** 7:00 p.m.  
**PLACE:** This meeting will be conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The live stream of the meeting may be viewed on Comcast Channel 15 and broadcast live on the City's website [www.hayward-ca.gov](http://www.hayward-ca.gov). Pursuant to Executive Order N-29-20, the public may only view the meeting on television and/or online and not in the Council Chamber.

Public comment will be accepted by email to [cityclerk@hayward-ca.gov](mailto:cityclerk@hayward-ca.gov) prior to the meeting and distributed to the City Council and uploaded to the City's website. Furthermore, public comment will be accepted by telephone during the meeting, prior to the close of public comment on an item, by calling (510) 583-4400 at the time indicated by the Mayor.

On the above date, at approximately the hour noted, the Hayward City Council will consider for confirmation the list of certain property owners with delinquent water and/or sewer bills owed to the City of Hayward in order to enforce collection of the delinquent amounts by placement on the Alameda County property tax roll.

In addition, notice is hereby given that on July 7, 2020, the list of delinquent accounts was filed with the City Clerk.

A copy of the staff report may be reviewed on the City's website at <https://hayward.legistar.com/Calendar.aspx>. Staff reports are available the Friday before the meeting.

**FOR INFORMATION RELATED TO DELINQUENT WATER AND/OR SEWER BILLS, CALL CITY OF HAYWARD, REVENUE OFFICE (510) 583-4624.**

**ASSISTANCE** will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact the City Clerk's Office 48 hours in advance of the meeting at (510) 583-4400, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

**PLEASE TAKE NOTICE** that if you file a lawsuit challenging any final decision on the subject of this notice, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. By Resolution the City Council has imposed the 90-day time deadline set forth in C.C.P. Section 1094.6 for filing of any lawsuit challenging final action on an item which is subject to C.C.P. Section 1094.5.

Dated: July 3, 2020  
Miriam Lens, City Clerk  
City of Hayward



# CITY OF HAYWARD

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

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**File #:** WS 20-032

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

East Bay Community Energy Potential Rate Increase: Review and Comment on a Potential Rate Increase for Electricity from East Bay Community Energy

**RECOMMENDATION**

That Council reviews and comments on this report and provides direction to staff.

**SUMMARY**

Most Hayward customers currently receive Brilliant 100 (100% carbon free electricity) from East Bay Community Energy (EBCE). EBCE will most likely phase out Brilliant 100 by the end of calendar year 2021. A formal decision by the EBCE Board of Directors is expected this fall. This report presents options and the impacts of each for Council to consider, including changing Hayward's default electricity product effective January 1, 2021. In addition, most of Hayward's municipal facilities receive Brilliant 100. This report also presents the fiscal impacts of changing the municipal facilities to another electricity product.

**ATTACHMENTS**

Attachment I      Staff Report



**DATE:** July 14, 2020  
**TO:** Mayor and City Council  
**FROM:** Director of Public Works  
**SUBJECT** East Bay Community Energy Potential Rate Increase: Review and Comment on a Potential Rate Increase for Electricity from East Bay Community Energy

## **RECOMMENDATION**

That Council reviews and comments on this report and provides direction to staff.

## **SUMMARY**

Most Hayward customers currently receive Brilliant 100 (100% carbon free electricity) from East Bay Community Energy (EBCE). EBCE will most likely phase out Brilliant 100 by the end of calendar year 2021. A formal decision by the EBCE Board of Directors is expected this fall. This report presents options and the impacts of each for Council to consider, including changing Hayward's default electricity product effective January 1, 2021. In addition, most of Hayward's municipal facilities receive Brilliant 100. This report also presents the fiscal impacts of changing the municipal facilities to another electricity product.

## **BACKGROUND**

EBCE formed in 2016 as a joint powers authority to provide cleaner, greener energy at lower rates to Alameda County customers. EBCE started providing electricity to commercial and municipal accounts in June 2018 and to residential customers in November 2018. Information about EBCE is available on their website<sup>1</sup>. Staff has provided many reports about EBCE to the Council Sustainability Committee and Council, all of which are available on the City's website<sup>2</sup>.

Hayward's original Climate Action Plan (CAP) was adopted in 2009. When the CAP was incorporated into the General Plan in 2014, the following greenhouse gas (GHG) emission reduction goals for both the community and municipal operations were included:

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<sup>1</sup> <https://ebce.org/>

<sup>2</sup> <https://www.hayward-ca.gov/your-government/departments/utilities-environmental-services/east-bay-community-energy>



- reduce emissions by 20% below 2005 baseline levels by 2020
- strive to reduce emissions by 61.7% by 2040
- strive to reduce emissions 82.5% by 2050

On June 16, 2020<sup>3</sup>, Council introduced and on June 23, 2020<sup>4</sup>, Council adopted an ordinance amending the General Plan to include the following goals:

- reduce emissions by 20% below 2005 levels by 2020
- reduce emissions by 30% below 2005 levels by 2025
- reduce emissions by 55% below 2005 levels by 2030
- work with the community to develop a plan that may result in the reduction of community-based GHG emissions to achieve carbon neutrality by 2045

When EBCE launched in 2018, three electricity products were offered:

- Bright Choice – The default for most communities. Cleaner electricity (38% renewable) and 1.5% lower rates than PG&E.
- Brilliant 100 – 100% carbon free electricity (40% renewable and 60% large hydro-electric) at rates equal to PG&E.
- Renewable 100 – 100% renewable electricity for one penny per kWh more than PG&E rates.

On March 6, 2018, Council voted to designate Brilliant 100 as the default product for nonresidential customers in Hayward. Council also chose to select Brilliant 100 for all municipal facilities. Non-residential accounts and municipal accounts began receiving EBCE service in June 2018. On May 22, 2018, Council adopted a resolution designating Brilliant 100 as the default electricity product for Hayward’s residential customers. Residential accounts began receiving EBCE service in November 2018. Council chose Brilliant 100 as the default because it would help Hayward meet its GHG emissions reduction goals and because Hayward customers would experience no change in the cost of their electricity.

There are approximately 48,000 residential accounts in Hayward, including approximately 14,000 California Alternate Rates for Energy (CARE) customers and 500 Family Electric Rate Assistance (FERA) customers. The CARE and FERA programs offer discounts to income-qualified customers. Also, approximately 4% of customers in the EBCE territory are Medical Baseline customers. They pay special rates due to equipment or heating/cooling needs related to medical conditions. All EBCE customers who were enrolled in CARE, FERA, or Medical Baseline have remained enrolled in these discount programs after the switch to EBCE. Also, customers in the discount programs and have been enrolled in Bright Choice.

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<sup>3</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4568609&GUID=46FF5863-9294-4217-9119-9631D7A2BB6F&Options=&Search=>

<sup>4</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4576651&GUID=4E2F5527-D216-4472-BB79-5D9A37A41AE8&Options=&Search=>

Council Sustainability Committee – On July 13, 2020, the Sustainability Committee discussed this report. Staff will provide a summary of that discussion during the presentation to Council on July 14, 2020.

## **DISCUSSION**

Hayward's participation in EBCE and the Council's selection of Brilliant 100 as the default product have contributed significantly to the community's overall reductions in GHG emissions. Staff recently received Hayward's GHG emission inventory for 2018 and it shows that total emissions fell 21.6% from 2005 to 2018. As noted above, Hayward's goal is to reduce emissions 20% by 2020, so the goal was met two years early. Hayward's 2019 emissions are expected to be even lower because EBCE started midway through 2018 and 2019 will include a full year of EBCE service with Brilliant 100. A detailed report on the 2018 inventory will be provided to the Sustainability Committee this fall.

Since EBCE's inception, it has been fiscally constrained by its promise to maintain rates that are competitive with PG&E. In late 2018 and early 2019, staff was working with EBCE on a potential partnership that would allow the City to sell excess electricity from the solar project at the Water Pollution Control Facility; however EBCE was not able to offer a rate that would make the City's project feasible.

In the last several months, EBCE has faced increasing financial pressures that have made it more difficult to remain competitive with PG&E. The financial challenges have included:

- PG&E has increased rates primarily by increasing the transmission component of the rate while decreasing the generation component. PG&E's generation rate decreased by 8% on May 1, 2020. EBCE competes with PG&E only on generation. The transmission rate is the same for both PG&E customers and EBCE customers.
- The Power Charge Indifference Adjustment (PCIA) increased by 30% as of May 1, 2020. The PCIA is sometimes referred to as an "exit fee". It is intended to ensure that customers who switch to EBCE pay for energy that was contracted by PG&E to serve them prior to their switch. Because EBCE maintains rates competitive with PG&E, when the PCIA increases, it reduces EBCE's margin. EBCE and other community choice energy programs throughout California are working with the California Public Utilities Commission to reduce the PCIA.
- Unpaid bills or "uncollectables" are estimated to increase from 0.5% to 2.5% in anticipation of COVID recessionary impacts.
- Procurement costs for Brilliant 100 have been higher than expected. While the difference in rates between Bright Choice and Brilliant 100 is 1.5%, the costs of providing Brilliant 100 exceeds 1.5% higher. As a result, according to EBCE, Brilliant 100 is currently being subsidized by Bright Choice.

On April 22, 2020, the EBCE Board declined to accept an allocation of nuclear energy attributes from PG&E, which would have saved EBCE approximately \$7 million during 2020 and 2021. Also on April 22, 2020, the EBCE Board voted to establish a power content procurement floor so that renewable energy content is now the benchmark for comparing

EBCE's power content to that of PG&E. Prior to this, EBCE was comparing its non-renewable (large hydro) carbon free power to PG&E's non-renewable carbon free power, which includes both large hydro and nuclear. These two decisions have made it more difficult for Brilliant 100 to remain competitive with PG&E.

During the EBCE Board meeting on May 20, 2020, EBCE staff presented an informational item about the 2020/2021 budget with a proposal to set the rate for Brilliant 100 at a 3% premium above PG&E rates and to decrease the discount for Bright Choice. It was noted that every 0.5% of the discount for Bright Choice equals \$2.7million in incremental revenue and that every 1% in Brilliant 100 premium equals \$1million in revenue (assuming no change to enrolled load).

During the staff presentation at the June 17, 2020 Board meeting, EBCE staff noted that if the rate structure remains unchanged, the LDBP budget would need to be reduced by \$2.7 million for the coming year. At the Board meeting, EBCE staff recommended:

- No changes to the Brilliant 100 value proposition (i.e. maintain rate parity with PG&E) for the balance of 2020
- Close Brilliant 100 to new accounts and opt-ups effective July 1, 2020.
- Present 2021 Brilliant 100 options in September for Board action in Q4 2020
- Phase out Brilliant 100 by the end of 2021.
- Establish a rate for Brilliant that reflects the cost of the service – either 2.5% or 3% more than PG&E. This increase would likely go into effect on January 1, 2021.
- Effective in September, change the power mix for Brilliant 100 from 40% renewable to 33% renewable for remainder of 2020 to match the state's minimum renewable portfolio standard (RPS). Then the renewable content would be 35.8% in 2021 to match the RPS for that year.

There were many public comments on EBCE's budget during the June 17 Board meeting and several people made comments regarding Brilliant 100. All the speakers were in favor of phasing out Brilliant 100. Comments included:

- the use of large hydro-electric power perpetuates environmental racism
- if people want electricity with low GHGs, they should go with Renewable 100
- large hydro is a false solution while renewable energy creates local jobs

When the Board approved the budget on June 17, the Board voted to:

- Change the discount for Bright Choice from 1.5% to 1.0% below PG&E rates effective July 1, 2020.
- Consider changes to Brilliant 100 – to be decided this fall.
- Maintain the rate for Renewable 100 at \$0.01/kWh more than PG&E rates.

*Options for Hayward* – At this time, staff has identified the following options for Council's consideration. After a formal decision regarding Brilliant 100 is made by the EBCE Board, likely in September, staff will return to Council with a recommended course of action.

1. Change Hayward’s default to Bright Choice effective January 1, 2021. This would result in most customers in Hayward paying 1% less (approximately \$1.00 per month for a typical residential customer) on their electricity bill compared to PG&E rates.
2. Keep Hayward’s default as Brilliant 100 through the end of 2021. This would result in most Hayward customers paying 2.5 to 3% more for their electricity during calendar year 2021. Effective January 1, 2022, Hayward’s default product would need to be changed to either Bright Choice or Renewable 100.
3. Change default to Renewable 100 effective January 1, 2021. Staff does not recommend this option as it would result in most customers in Hayward paying \$0.01/kWh more than PG&E rates. An average residential customer would pay approximately 4% to 5% more or approximately \$4 per month. If Renewable 100 is chosen as the default product, CARE, FERA or Medical Baseline could remain with Bright Choice; however, there are likely many customers that are eligible for CARE/FERA/Medical Baseline, but they may be unaware of the programs and so they would pay the higher rates. There are also many residential customers that are just above the income thresholds for CARE and FERA so they don’t qualify for the discount, but they may still suffer from financial challenges. Even for residential and commercial customers who have managed to maintain their income during the current pandemic, there may be some who will argue that the general economic conditions make this the wrong time to increase rates.

If EBCE is able to create a new product or other options with more of a compromise in terms of GHG emissions and price, staff will present them at a future meeting.

## ECONOMIC IMPACT

Following are rate comparisons for a few typical customers showing rates that were effective May 1, 2020. A comprehensive list of rate comparisons is available on the EBCE website<sup>5</sup>. The comparisons will be updated soon to reflect the new Bright Choice differential of 1% from PG&E rates. Average monthly bill amounts represent a snapshot in time. In some cases, the value propositions (such as Brilliant 100 being equal to PG&E) are only evident when viewing 12 months of billing data.

Residential customer (monthly usage of 359 kWh):

Residential: E-1	PG&E	PG&E Solar Choice (100% Renewable)	EBCE Bright Choice	EBCE Brilliant 100 (100% Carbon-free)	EBCE Renewable 100 (100% Renewable)
Generation Rate (\$/kWh)	\$0.11752	\$0.09410	\$0.08177	\$0.08353	\$0.09353
PG&E Delivery Rate (\$/kWh)	\$0.15298	\$0.15298	\$0.15298	\$0.15298	\$0.15298
PG&E PCIA/FF (\$/kWh)	N/A	\$0.02979	\$0.03045	\$0.03045	\$0.03045
Total Electricity Cost (\$/kWh)	\$0.27050	\$0.27687	\$0.26520	\$0.26696	\$0.27696
Average Monthly Bill (\$)	<b>\$97.11</b>	<b>\$99.39</b>	<b>\$95.20</b>	<b>\$95.84</b>	<b>\$99.43</b>

<sup>5</sup> <https://ebce.org/wp-content/uploads/EBCE-Web-Comparison-May2020-new-EBCE-bill-format-2.pdf>

Small commercial customer (monthly usage of 1,518 kWh):

Commercial/Industrial: A-1 TOU (A-1X)	PG&E	PG&E Solar Choice (100% Renewable)	EBCE Bright Choice	EBCE Brilliant 100 (100% Carbon-free)	EBCE Renewable 100 (100% Renewable)
Generation Rate (\$/kWh)	\$0.11565	\$0.07370	\$0.08135	\$0.08308	\$0.09308
PG&E Delivery Rate (\$/kWh)	\$0.14932	\$0.14932	\$0.14932	\$0.14932	\$0.14932
PG&E PCIA/FF (\$/kWh)	N/A	\$0.04065	\$0.03257	\$0.03257	\$0.03257
Total Electricity Cost (\$/kWh)	\$0.26497	\$0.26367	\$0.26324	\$0.26497	\$0.27497
Average Monthly Bill (\$)	<b>\$402.34</b>	<b>\$400.36</b>	<b>\$399.71</b>	<b>\$402.34</b>	<b>\$417.40</b>

Large commercial customer (monthly usage of 263,181 kWh):

Commercial/Industrial: E-19 S	PG&E	PG&E Solar Choice (100% Renewable)	EBCE Bright Choice	EBCE Brilliant 100 (100% Carbon-free)	EBCE Renewable 100 (100% Renewable)
Generation Rate (\$/kWh)	\$0.11077	\$0.07230	\$0.07696	\$0.07862	\$0.08862
PG&E Delivery Rate (\$/kWh)	\$0.09000	\$0.09000	\$0.09000	\$0.09000	\$0.09000
PG&E PCIA/FF (\$/kWh)	N/A	\$0.04013	\$0.03215	\$0.03215	\$0.03215
Total Electricity Cost (\$/kWh)	\$0.20077	\$0.20243	\$0.19911	\$0.20077	\$0.21077
Average Monthly Bill (\$)	<b>\$52,838.76</b>	<b>\$53,275.64</b>	<b>\$52,401.88</b>	<b>\$52,838.76</b>	<b>\$55,470.66</b>

## FISCAL IMPACT

In addition to Brilliant 100 being the default product for the community, the City has approximately 450 municipal accounts enrolled in Brilliant 100 (The City’s nine accounts that are part of the RES-BCT<sup>6</sup> arrangement are not enrolled in EBCE). The City spends approximately \$2.2 million annually on electricity. For the City’s accounts that are enrolled in EBCE (Brilliant 100), the City spends approximately \$585,000 per year. If the City keeps its accounts enrolled in Brilliant 100 and rates are increased by 3%, annual costs will increase to approximately \$602,000. If the City’s accounts are changed to Renewable 100, then annual costs would increase to approximately \$656,000. If municipal accounts are changed to Bright Choice, annual costs would be \$579,000. The above estimates are based on 2019 expenditures and do not account for annual increases that result from increases in PG&E rates.

Approximate Annual Costs	Total
Current spending on City accounts enrolled in Brilliant 100	\$585,000
If City keeps its accounts enrolled in Brilliant 100	\$602,000
If City’s accounts are changed to Renewable 100	\$656,000
If City’s accounts are changed to Bright Choice	\$579,000

## STRATEGIC ROADMAP

This agenda item relates to the Strategic Priority of Combat Climate Change. Specifically, this agenda item relates to the implementation of the following project:

<sup>6</sup> RES-BCT is the renewable energy self-generation bill credit transfer program. It is a PG&E program that allows excess bill credits from renewable energy generation at the Water Pollution Control Facility to be applied to other City facilities.

- Project 2: Work with EBCE to transition citywide electricity use to 100% carbon free (beginning in FY21)
- Project 3: Transition electricity use in city operations to 100% renewable energy (beginning in FY22)
- Project 4: Adopt and implement 2030 GHG Goal and Roadmap (beginning in FY21)

**SUSTAINABILITY FEATURES**

Community choice energy was identified in the City’s Climate Action Plan as the program with the greatest potential to reduce community-wide GHG emissions. As noted above, Hayward’s participation in EBCE has resulted in the 2020 GHG reduction goal being met two years early. Later this year when PG&E data becomes available, staff will update the GHG inventory for calendar year 2019, which was the first full year of EBCE service.

In addition to EBCE’s efforts to deliver electricity that is clean than PG&E, EBCE is actively implementing its Local Development Business Plan (LDBP), which includes programs for building electrification and \$4.6 million for the development of electric vehicle charging infrastructure throughout Alameda County in 2020-2021. Full implementation of the LDBP is expected to result in the development of approximately 400 megawatts of new renewable energy facilities by 2025, which would result in significant further reductions in GHG emissions.

**PUBLIC CONTACT**

The EBCE Board discussed rates during their meetings on May 20, 2020 and June 17, 2020. EBCE facilitated a Public Comment Period from Friday, May 22, 2020 through Sunday, June 7, 2020; hosted two online webinars on Tuesday, June 2 and Wednesday, June 3; and hosted an audio-only meeting on Friday, June 5. Following a decision by Council, staff will work with EBCE to communicate any rate changes to all affected Hayward customers.

**NEXT STEPS**

Upon direction from Council, staff will forward comments to the EBCE Board for their consideration.

*Prepared by:* Erik Pearson, Environmental Services Manager

*Recommended by:* Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager



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**File #:** LB 20-035

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT**

Residential Rent Stabilization and Tenant Protections: (1) Introduce an Ordinance Amending Chapter 12, Article 1 of the Hayward Municipal Code Relating to Residential Rent Stabilization and Tenant Protections; (2) Introduce an Ordinance Adding Chapter 12 Article 2 of the Hayward Municipal Code Related to Tenant Relocation Assistance; (3) Adopt a Resolution Authorizing Amendment to Resolution 20-060 City of Hayward Fiscal Year 2021 Master Fee Schedule to Establish an Amount of Relocation Assistance; and (4) Provide a Progress Report on Implementation of Residential Rent Stabilization and Tenant Protection Ordinance

**RECOMMENDATION**

That the Council:

1. Introduces an Ordinance (Attachment II) amending Chapter 12, Article 1 of the Hayward Municipal Code Relating to Residential Rent Stabilization and Tenant Protections;
2. Introduces an Ordinance (Attachment III) adding Chapter 12, Article 2 to the Hayward Municipal Code Relating to Tenant Relocation Assistance, and
3. Adopts a Resolution (Attachment IV) authorizing an amendment to Resolution 20-060, the resolution for the City of Hayward Fiscal Year 2021 Master Fee Schedule associated with the administration of the Ordinance governing Permanent and Temporary Relocation Assistance.

**SUMMARY**

This item provides an update on the first six months of implementation of the City's Residential Rent Stabilization and Tenant Protection Ordinance (RRSO) and presents recommendations for amending the ordinance in order to clarify language, align with State Law, and address key policy issues identified by the Homeless Housing Task Force (HHTF) and City Council. On March 5, 2020, the HHTF received an update from staff on the implementation of the RRSO and the impact of the State's Tenant Protection Act (TPA), which became effective on January 1, 2020, as well as discussed several recommendations for related revisions to the RRSO. The recommendations in this report reflect those reviewed and supported by the HHTF. **Table 1** summarizes recommended Council actions related to rent stabilization and tenant relocation assistance.

**Table 1. Recommended Action and RRSO Revisions**

No.	Recommended Council Action	Corresponding Recommended Revision
1.	Introduce an Ordinance amending the RRSO (Chapter 12, Article 1 of the Hayward Municipal Code)	Clarify language in the RRSO based on implementation experience. See Attachment V for all recommendations.
		Align RRSO with State Law by including reference to the TPA.
		Eliminate the exemption for Affordable Housing Conversion Projects from Just Cause for Eviction per recommendation by HHTF in response to Council's direction to evaluate.
2.	Introduce an Ordinance adding Article 2 to Chapter 12 of the Hayward Municipal Code to create the Tenant Relocation Assistance Ordinance	Align RRSO with State Law by providing the same permanent relocation assistance established in the TPA.
		Add Temporary Relocation Assistance for tenants temporarily displaced from their units for significant repairs related to code compliance, major remodel, or substantially damaging events, such as a fire or flood to address specific policy issues identified by Council and for evaluation by the HHTF.
3.	Adopt a Resolution authorizing an amendment to the City's Master Fee Schedule to include relocation assistance payments made by landlords to tenants	Establish the amount of relocation assistance to be provided by the landlord to comply with the Temporary Relocation Assistance Ordinance.

**ATTACHMENTS**

- Attachment I            Staff Report
- Attachment II          Amendment to RRSO
- Attachment III        Tenant Relocation Assistance Ordinance
- Attachment IV        Amendment to Master Fee Schedule
- Attachment V         RRSO Revisions Summary
- Attachment VI        Tenant Protection Act Analysis
- Attachment VII       RRSO Marketing, Assistance, and Resources Summary
- Attachment VIII      Tenant Relocation Assistance Summary





**DATE:** July 14, 2020

**TO:** Mayor & City Council

**FROM:** Deputy City Manager

**SUBJECT:** Residential Rent Stabilization and Tenant Protections: (1) Introduce an Ordinance Amending Chapter 12, Article 1 of the Hayward Municipal Code Relating to Residential Rent Stabilization and Tenant Protections; (2) Introduce an Ordinance Adding Chapter 12 Article 2 of the Hayward Municipal Code Related to Tenant Relocation Assistance; (3) Adopt a Resolution Authorizing Amendment to Resolution 20-060 City of Hayward Fiscal Year 2021 Master Fee Schedule to Establish an Amount of Relocation Assistance; and (4) Provide a Progress Report on Implementation of Residential Rent Stabilization and Tenant Protection Ordinance

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supported by the HHTF. **Table 1** summarizes recommended Council actions related to rent stabilization and tenant relocation assistance.

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2.	Introduce an Ordinance adding Article 2 to Chapter 12 of the Hayward Municipal Code to create the Tenant Relocation Assistance Ordinance	<p>Align RRSO with State Law by providing the same permanent relocation assistance established in the TPA.</p> <p>Add Temporary Relocation Assistance for tenants temporarily displaced from their units for significant repairs related to code compliance, major remodel, or substantially damaging events, such as a fire or flood to address specific policy issues identified by Council and for evaluation by the HHTF.</p>

No.	Recommended Council Action	Corresponding Recommended Revision
3.	Adopt a Resolution authorizing an amendment to the City’s Master Fee Schedule to include relocation assistance payments made by landlords to tenants	Establish the amount of relocation assistance to be provided by the landlord to comply with the Temporary Relocation Assistance Ordinance.

**BACKGROUND**

**The City of Hayward’s New RRSO**

On June 18, 2019,<sup>1</sup> the City Council approved a new RRSO to mitigate displacement of Hayward residents. The City of Hayward and the Rent Review Office conducted a comprehensive and community inclusive process, including specific direction provided by the City Council on February 19, 2019,<sup>2</sup> a community workshop on April 6, 2019, and numerous subsequent Homelessness-Housing Task Force (HHTF) meetings, to develop the RRSO. The key components of the RRSO include:

- Mandatory mediation program with binding arbitration that would be available to tenants upon rent increases greater than five percent and applicable to all pre-1979 units except single family homes and condominiums consistent with State Law;
- Provisions to protect Section 8 voucher holders from discrimination;
- Requirements that landlords file rent increase notices and eviction notices with the City to obtain accurate data about rental housing activity;
- Tenant retaliation protection provisions; and
- Reincorporation of the Just Cause for Tenant Evictions into the ordinance.

Based on recommendations from the HHTF, the following provisions were considered but excluded from the new RRSO:

- Permanent (improvement) vacancy decontrol provisions; and

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<sup>1</sup>June 18, 2019 City Council Staff Report and Attachments:  
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3985848&GUID=52D1B678-D6BB-401A-AB3C-8990885C0CDD&Options=&Search=>

<sup>2</sup> February 19, 2019 City Council Staff Report and Attachments:  
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3863371&GUID=E3FF2A1F-D770-463F-ACC2-8EBEFC711CF3>

- Tenant relocation assistance provisions.<sup>3</sup>

Council subsequently passed an Emergency Ordinance establishing a temporary moratorium on rent increases exceeding 5% of current rent on June 25, 2019.<sup>4</sup> The moratorium was in effect until the RRSO became law on July 25, 2019.

In July 2019, the City of Hayward extended its contract with Project Sentinel, a non-profit organization that assists individuals in resolving housing disputes to administer the tenant and landlord rent increase dispute resolution process, including mediation and arbitration services, as well as to provide educational workshops for tenants and landlords. Since then, the Rent Review Office has engaged in several outreach activities, fielded hundreds of inquiries, and worked closely with Project Sentinel to implement the new provisions of the RRSO.

### **Assembly Bill 1482**

California Assembly Bill 1482, known as the Tenant Protection Act (TPA) went into effect on January 1, 2020.<sup>5</sup> The TPA establishes a state-wide rent increase cap of 5% plus annual increase to the consumer price index (CPI), just cause for eviction protections, and relocation assistance for no-fault terminations. Key components of the new TPA include:

- **Rent Increase Cap:** Until January 1, 2030, within a 12-month period an owner may not increase the total rent more than 5% plus the percentage change in the cost of living or 10%, whichever is lower. The cap applies to any pre-2005 unit and applies to all residential rental units not covered by a local ordinance. It does not apply to housing already restricted by an agreement with another government agency, dormitories, housing restricted by a public entity that restricts annual rent increases in the rental rate to an amount less than that provided in the TPA, single family homes (single unit properties) except those owned by a real estate or investment corporation, and owner-occupied duplexes.
- **Just Cause for Eviction and Relocation Assistance:** The TPA includes protections for just cause for evictions, stipulating the allowable reasons for a landlord to evict a tenant. Allowable reasons include several “at fault” reasons that are considered the fault of the tenant (e.g., failure to pay rent or breach of a material term of the lease) and several “no fault” reasons that are not the fault of the tenant but still an allowable reason for an eviction (e.g., the owner, spouse, child, parent, grandparent intend to occupy the unit, or the owner is withdrawing the unit from the rental market). This section of the TPA also includes provisions for relocation assistance, which must be paid by the owner to the tenant when an owner issues a no-fault termination. The owner is required to notify the tenant of their right to relocation assistance of either a direct payment of one month’s rent or waiver of the final month’s rent. This does not

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<sup>3</sup> While not included in the RRSO, tenant relocation assistance was delegated to the HHTF for further discussion and consideration at a later time.

<sup>4</sup> June 25, 2019 City Council Staff Report and Attachments:

<https://hayward.legistar.com/MeetingDetail.aspx?ID=695618&GUID=673F14D1-72B7-44A7-832A-C56ADAE68B1A&Options=info&Search=>

<sup>5</sup> Assembly Bill No. 1482, Tenant Protection Act of 2019:

[https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1482](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482)

apply to: hotels/motels; nonprofit hospitals, residential, or extended care facilities; dormitories; housing where tenants share a bathroom or kitchen with the owner; single-family owner-occupied residences; owner-occupied duplexes; and alienable and separate residential real property owned by a real estate or investment corporation.

Full analysis of the applicability of the TPA compared to the City of Hayward's RRSO is included in Attachment VI.

### **Homelessness-Housing Task Force Review**

On March 5, 2020, the HHTF met to receive a report on the implementation progress of the RRSO and to hear staff's recommendations for revisions to the RRSO.<sup>6</sup> Task Force members supported recommendations for revisions to the RRSO presented in this report.

### **COVID-19 & Rental Assistance**

Since the HHTF met on March 5, 2020, many Hayward residents have experienced significant physical and economic hardship from the COVID-19 pandemic. In response, the City of Hayward has allocated \$600,000 of its emergency CARES Act Community Development Block Grant (CDBG) and \$388,000 of its HOME Investment Partnership funding to a Rental Housing Relief Program, which provides one-time payments of up to \$2,500 to eligible low-income Hayward residents to help bridge the gap between what residents can pay and their actual rent, reducing the risk of displacement of the city's most vulnerable residents and offsetting revenue loss for landlords who need to continue providing housing services. The staff report for Consent Item 20-337 from the Hayward City Council meeting on July 7, 2020, includes a more detailed description of this program and initial outcomes data.

Staff have re-evaluated the recommendations made in March, prior to the Governor's state of emergency and statewide Shelter-in-Place Order, and determined that it is still appropriate to move forward with the recommendations as presented at the HHTF meeting on March 5, 2020.

## **DISCUSSION**

The following discussion provides a summary of recommended revisions that have been vetted by the HHTF and an update on the implementation of the RRSO since it was enacted on July 25, 2019. The revisions are intended to clarify language in sections that have caused confusion for landlords and tenants, to better align with the Tenant Protection Act (see Attachment VI), and to address key policy issues identified by the HHTF and staff.

### **Recommended RRSO Revisions**

Following the first six months of implementation, staff integrated feedback from the community, City Council, and the HHTF along with staff's on-the-ground experience to identify some potential revisions to the RRSO. These recommended revisions were presented to the

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<sup>6</sup> March 5, 2020, Homelessness-Housing Task Force Staff Report and Attachments: <https://hayward.legistar.com/MeetingDetail.aspx?ID=761368&GUID=EC9B416A-5F1C-4574-9AD6-081EBEF9729A&Options=&Search=>

HHTF on March 5, 2020, and are intended to: a) add clarity to the RRSO; b) align the RRSO with new state tenant protection legislation; and c) respond to key policy issues identified by the HHTF or from earlier work sessions.

The following recommendations take into consideration the investment made to date in education and outreach to ensure tenants and landlords understand their rights under the new RRSO, staff capacity to implement changes, feedback from landlord and tenant stakeholders, and the need to allow the new policy to stabilize over an extended period of time prior to making substantial changes. Attachment V summarizes the potential revisions and staff's recommendations for addressing the potential revisions. Revisions to the actual language of the RRSO is included in Attachment II.

### ***Language Clarifications***

The following revisions will clarify components of the RRSO that have caused confusion among tenants and landlords and will conform to staff's interpretation of the RRSO:

- **Clarify that motels/hotels and hospitals and long-term care facilities are exempt from the RRSO.** Currently, these properties are listed as exemptions in all sections of the RRSO that impose regulatory restrictions, but not sections that impose administrative requirements. *Staff recommends placing the exemption in the definition of a "rental unit" to clarify that they are exempt from all provisions of the RRSO.*
- **Clarify when banked rent accruals and capital improvement pass-throughs start**
  - Some landlords have asked for additional clarity about when they may start aggregating banked rent. Some landlords expected that banked increases from the previous ten years could be recovered; however, the banking provisions under the current RRSO do not take effect until the effective date of the Ordinance. Using Calendar Year 2018 as the initial year, as is done for calculating fair return, this update will clarify this confusion. *Staff recommends that the banking provision initial year be consistent with the fair return initial year.*
  - While the effective date of the RRSO establishes the date that completed capital improvements can be passed through to tenants, the lack of explicit statement has caused confusion. Some landlords expected to pass through costs of an improvement that happened before the RRSO was passed. *Staff recommends amending the RRSO to explicitly state that only capital improvement projects that were completed after the effective date of the RRSO are eligible for the capital improvement pass-through.*
- **Clarify Noticing Requirements for Landlords**
  - The language regarding when landlords are required to provide tenants with a copy of the RRSO is currently ambiguous and can be clarified further. Landlords are only required to provide a copy of the RRSO or the summary developed by the Rent Review Office when entering into a new tenancy. They do not have to provide a copy with lease renewals, unless the RRSO has changed substantially. *Staff recommends clarifying this requirement in the RRSO to state that landlords only need to provide a copy of the RRSO or summary for new tenancies.*

- The Rent Review Office has received feedback that the requirement to provide a paper copy of the tenant petition with each rent increase notice creates a substantial administrative and financial burden. Staff have also observed that landlords often provide outdated versions of the petition, causing tenants to have to re-submit their petition with the correct form. To reduce the burden on landlords and increase the likelihood that tenants receive the correct form, *staff recommends removing the requirement to provide the paper petition and adjusting noticing requirements to specify that landlords must tell tenants, in writing, that tenants have a right to file a petition, that they have 30 days from the increase to file, and where to find a copy of the petition (i.e., the Rent Review Office website or office).*
- **Clarify that tenants can petition the Rent Review Office for any violation of the Residential Rent Increase Threshold Section.** Through feedback from tenants and landlords, staff learned that there is some ambiguity over whether tenants can petition limitations on fees. *Staff recommends adding a statement to the Petition Process section (12-1.05 (g)) specifying that any violation of the Residential Rent Increase Threshold Section (12-1.05) can be petitioned.*
- **Correct substantive typo related to fair return rent increases.** Change the CPI for comparison year in the Standards of Review Section from 285.550 to 289.896. *Staff recommends making this change in the CPI figure to resolve a typo that mistakenly included the annual CPI instead of the monthly CPI for December 2018.*
- **Update language regarding mediation.** The City’s mediation consultant identified outdated language regarding mediation that does not reflect the current generally accepted practices for mediation. A mediator facilitates a discussion between the parties and is educated on the applicable laws, however, they do not consider evidence or make decisions. Additionally, the section is revised to clarify that a potential remedy to a dispute could be a rent reduction which may be appropriate when housing services are decreased. *Staff recommends updating language regarding mediation.*

### ***Alignment with State Law***

The following revisions will bring the City’s RRSO into closer alignment with the State’s Tenant Protection Act (TPA, AB 1482) by resolving inconsistencies between the RRSO and the TPA and ensuring Hayward residents have maximum protections:

- **Address ambiguity and resolve inefficiency created by the TPA rent cap and the applicability of local rent control.** Per section 1947.12(d)(3), Housing subject to rent or price controls that restrict annual increases in the rental rate to an amount less than that provided in the TPA is exempt from the rent cap. Both banked rent increases and capital improvement rent increases allowed for in the RRSO could possibly exceed the rent cap established in the TPA, making it subject to the TPA’s cap. By referencing the TPA rent cap in the RRSO, disputes regarding rent increases could be resolved by the City’s rent dispute process. *Staff recommends including reference to the TPA rent cap to ensure that all rent disputes related to covered units can be resolved through the City’s Rent Review process.*

- **Ensure that Hayward residents have equal protections as other residents in the state by providing relocation assistance consistent with the TPA.**<sup>7</sup> When the RRSO was being deliberated, the topic of relocation assistance was delegated to the HHTF for further review. The State's TPA requires landlords to provide one month's rent (or to waive the last month's rent) for any no-fault eviction. Staff do not recommend providing relocation assistance beyond what is currently provided via State Law as further expansion of relocation assistance would require extensive re-education for landlords and tenants, which would create additional burden on residents that could reduce their willingness to engage with staff to understand and comply with new changes. Current and immediate efforts should focus on synthesizing State Law and the RRSO to reduce confusion for Hayward residents and to promote compliance with both, to the extent that the City has the authority to enforce compliance. *Staff recommends mirroring the State's relocation assistance policy for tenants displaced through no-fault just cause terminations in order to better align the City's RRSO with State Law and provide Hayward residents the same protection as other California residents.*

### ***Specific Policy Issues***

The following revisions and policies are in response to specific policy issues, that were delegated to the HHTF for review related to displacement caused by the conversion of market rate housing to affordable housing and habitability concerns related to property rehabilitation of occupied housing. During the October 22, 2019, Task Force meeting<sup>8</sup>, the HHTF discussed relocation assistance and the exemption of Affordable Housing Conversion Projects from just cause provisions as a measure to address the issues. The following policy recommendations were supported by the HHTF:

- **Eliminate the exemption for Affordable Housing Conversion Projects from the Just Cause for Eviction provisions.** During discussion of the Leisure Terrace conversion project, the HHTF reached consensus on removing the exemption for affordable housing conversion projects from the just cause for eviction provisions. Removing this exemption is intended to prevent displacement related to the conversion of a property from market rate to affordable.
- **Adopt an ordinance to provide Temporary Relocation Assistance to address Task Force concerns regarding habitability during renovations.**<sup>9</sup> During the October 22 HHTF meeting and through communications with the Rent Review Office, tenants have expressed repeated concerns regarding the habitability of their units while the property undergoes renovation. Temporary relocation assistance will define the landlord's obligation to a tenant, if the unit becomes temporarily uninhabitable due to substantial repairs, including a major remodel, or if a governmental agency orders a tenant to vacate or a tenant chooses to vacate due to health or safety concerns. Health

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<sup>7</sup> Staff recommends that Council adopt a Resolution amending the Master Fee Schedule to include this payment, which will be made by landlords to tenants.

<sup>8</sup> October 22, 2019, Homelessness-Housing Task Force Meeting Staff Report and Materials: <https://hayward.legistar.com/MeetingDetail.aspx?ID=723938&GUID=D10A57BF-852D-44BE-A6EA-D6525F126044&Options=info&Search=>

<sup>9</sup> Staff recommends that Council adopt a Resolution amending the Master Fee Schedule to include this payment, which will be made by landlords to tenants.



or safety concerns refer to conditions that would reasonably affect the health and/or safety of the tenant were they to remain in the unit while the conditions exist. To be eligible for temporary relocation assistance, the conditions must not have been caused by a natural disaster (e.g., fire, flooding) unless those events were caused by human action or inaction (e.g., fire due to property owner’s neglect), or caused by the tenant or their invited guests. Tenants will have the opportunity to choose to receive relocation payments and will not be obligated to pay rent if they choose to not receive temporary relocation payments. If work is not completed within 120 days,<sup>10</sup> landlords are required to make rent differential payments (i.e., the difference between the rent the tenant paid at the time of displacement and the fair market rent) to tenants and tenants will not be required to pay rent while receiving rent differential payments. Attachment VII provides a summary and Attachment III provides the full language of the Tenant Relocation Assistance Ordinance. Based on a benchmarking review of comparable local cities, staff recommend establishing a per diem relocation cost for extended stay hotel/motel which includes kitchenette and pet boarding costs, if applicable. *Staff recommends that Council pass the Resolution in Attachment IV to adopt the per diem rates listed in Error! Reference source not found.. Per HHTF request, doing so will allow the rates to be updated periodically via Resolution.*

**Table 2. Recommended Temporary Relocation Payments**

Per Diem Category	Amount	Payment Term
Hotel or Motel	\$161	Per day per household
Meal Expenses	\$32	Per day per person
Laundry	\$1	Per day per household
Pet Accommodations	Cat - \$31 Dog - \$56	Per day per animal

**Other Topics Evaluated**

- Maintain current mediation services for Covered Rental Units.** During the June 18, 2019, Council meeting, Council directed staff to explore expansion of mediation services to cover all Hayward residents, regardless of the covered status of units.<sup>11</sup> Staff evaluated options for expanding existing mediation services beyond those provided in the RRSO for Covered Rental Units and determined that, to remain in line with State Law and to maintain reasonable rent review fees, we should continue referring community members to existing fair housing and legal resources that the City currently pays to provide accessible services to Hayward residents. Since the HHTF met in March, Council has approved an expansion to existing mediation services to support landlords and tenants in negotiating repayment plans for individuals financially impacted by COVID-19. *Staff recommends maintaining existing mediation services at the*

<sup>10</sup> In the case of work being done due to a governmental agency’s order to vacate or if a tenant vacates due to health or safety conditions, tenants are to receive rent differential payments after 60 days of displacement.

<sup>11</sup> June 18, 2019, Hayward City Council Meeting Staff Report and Materials:  
<https://hayward.legistar.com/MeetingDetail.aspx?ID=695617&GUID=CADE769E-CF9E-496E-9D23-D589F1BAC64E&Options=info&Search=>

*expanded level to continue providing both rent stabilization mediation and arbitration services, as well as repayment plan negotiation services for those impacted by COVID-19.*

### **Implementation Progress**

Throughout the implementation process, Rent Review Office staff have focused on developing materials, resources, and tools to improve understanding and facilitate compliance for tenants, landlords, advocacy groups, and real estate professionals. The wide-ranging efforts to create awareness and support compliance include:

- Development of a plain-language summary of the RRSO
- Development of a compliance guide for landlords to help them understand their rights and responsibilities under the new RRSO
- Development of forms and templates to help landlords comply with noticing requirements of the RRSO
- Revision of existing forms to conform with the new RRSO
- Development of infographics to illustrate new, potentially complex processes
- Provision of regular and ongoing landlord and tenant education workshops
- Provision of one-on-one technical assistance to landlords, tenants, and industry professionals
- Engagement in ongoing marketing and outreach to spread the word about the RRSO
- Translation of materials into Spanish and traditional Chinese
- Creation of a system to collect, store, and query Rent Increase Notices and Tenancy Termination Notices

Attachment VIII to this report provides more detail regarding these efforts, including review of the marketing and outreach efforts designed to increase education and awareness of the RRSO. The following subsections provide information regarding activity related to the RRSO including: the petition process; rent increase and termination notices received by the Rent Review Office; and the lessons learned from implementation to date.

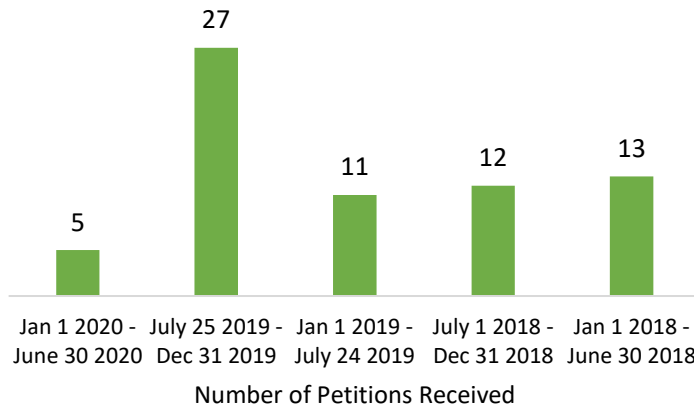
### ***Tenant and Landlord Petitions***

The new RRSO expanded the mediation and arbitration process to more Covered Rental Units. The process is initiated by a petition, either from a tenant or a landlord. To support the petition process and make it as easy as possible for tenants and landlords to understand and comply with the RRSO, staff created several petition forms for tenants and landlords.

*Petitions Received*

From July 25, 2019, through December 2019, the Housing Division received 27 petitions, all from Tenants. This is more than double the number of petitions received in each of the three six-month periods prior to the new RRSO, as shown in **Figure 1**. Since January 1, 2020, the frequency of petition submissions has reduced significantly, likely due to a lack of rent increases from landlords during the COVID-19 pandemic.

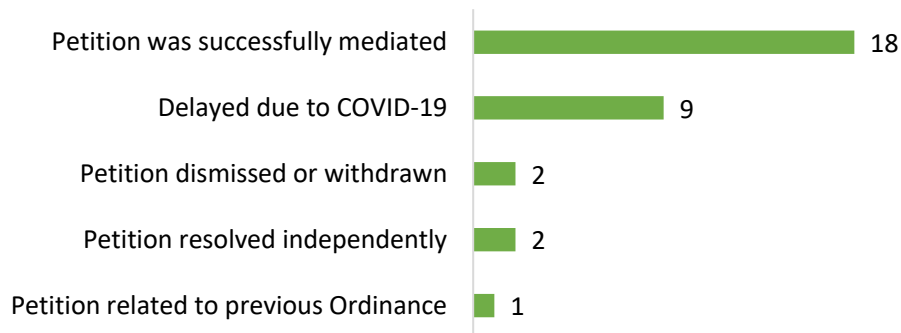
**Figure 1. Petitions Received since January 2018**



*Petition Outcomes*

**Figure 2** presents the outcomes of each petition received since the new RRSO went into effect, through the end of June 2020. While about a fourth of the petitions are delayed due to COVID-19 and social distancing restrictions, the majority have been successfully mediated. Per request of the HHTF, staff have also started tracking the reasons for dismissed or withdrawn petitions. While no landlord petitions have been submitted, staff have talked with several landlords to explain the process and address questions, and Project Sentinel has delivered two landlord workshops focused on the petition process.

**Figure 2. Tenant Petition Outcomes, as of June 2020**



Of the petitions submitted, only two were submitted outside of the 30-day window for petitions to be filed, suggesting that the majority of tenants who know about the petition process are submitting their petitions in compliance with the RRSO.

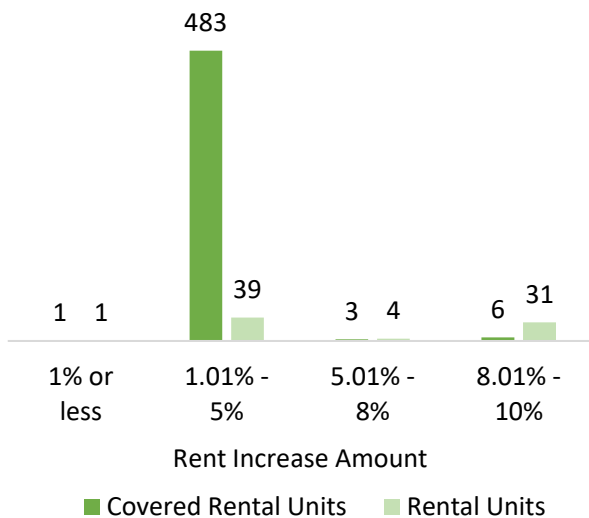
***Rent Increase and Termination Notices***

The RRSO requires that landlords provide the Rent Review Office with copies of all rent increase and termination notices. Collecting such information will enable the Rent Review Office to identify trends in Hayward’s rental environment that were previously unclear without reliable data. To make it as easy as possible for landlords to comply with this component of the RRSO, staff developed several forms that meet all the noticing

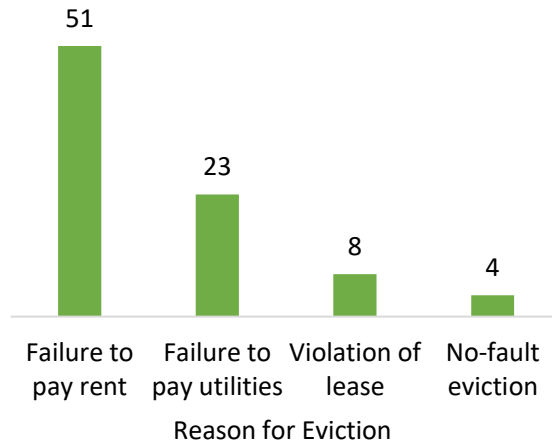
requirements of the RRSO, including a template form to use whenever a landlord increases rent.

Since the RRSO was passed through December 2019, the Rent Review Office received and documented 489 rent increase notices and 75 termination notices. In some instances, landlords provided incomplete information. For increases with adequate information regarding the amount increased and the type of unit (i.e., covered or not covered; n = 568), the average rent increase amount was 4.7% of monthly rent for covered rental units and 6.0% for rental units. Figure 3 below shows the distribution of rent increase amounts from July 25, 2019 to June 30, 2020 for each type of unit. Most landlords who have submitted rent increases have used the form created by the Rent Review Office. As shown in Figure 4, the majority of termination notices received by the Rent Review Office with enough information to determine the reason (n = 86) were for either a failure to pay rent or to pay utilities. Only a small proportion (5%) of eviction notices were for a no-fault cause, such as owner or family move-in.

**Figure 3. Rent Increase Amounts for July 25 – June 30, 2020**



**Figure 4. Reasons for Termination for July 25 – June 30, 2020**



***Rental Housing Database***

The Rent Review Office began implementation of the first phase of the Rental Housing Database. The rent review fee billing process enabled staff to identify inconsistencies and conflicting data on rental properties in the City, resulting in over 3,800 edits made to GIS records and the addition of 676 units that were previously not in the City’s GIS records. Once the billing process was completed, staff began uploading records for all rental housing units into the online Knack platform database. While doing so, staff identified if each unit was covered under the residential rent increase threshold, which will enable both tenants and landlords to search the database and determine what components of the RRSO apply to their units.

The main challenge in developing the database is in instances where one property has some units that are covered (“Covered Rental Units”) under the residential rent increase threshold and others that are not covered (“Rental Units”), staff currently do not have the ability to identify which units are specifically covered and which are not. For example, if a landlord has a property with ten covered rental units, but two are occupied by Section 8 tenants (therefore making exempting them from the threshold), staff currently cannot determine which specific units on the property (e.g., Apartment 1) are covered rental units and which are rental units. In the next billing cycle, staff will prompt landlords to specify which units are covered and which are not for any given property.

### ***Implementation Lessons Learned***

Throughout the implementation process, staff has solicited feedback from landlords, tenants, Project Sentinel, and other City staff. This feedback has already been incorporated to revise existing petition forms and outreach materials, and to streamline processes for scheduling mediation and arbitration hearings. Administration of the rent review fee enabled the Rent Review Office to clean a substantial amount of data, which had the added benefit of helping the Planning Division update their data as well. Feedback regarding the rent review fee administration (e.g., clarifying language in the invoice letter and providing clearer guidance on required documentation for declaring exemptions) has been documented and will be incorporated into the billing process for FY21.

### **ECONOMIC IMPACT**

There is an expected economic impact to landlords who may be required to pay temporary or permanent relocation assistance.

### **FISCAL IMPACT**

The recommended revisions will have no fiscal impact on the City’s General Fund.

### **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Present, Protect, & Produce Housing. Specifically, this item relates to the implementation of the following projects:

Project 7, Part 7a:	Provide 6-month update on the implementation of the Rent Stabilization Ordinance and recommend amendments
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### **PUBLIC CONTACT**

Prior to the March 5, 2020, HHTF meeting, staff reached out to landlord, tenant, and realtor stakeholder groups to notify them of the recommended revisions. Staff sent a comprehensive outreach flyer and answered questions from stakeholders to provide further clarification. Staff has received feedback regarding the implementation of the RRSO and the recommended revisions:

- **Accessibility of materials:** One tenant advocacy group requested that staff include statements in Spanish and Chinese on English forms informing residents of the availability of those forms in other languages. Staff agrees that this would improve outreach and is in the process of making those adjustments to our forms.
- **Applying the TPA rent cap to banking and capital improvement passthrough increases:** One housing provider advocacy group has an alternate interpretation of the TPA. Under their interpretation, if a local government has valid rent control, it is essentially more restrictive than the TPA and the local rent control would supersede the State Law. There is concern that further restrictions would disincentivize landlords from improving their properties. However, these variations in interpretation are the reason staff proposes the modification to improve clarity.
- **Tenant Relocation Assistance**
  - Permanent: Many realtors have voiced concerns about relocation assistance, noting that they anticipate many property owners will sell their investment properties rather than continue to rent them in Hayward. It was also noted that there has been an increase in sales of investment property from July 2019 through February 2020 and expect that this trend will continue. In consideration of the trend, relocation assistance will mitigate the cost of relocation or possibly discourage reactive measures that may displace tenants. A tenant advocacy group has requested that the City make the relocation assistance permanent (unlike the TPA, which has a sunset date).
  - Temporary Relocation: One housing provider advocacy group is concerned that the proposed temporary relocation assistance will make the landlord responsible for tenant caused damage that makes the unit uninhabitable. Staff has refined the description of this proposed policy to exclude displacement caused by the tenant or their invited guests.
- **Additional Analysis of the Residential Rent Increase Threshold:** A tenant advocacy group has asked for additional analysis of the impact of the residential rent increase threshold, expressing concern that allowing increases in excess of 5% will, over time, lead to renters paying substantial portions of their income on rent.

## NEXT STEPS

### RRSO Revisions

If Council chooses to move forward with revisions to the RRSO and adoption of a new Relocation Assistance Ordinance, there will be a second reading at the next Council meeting. If passed, the amended RRSO and new Relocation Payment Ordinance will be effective 30 days after the adoption. Staff will move forward with outreach to landlords and tenants to ensure they are aware of the new changes. Staff will use successful strategies from the previous education and outreach efforts to update landlords and tenants.

### RRSO Implementation

Staff will continue to monitor implementation of the RRSO, identifying additional opportunities to improve processes, forms, and outreach strategies.

*Upcoming Outreach.* Staff are in the process of developing online workshops for landlords and tenants to provide more education about COVID-19-related resources and the City's eviction moratorium.

*Rent Review Database Development.* The Rent Review Office will continue adding to Phase I of the database and will begin Phase II, which will focus on adding all completed and open petition processes to the database. Based on the information collected, the City can evaluate the volume of petitions, the nature of the petitions, at what stage the petitions are being resolved, the outcomes of the petitions, and the effectiveness of the process. While detailed information regarding each petition would not be available to the public, generalized statistical information will be available through reports. This phase will also include creating a repository for community members to lodge complaints related to rental housing. Tenants will be able to submit complaints online or by contacting staff. The City will not intervene in the complaints but will notify the landlord that a complaint was received. Like the Better Business Bureau or Yelp, landlords can respond to a tenant's complaint, but resolution of the issue will be left to the tenant and landlord. This component of the database will enable the City to track rental housing issues not covered by the RRSO and collect information.

*Fiscal Year 20/21 Rent Review Fee Administration.* Staff have aggregated feedback on the initial billing process for FY20 and will apply that feedback to improve administration of the Rent Review Fee for FY21. Due to the financial impacts of COVID-19 on landlords and tenants, staff has decided to delay the FY21 billing process from July to September 2020.

*Prepared by:* Amy Cole, Management Analyst

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

Approved by:



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Kelly McAdoo, City Manager

ORDINANCE No. 20-

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING  
ARTICLE 1 OF CHAPTER 12 OF THE HAYWARD MUNICIPAL CODE RELATING  
TO RESIDENTAL RENT STABILIZATION AND TENANT PROTECTION

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

Section 1.

Section 12-1.04 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit A, attached hereto and incorporated herein.

Section 12-1.05 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit B, attached hereto and incorporated herein.

Section 12-1.07(i) of Article 1, Chapter 12 of the Hayward Municipal Code is hereby amended to read as contained in Exhibit C, attached hereto and incorporated herein.

Section 12-1.09 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit D, attached hereto and incorporated herein.

Section 12-1.12 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit E, attached hereto and incorporated herein.

Section 12-1.13 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit F, attached hereto and incorporated herein.

Section 12-1.15 of Article 1, Chapter 12 of the Hayward Municipal Code, is hereby amended to read as contained in Exhibit G, attached hereto and incorporated herein.

Section 2. California Environmental Quality Act (CEQA).

The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the



proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. Pursuant to Section 620 of the Charter of the City of Hayward, this Ordinance shall become effective thirty (30) days from the date of its adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of, \_\_\_\_\_ 2020, by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_ day of \_\_\_\_\_ , 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBER

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

## SEC. 12-1.04 - DEFINITIONS.

- (a) "Arbitrator." A person who is neither a Tenant as that term is defined in this ordinance nor who has an interest in residential rental Property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official and a person whom the Rent Review Officer determines meets one of the following criteria:
- (1) Completion of a Juris Doctor or equivalent degree from a school of law and completion of a formal course of training in arbitration which, in the sole judgment of the Rent Review Officer, provides that person with the knowledge and skills to conduct a rental dispute arbitration in a professional and successful manner; or
  - (2) Completion of at least three arbitration proceedings for a Superior Court or other public entity that involved issues the Rent Review Officer considers similar to those raised in Rent dispute arbitrations.
- (b) "Banking" or "Banked Increase." Any Rent Increase the Landlord chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in this ordinance.
- (c) "Business Tax Declaration." The annual declaration required to be filed in connection with a Landlord's obtaining or renewing a city business license for Rental Units. Any failure by a Landlord to file such a declaration, whether pursuant to an exemption or otherwise, shall not relieve a Rental Unit from being subject to the provisions of this ordinance.
- (d) "Capital Improvements." Those improvements that were paid for and completed after July 25, 2019, which materially add to the value of the Property and appreciably prolong its useful life or adapt it to new uses, benefit the Tenant, and which may be amortized over the useful remaining life of the improvement to the Property, including but not limited to improvements to, the seismic safety of the rental Property or increase the energy efficiency of the rental Property (including any improvement to allow a significantly more accurate allocation of utility costs), provided that in determining the cost of a capital improvement no consideration shall be given to any

additional cost incurred for increased Property damage or improvements for ordinary repairs, replacements, and maintenance, and/or deterioration resulting from an unreasonable delay in the undertaking of completion or after a Notice of Violation by a government agency ordering repairs that has remained unabated for 90 or more days of any repair or improvement.

- (e) "Covered Rental Unit." Any residential Rental Unit, other than a mobile home unit, and all Housing Services provided with such unit that is located in the City of Hayward and used or occupied by the payment of Rent.

Notwithstanding the foregoing, the following residential Rental Units are not deemed Covered Rental Units for the purpose of this ordinance:

~~(1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs.~~

~~(2) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.~~

(13) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.

(24) Rental Units whose Rents are controlled, regulated (other than by this ordinance), or subsidized by any governmental unit, agency or authority for term specified in written agreement with governmental unit, agency or authority. Upon termination of regulatory covenants or contracts that control, regulate, or subsidize the Rents of a Rental Unit, the Rental Units shall be subject to this ordinance.

(35) Rental Units that are lawful and in compliance with the Hayward Municipal Code Section 10-1.2740, et seq. (Accessory Dwelling Units), if the primary residence is occupied by the Property owner.

- (46) Rental Units located in a structure for which a certificate of occupancy is first issued after July 1, 1979.
- (57) Any residential real Property that is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision as specified in subdivision (b), (d) or (f) of Section 11004.5 of the California Business and Professions Code.
- (68) A condominium unit that has been sold separately by the subdivider to a bona fide purchaser for value. However, this ordinance shall apply to pre-1979 condominium units that remain unsold by the subdivider, unless and to the extent the Property has become owner-occupied for a period of at least a year. A subdivider who continues to Rent out the units and allows a public report for sale of subdivision interests to lapse may be regulated by this ordinance because they are no longer "alienable" for purposes of the statute preempting local regulation.
- (79) Rental Units exempt from Rent control pursuant to the Costa-Hawkins Rental Housing Act (California Civil Code § 1954.52).
- (f) "Fair Return" as defined in Section 12-1.09(a)(6).
- (g) "Governmental-Utility Services." Services provided by a public agency, public utility, or quasi-public or utility, including but not limited to water, sewer, gas, electric, and rubbish removal.
- (h) "Gross Income." The annual Rents collected from all occupied Rental Units as well as income from any other source related to the use or occupancy of the Rental Units, including income from facilities, garage or parking fees or other services if not included in Rent; utility costs paid directly to the Landlord by the Tenant if not included in the Rent.
- (i) "Harassment." A knowing and willful act or course of conduct directed at a specific Tenant or Tenants which:

- (1) Would cause a reasonable person to fear the loss of use or occupancy of a Rental Unit or part thereof, or of any service, privilege or facility connected with such use or occupancy, without legitimate reason or legal justification; or
  - (2) Materially interferes with a Tenant's peaceful enjoyment of the use and/or occupancy of a Rental Unit; or
  - (3) A single act may constitute Harassment for purposes of determining whether a vacancy was voluntary. A course of conduct is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
- (j) "Health Facility." means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.
- (k) "Housing Service." A service provided by the Landlord related to the use or occupancy of a Rental Unit, including but not limited to, insurance, repairs, replacement, maintenance, painting, lighting, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.
- (l) "Initial Rent." The Rent in effect on July 25, 2019 is the Initial Rent. If there was no Rent in effect on that date, the Initial Rent is the Rent charged on the first date that Rent was charged after that date. For tenancies that commenced after July 25, 2019, the Initial Rent is the rate of Rent charged on the date the tenancy begins.
- (m) "Landlord." Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- (n) "Mediator." A person whom the Rent Review Officer determines meets all of the following criteria:

- (1) Has received at least 24 hours of formal training in mediation;
  - (2) Has mediated Rent disputes or has had other experience or training showing a capability to mediate the issues which arise in such disputes; and
  - (3) Who is neither a Tenant as that term is defined in this ordinance nor has an interest in residential rental Property that would require disqualification under the provisions of the Political Reform Act if such person were an elected state official.
- (o) "Net Operating Income." The revenue available to the Landlord after paying the normal Operating Expenses.
- (p) "Operating Expenses." The costs of normal operations, including management, taxes and insurance, maintenance and other recurring costs.
- (q) "Property." means a parcel of real Property, located in the City of Hayward, that is assessed and taxed as an undivided whole.
- (r) "Rent." The total consideration, including any bonus, benefit, gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, or the assignment of a lease for such a unit, including Housing Services or subletting, but excluding any amount demanded or received by a Landlord as a Security Deposit.
- (s) "Rental Agreement." means an agreement, oral, written, or implied, between a Landlord and a Tenant for the use and/or occupancy of a Rental Unit.
- (t) "Rent Increase." Any additional Rent demanded of or paid by a Tenant for a Rental Unit, including any reduction in Housing Services without a corresponding reduction in the amount demanded or paid for Rent; or a pro rata increase in costs of Housing Services apportioned to a Covered Rental Unit.
- (u) "Rent Review Officer." The person or persons and/or entity designated by the City Manager to administer and enforce the provisions of this ordinance.
- (v) "Rental Unit." Any building, structure, or part thereof, or appurtenant thereto, or any other rental Property Rented or offered for Rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other real

properties used for living or dwelling purposes, together with all Housing Services connected with the use or occupancy of such Property. For purposes of this ordinance a Rental Unit shall not include the following:

(1) Aa mobile home or mobile home space;

(2) -Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for Rent in conjunction with the providing of services such as meals, cleaning services, and social programs;

(3) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.

(w) "Security Deposit." Any payment, fee, deposit or charge, including but not limited to an advance payment of Rent, used or to be used for any purpose, including but not limited to any of the following:

(1) Compensation of a Landlord for a Tenant's default in the payment of Rent;

(2) The repair of damages to the premises caused by the Tenant beyond ordinary wear and tear;

(3) The cleaning of the Rental Unit, if necessary, upon termination of tenancy; provided, however, that the term Security Deposit shall not include any fee or charge pursuant to any mutual agreement for the Landlord at the request of the Tenant to make any structural, decorative, furnishing, or other similar alterations as long as such alterations are other than that cleaning or repairing for which the Landlord may charge the previous Tenant under California law.

(x) "Skilled Nursing Facility." A Health Facility or a distinct part of a hospital that provides, at a minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide 24-hour inpatient care, an activity program, and medical,



nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

- (y) "Source of Income." All lawful, verifiable sources of income, or rental assistance from any federal, state, local, or nonprofit-administered benefit or subsidy program, or any financial aid from any rental assistance program, homeless assistance program, Security Deposit assistance program, or housing subsidy program, whether paid directly to the program participant, Landlord, or representative of either.
- (z) "Tenant." A Tenant, subtenant, lessee, or sublessee, or any other person entitled by written or oral agreement to the use or occupancy of any Rental Unit or Covered Rental Unit.
- (aa) "Veteran." Any person who served in the active military, naval, or air service of the United States, or as a member of the National Guard who was called to and released from active duty or active services, for a period of not less than 90 consecutive days or was discharged from service due to a service-related disability. This includes veterans with other-than honorable discharges.
- (bb) "Voluntarily Vacated." Shall mean a vacancy that results from the independent choice of the Tenant, without intimidation, pressure, or Harassment, but does not include tenant vacancy due to severe habitability issues as defined in Civil Code Sections 1941.1 et seq. and Health and Safety Code Sec 17920.3 and 17920.10. For purposes of this section "abandonment" is defined as the Tenant's independent choice, without intimidation, pressure, or Harassment to relinquish all right and possession of the premises, with the intention of not reclaiming or resuming its possession or enjoyment, and the Landlord terminates the tenancy pursuant to Civil Code Section 1951.3. Abandonment is considered voluntary.

## SEC. 12-1.05 - RESIDENTIAL RENT INCREASE THRESHOLD.

- (a) From and after July 25, 2019 (the effective date of this Ordinance), a Rent Increase, including any increase of Housing Services, for use or occupancy of a Covered Rental Unit may be imposed once every twelve (12) months for an amount equal to or less than five percent (5%) of the existing total monthly Rent. Such an increase shall be known as the, "Rent Increase Threshold" and shall not be subject to Section 12-1.07 of this Ordinance.
- (1) A Rent Increase, including any increase of Housing Services, for any Covered Rental Unit that exceeds the five percent (5%) Rent Increase Threshold within a twelve (12) month period, shall be subject to Section 12-1.07 of this ordinance and a Tenant may file a petition for review of the Rent Increase in accordance with Section 12-1.07(b) and 12-1.07(c).
  - (2) If a Landlord has imposed a Rent Increase during any twelve (12) month period between July 25, 2018 and July 25, 2019, the Landlord may increase no earlier than the anniversary date of the last Rent Increase.
- (b) Exemptions to the Rent Increase Threshold:
- (1) A Rent Increase after the Covered Rental Unit has been Voluntarily Vacated;
  - (2) A Rent Increase after lawful eviction;
  - (3) The Rent Increase Threshold shall not apply if doing so would violate the terms of a written lease entered into on or before July 25, 2019. Otherwise, any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of Section 12-1.05 is waived or modified, is against public policy and void.
  - (4) An increase for Governmental-Utility Service costs in accordance with Section 12-1.05(d).
  - (5) An increase for Capital Improvement costs in accordance with Section 12-1.05(e).

- (6) An increase based on Banking in accordance with Section 12-1.05(f).
- (c) Limitations on Fees. The following fees may not be charged to Tenants except as provided:
- (1) Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars (\$10.00) unless approved by Tenant petition.
  - (2) Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719(a)(1), as amended. Landlord need not provide Tenant with a third-party invoice for this service charge.
  - (3) Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.
  - (4) Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6(b), as amended.
- (d) Governmental-Utility Service Pass Through. A Landlord may only pass through costs of Governmental-Utility Services through a ratio utility billing system (RUBS) or similar unmetered allocation arrangement, pursuant to the terms of a written lease. However, costs for Governmental-Utility Service pursuant to this section shall not be considered Rent, and shall not be increased when Rent Increases, nor shall they be considered Rent for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 12-1.05(a).
- (1) Within two (2) months receipt of a utility rate cost increase and/or any increase in utility services costs above one percent (1%) of the Tenant's existing Rent, upon request by a Tenant, the Landlord shall provide the Tenant(s) documentation supporting the level of increase, including at a minimum:

- (i) Proof of the Governmental-Utility Service cost for the entire building showing the amount paid by the Landlord for each billing period for a twelve (12) month period prior to the increase in the Governmental-Utility Service;
  - (ii) Proof of the Governmental-Utility Service cost by month or billing period apportioned to each unit for a twelve (12) month period prior to the increase in the Governmental-Utility Service.
  - (iii) Billing notices or other equivalent documents from the agency imposing the increase reflecting the amount of increase in the Governmental-Utility Service cost for the entire building; and
  - (iv) The RUBS or unmetered allocation arrangement calculations used by Landlord or third-party agency on behalf of the Landlord to apportion the increased costs among the Tenants.
- (2) In accordance with Section 12-1.07 of this ordinance, the Tenant may file a petition to initiate review of a Governmental-Utility Service upon the Landlord's failure to provide the Tenant with the documentation required in Section 12-1.05(d)(1) and when the Government-Utility Service increase in cost exceeds one percent (1%) of the Tenant's existing Rent.
- (3) Failure of the Landlord to follow the procedure set forth in this subsection shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the disputed Governmental-Utility Service Pass Through costs.
- (e) Capital Improvements. A Landlord may impose a pass-through cost, in addition to a Rent Increase, to the extent authorized in a final decision by an Arbitrator on a Landlord capital improvement petition filed in accordance with this section. Costs for Capital Improvements shall not be considered Rent and shall not be increased when Rent Increases, nor shall they be considered Rent for purposes of calculating an increase under the Rent Increase Threshold in accordance with Section 12-1.05(a).
- (1) Limitations on Pass-through for Capital Improvements.

- (i) Must be a Capital Improvement as defined in Section 12-1.04(d) that was paid for and completed after July 25, 2019.
  - (ii) The Capital Improvement must have been completed and paid for prior to the filing of the petition for a final decision by an Arbitrator.
  - (iii) A petition to impose a Capital Improvement pass-through of costs must be initiated by the Landlord within two (2) years of completion of the capital improvement work.
  - (iv) The total costs passed through by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and
  - (v) No Landlord may require a Tenant to pay any amount of any cost that is attributable to any period of time that the Tenant was not entitled to use and occupy the Covered Rental Unit; and
  - (vi) No Landlord may require a Tenant to pay more than its share of the cost attributable to that Tenant's Covered Rental Unit that is permitted to be passed through to Tenant.
  - (vii) Equipment otherwise eligible as a Capital Improvement will not be considered if a "use fee" is charged (i.e. coin-operated washer and dryers).
- (2) Calculating Capital Improvements.
- (i) Capital Improvement costs must be amortized over the useful life of the improvement.
  - (ii) Capital Improvements shall be given a useful life period of five (5) years or sixty (60) months and the total costs shall be amortized over that time period, unless the Rent Increase coupled with the Capital Improvement cost would exceed ten percent (10%) of the existing Rent for a Covered Rental Unit.
  - (iii) When a capital improvement cost standing alone or a capital improvement cost coupled with a Rent Increase and Banking Increase would exceed ten percent (10%) or thirty percent (30%) in five years, the excess can only be recovered by extending the Capital Improvements amortization period in

yearly increments sufficient to cover the excess. In addition, the Landlord must comply with the requirements to notice the Tenant of the extended amortization period with the initial Capital Improvement cost.

- (iv) For mixed-use structures, only the percent of residential square footage will be applied in the calculations. The same principle shall apply to Landlord-occupied Rental Units (i.e., exclusion of Landlord's unit).
  - (v) If a unit is occupied by an agent of the Landlord, this unit must be included when determining the average costs per unit. For example, if a building has ten (10) units, and one is occupied by a nonpaying manager, any Capital Improvement would have to be divided by (10), not nine (9), in determining the average Capital Improvement increase.)
  - (vi) Where a Landlord is reimbursed for Capital Improvements (i.e. insurance, court-awarded damages, subsidies, etc.), this reimbursement must be deducted from such Capital Improvements before costs are amortized and allocated among the units.
  - (vii) The dollar amount of the Capital Improvement charge shall be removed from the allowable Rent in the sixty-first month or at the end of an extended amortization period.
- (3) Landlord Petition for Capital Improvements.
- (i) A Landlord must file a petition with the Rent Review Officer to schedule an arbitration for review of Capital Improvement costs in accordance with this section and Section 12-1.07.
  - (ii) The Landlord must provide documentation of its costs in support of the petition for Capital Improvement. Undocumented labor costs provided by the Landlord cannot exceed 25% of the costs of materials.
- (4) Landlord Petition of Capital Improvements for Provisional Decision by Arbitrator. A Landlord may file a petition of Capital Improvement costs in accordance with this section and Section 12-1.07 with the Rent Review Officer to

schedule an arbitration for a provisional decision prior to performing the Capital Improvement, which shall include a written proposal, cost estimates and other supporting documentation. A final decision by an Arbitrator shall not be considered until the Capital Improvement has been completed and the necessary documentation submitted.

(5) Failure of Landlord to Remove Capital Improvement Costs from Rent.

(i) If an owner fails to reduce a Capital Improvement costs from Rent in the month following the end of the amortization period for such improvement and the Tenant pays any portion of such Capital Improvement costs after the end of the amortization period, the Tenant may recover interest on the amount overpaid.

(ii) The applicable rate of interest for overpaid Capital Improvements shall be the rate specified by law for judgements pursuant to California Constitution, Article XV and any legislation adopted thereto, and shall be calculated at simple interest.

(f) Landlord "Banked Increase".

(1) A Landlord may bank all or part of its annual permissible Rent Increase up to five percent (5%) in accordance with the Rent Increase Threshold and use the Banked Increase at a later time. The Landlord may apply the unused Rent Increase to its current year in accordance with this section.

(2) Limitations on Banking.

(i) Any Banked Increase that has not been imposed shall expire after ten (10) years.

(ii) A Landlord shall add no more than a five (5) percent Banked Increase to the total of any current year Rent Increase not to exceed a total annual Rent Increase of ten (10) percent.

(iii) The first year from which a Landlord may bank an unused rent increase is the 2018 calendar year.

- (3) Notice. The Landlord shall notice a Banked Increase concurrent with a Rent Increase pursuant to Section 12-1.15.
  - (4) A Tenant may file a petition for review of a Banked Increase in accordance with Section 12-1.05(g) and Section 12-1.07 of this ordinance. If a Tenant contests a Banked Increase in accordance with Section 12-1.05(g) and Section 12-1.07, the Landlord shall provide evidence of the rental history of the subject Covered Rental Unit.
- (g) Petition Process
- (1) Tenant Petitions. A Tenant may submit a petition to the Rent Review Officer in accordance with Section 12-1.07 on any one (1) or more of the following grounds:
    - (i) The Landlord failed to provide notice of the Rent Increase, Banked Increase, or Governmental-Utility Services in accordance with Section 12-1.15;
    - (ii) To request review of a Rent Increase in excess of the five percent (5%) Rent Increase Threshold in Section 12-1.05(a);
    - (iii) To contest the Banked Increase calculations or a Banked Increase coupled with a Rent Increase in excess of ten (10%) percent;
    - (iv) To request review of an increase in Governmental-Utility Services which exceeds one percent (1%) of the Tenant's existing Rent;
    - (v) To request a reduction in Rent based on decreased Housing Services;
    - (vi) To contest a Capital Improvement cost not subject to a final decision of an Arbitrator per Section 12-1.05(e)(2) as an unauthorized or excessive pass through;
    - (vii) To request review of a Rent Increase when the Covered Rental Unit has uncured health, safety, fire, or building violations.
    - (viii) For any other violation by the Landlord of Section 12-1.05.
    - (ix) For a violation of the rent increase limitations imposed by California Civil Code section 1947.12, as it may be amended from time to time.



- (2) Landlord Petitions. There is hereby established a Landlord petition process. In accordance with Section 12-1.07 of this ordinance, a Landlord may submit a petition to the Rent Review Officer on any one (1) or more of the following grounds: (i) to request a Rent Increase in excess of the Rent Increase Threshold or in excess of a ten percent (10%) Rent Increase, inclusive of Banking and/or Capital Improvement costs to obtain a Fair Return; or (ii) to request a pass through of Capital Improvement costs. The Landlord must provide notice to the Tenant(s) of the petition in accordance with Section 12-1.15.

## SEC. 12-1.07 - THE RENT DISPUTE RESOLUTION PROCESS.

- (i) Mediation. Upon, the Rent Review Officer's acceptance of a petition, mediations under this ordinance shall be conducted consistent with the following rules and procedures.
- (1) The Rent Review Officer shall provide the Tenant and Landlord a notice of receipt and acceptance of the petition, and this notice shall be served either in person, ordinary mail, or electronic correspondence.
  - (2) The Rent Review Officer shall assign a Mediator and set a date for a mediation no later than thirty (30) days after the acceptance of the petition, unless the Rent Review Officer determines that additional time is required under the circumstances. The Rent Review Officer shall notify the Landlord and Tenant(s) in writing of the date, time, and place of the mediation hearing at least fourteen (14) days prior to the mediation hearing and this notice shall be served either in person, ordinary mail, or electronic correspondence. To the extent possible, the Rent Review Officer shall consider the work schedules of the Tenant(s) and Landlord when selecting a date and time for the mediation.
  - (3) The parties may agree to waive mediation and proceed directly to arbitration. Written notice of the intent to waive mediation must be filed at least seven (7) days before the mediation hearing. Upon receipt of a waiver, the Rent Review Officer shall assign an Arbitrator and schedule the arbitration hearing in accordance with Section 12-1.07(j).
  - (4) For Landlord petitions, the Landlord may unilaterally waive mediation and proceed to arbitration. Written notice of the intent to waive mediation must be filed at least (7) days before the mediation hearing. Upon receipt of a waiver, the Rent Review Officer shall assign an Arbitrator and schedule the arbitration hearing in accordance Section 12-1.07(j).
  - (5) Rent Review Officer may grant postponements of the mediation hearing of up to twenty-one (21) days for good cause. The parties, with concurrence of the Mediator and Rent Review Officer, may agree in writing to additional continuances.
  - (6) With input from stakeholders and community members, the Rent Review Officer may adopt procedures for the conduct of mediation ~~hearings~~.
  - (7) Mediation is a voluntary collaborative process where in the Landlord and Tenant(s) who have a disagreement regarding the Rent Increase, can develop options, consider alternatives, and develop a consensual agreement. The role of the Mediator is to facilitate open communication to resolve dispute in a non-adversarial and confidential manner.
  - (8) The Landlord shall submit a written response to the Tenant's petition and any documents they wish to present in the mediation, including documentary evidence to the Rent Review Officer at least five (5) days prior to the scheduled mediation ~~hearing~~. The Landlord and Tenant(s) must attend appear at the mediation and participate in good faith offer oral and documentary evidence. Both the Landlord

and the Tenant(s) may designate a representative or representatives with decision making authority to appear on their behalf at the mediation hearing. Requests for translation services during the mediation shall be submitted to the Rent Review Officer at least five (5) days prior to the scheduled mediation hearing.

- (9) If the Landlord and Tenant(s) agree to a level of Rent Increase or a reduction in Rent, the Mediator shall prepare a memorandum of agreement for the signature of the Landlord and the Tenant(s). This agreement shall constitute a legally enforceable contract.
- (10) Should the parties fail to agree to a level of Rent Increase or a reduction in Rent, or the Mediator determines that the parties have reached an impasse, the Mediator may refer the cases to the Rent Review Officer for arbitration.

## SEC. 12-1.09 - STANDARDS OF REVIEW.

- (a) The Arbitrator shall consider all relevant factors when evaluating Rent Increases above the 5% Rent Increase Threshold or a Landlord petition in compliance with Section 12-1.07(e) and 12-1.07(f), including the following:
- (1) Unavoidable increases in maintenance and Operating Expenses, including the reasonable value of the Landlord's labor. Factors to be considered, include but are not limited to:
    - (i) Year to year comparison of annual operating budget and financial statements; and
    - (ii) Operating Expense documentation.
  - (2) Application of Banking Rent Increases when owner chooses to delay imposing part or in full an annual Rent Increase not to exceed a total Rent Increase of ten percent (10%). Factors to be considered, include but are not limited to:
    - (i) The rental history of the unit or the complex of which it is a part;
    - (ii) The presence or absence of past increases; and
    - (iii) The frequency of past Rent Increases.
  - (3) Verification of the Governmental-Utility Services cost increase. Factors to be considered, include but are not limited to:
    - (i) The percentage of the utility rate costs increase above one percent (1%) of the Tenant's existing Rent.
    - (ii) The allocation of the increased Government-Utility Service costs among Tenants including any increase or decrease in the number of Tenants in the Covered Rental Unit.
    - (iii) Whether the cost increase is the result of irresponsible or wasteful use of utilities by the Tenant
    - (iv) Whether the Landlord provided the Tenant(s) documentation supporting the level of increase in accordance with Sections 12-1.05(d) and 12-1.15.

- (4) Capital Improvement of the Covered Rental Units, including the reasonable value of the Landlord's labor and financing costs. Factors to be considered, include but are not limited to:
- (i) Improvement completed;
  - (ii) Landlord's petition made within two (2) years of completion of Capital Improvement work;
  - (iii) No more than Fifty percent (50%) pass through costs requested;
  - (iv) Distinguished from ordinary repair or maintenance;
  - (v) For the primary benefit, use, and enjoyment of the Tenant;
  - (vi) Permanently fixed in place or relatively immobile and appropriated to the use of the Property;
  - (vii) Not coin-operated nor for which a "use fee" or other charge is imposed on Tenants for its use; and
  - (viii) Cost-factored and amortized in accordance with Section 12-1.05(e).
- (5) Other financial information which the Landlord is willing to provide.
- (6) A Landlord's fair rate of return on investment based on the following calculations:

Fair Return Standard. A Fair Return is the Initial Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Initial Year. "Net Operating Income" is the Gross Income from a Covered Rental Unit net of Operating Expenses. Debt service and Capital Improvement costs are not included in calculating Net Operating Income.

Initial Year. The "Initial Year" is the 2018 calendar year, provided that where the Rent for Covered Rental Units has been set in a prior Fair Return decision regarding a petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Initial Year for the purposes of reviewing a subsequent Fair Return petition.

Current Year. The Current Year is the most recent calendar year preceding the submission of a petition pursuant to Section 12-1.07.

Calculation of Consumer Price Index. The percentage increase in the CPI shall be determined by comparing the monthly CPI for All Urban Consumers for all items for the San Francisco-Oakland-Hayward metropolitan area as reported by the U.S. Bureau of Labor Statistics, for December of the comparison year to the monthly CPI for December 2018 (i.e., ~~289.896~~~~285.550~~), or the monthly CPI for December of the Current Year in cases that the Initial Year was determined through a subsequent petition, whichever is later. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-Hayward metropolitan area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

- (b) Grounds for Denial. The Arbitrator shall consider all relevant factors when evaluating whether to deny a Rent Increase, including but not limited to the following:
- (1) Landlord allows violations of the City of Hayward Housing Code or other applicable state and local statutes to persist. Landlord may remedy noncompliance by addressing any and all state and local code violations prior to the commencement of the arbitration proceedings.
  - (2) Landlord failed to pay the Rent program service fee. Landlord may remedy such non-compliance by paying any and all outstanding fees prior to the commencement of the arbitration proceedings.
  - (3) Landlord failed to provide Tenant notice of a Rent Increase, Banked Increase, or costs imposed for Government-Utility Services in accordance with Sections 12-1.05(d) and 12-1.15.
- (c) Grounds for a Reduction of Rent. The Arbitrator shall consider all relevant factors when evaluating whether to reduce Rent, including but not limited to the following:
- (1) Landlord allows violations of the City of Hayward Housing Code or other applicable state and local statutes to persist. Landlord may remedy noncompliance

by addressing any and all state and local code violations prior to the commencement of the arbitration proceedings.

- (2) Any reduction of Housing Services since the last Rent Increase.

SEC. 12-1.12 - PROHIBITION AGAINST RETALIATORY EVICTION AND HARASSMENT  
AGAINST TENANTS.

- (a) Applicability and Exemptions. Section 12-1.12 of this ordinance shall apply to all Rental Units, including all Covered Rental Units, in the City of Hayward. However, Section 12-1.12 shall not apply to the following types of Rental Units:
- (1) ~~Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for rent in conjunction with the providing of services such as meals, cleaning services, and social programs.~~
  - (2) ~~Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.~~
  - (3) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.
  - (4) Rental Units in a residential Property where the owner of record occupies a unit in the same Property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the Tenants of such Rental Units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's Property tax exemption on any other real Property in the State of California.
- (b) Prohibition Against Retaliatory Evictions and Harassment. No Landlord or an agency acting on behalf of a Landlord, shall do any of the following, in bad faith:
- (1) Interrupt, terminate, or fail to provide Housing Services required by contract State, County or municipal housing, health or safety laws, or threaten to do so;
  - (2) Fail to perform repairs and maintenance required by contract or by State, County, or municipal housing, health, or safety laws, or threaten to do so;
  - (3) Failure to exercise due diligence in completing repairs and maintenance once undertaken or fail to follow appropriate industry repair, containment or remediation protocols designed to minimize exposure to noise, dust, lead paint, mold, asbestos, or other building materials with potentially harmful health impacts;
  - (4) Abuse the Landlord's right of access into a Rental Unit as that right is provided by law;
  - (5) Influence or attempt to influence a Tenant to vacate a Rental Unit through fraud, intimidation or coercion, which shall include threatening to report a Tenant to U.S. Immigration and Customs Enforcement;
  - (6) Refuse to accept or acknowledge receipt of a Tenant's lawful Rent payment, except as such refusal may be permitted by state law after a notice to quit has been



served on the Tenant and the time period for performance pursuant to the notice has expired;

- (7) Interfere with a Tenant's right of privacy, including but not limited to the Tenant's residence or citizenship status or social security number, except as required by law or, in the case of a social security number, for the purpose of obtaining information for the qualifications for a tenancy, and not release such information except as required or authorized by law;
  - (8) Offer payments to a Tenant to vacate more than once in six (6) months, after the Tenant has notified the Landlord in writing the Tenant does not desire to receive further offers of payments to vacate;
  - (9) Substantially and directly interfere with a Tenant's right to quiet and enjoyment of a Rental Unit as that right is defined by California law;
  - (10) A Tenant's exercise of their right to file a petition under this ordinance.
  - (11) Verbal or physical abuse or intimidation.
- (c) Retaliation Prohibited. Retaliation against a Tenant because of the Tenant's exercise of right under the Ordinance is prohibited. Retaliation claims may only be brought in court and may not be addressed administratively. A court may consider the protections afforded by Section 12-1.12 in evaluating a claim of retaliation.
- (d) Evictions. Nothing in this section shall be construed as to prevent a Landlord from lawfully evicting a Tenant pursuant to state or federal law, or Section 12-1.13 (Just Cause for Eviction) of this Ordinance.
- (e) Rent Increases. Nothing in this section shall be construed as to prevent a Landlord from lawfully increasing a Tenant's Rent pursuant to state law or the City of Hayward's Residential Rent Stabilization and Tenant Protection Ordinance.
- (f) Repairs and maintenance. Nothing in this section shall be construed as requiring different timeliness or standards for repairs or maintenance, as required by contract or State, County, or municipal housing, health, and safety laws, or according to appropriate industry protocols.
- (g) Notice to Tenant. Notice must be provided by Landlords to all Tenants of Rental Units in accordance with Section 12-1.15 of this ordinance. If Rental Units subject to Section 12-1.12 of this ordinance are located in a building with an interior common area that all the building's Tenants have access to, the Landlord must post a notice in at least one such common area in the building via a form prescribed by the Rent Review Officer.
- (h) General Remedies. Violations of Section 12-1.12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants) may be enforced by civil remedies as set forth in this section or as otherwise specifically set out in Section 12-1.18.
- (1) Tenant's Notice Requirement. Before a Tenant may file a civil suit alleging a violation of Section 12-1.12(b)(1), (2), (3), (6), or (9) of this ordinance, the Tenant must first notify the Landlord or his or her designated agent regarding the problem. If the allegation is a violation of Section 12-1.12(b)(1), (2), (3), (6), or (9),

the Tenant must allow 15 days for the Landlord to correct the problem, unless the Landlord notifies the Tenant that the repairs will take more than 15 days and provides a reasonable time period for completion. If the repair takes more than 15 days, the Tenant may file the civil suit if the Landlord does not take reasonable steps to commence addressing the problem or the Landlord does not follow through to complete the repairs with reasonable diligence.

- (2) In addition to the remedies provided in this section, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City in abatement and prosecution of the violation.
  - (3) This section is not to be construed to limit an aggrieved person's right to bring legal action for a violation of any other laws concerning housing discrimination, or other standards or rights, nor is exhaustion of remedies under this section a prerequisite to the assertion of any other such right.
- (i) Civil Remedies.
- (1) Enforcement by a Tenant. An aggrieved Tenant may bring a civil action for injunctive relief or damages, or both, for any violation of Section 12-1.12(b) or Section 12-1.12(c).
  - (2) Enforcement by City Attorney. The City Attorney may enforce Section 12-1.12(b) or Section 12-1.12(c) through civil action for injunctive relieve or damages, or both, when a party against whom enforcement is sought has a pattern and practice of violating Section 12-1.12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants). The City Attorney may also request that an administrative citation or civil penalty be issued by the City. The City Attorney has the sole discretion to determine the cases appropriate for enforcement by the City Attorney's Office.
- (j) Damages.
- (1) An award of actual damages may include an award for mental and/or emotional distress and/or suffering, or for minimum damages in the sum of one thousand dollars (\$1,000.00), whichever is greater, and whichever other relief the court deems appropriate. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court outside of the presence, and without the knowledge of, the jury, if any, if a defendant acted in knowing violation of, or in reckless disregard of, the provision of this section.
  - (2) A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000.00) for each violation of this section committed against a person who is a Veteran or disabled within the meaning of California Government Code Section 12926, et seq., or aged sixty-five (65) or over.
- (k) Injunctive Relief. Any person who commits an act, proposes to commit an act, or engages in any pattern and practice which violates Section 12-1.12(b) or Section 12-1.12(c) may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved Tenant, by the

City Attorney (for pattern and practice), or by an aggrieved Tenant who will fairly and adequately represent the interest of the protected class.

(l) Attorney's Fees and Costs

(1) An Action by the City Attorney. In any administrative, civil, or special proceeding brought pursuant to Section 12-1.12, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided, however, that no award may be made to the prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Court costs may be awarded to a prevailing party pursuant to state law.

(2) Action by Tenant. In any civil action brought pursuant to Section 12-1.12 (Prohibition Against Retaliatory Eviction and Harassment Against Tenants), the prevailing Tenant is entitled to recover the Tenant's reasonable attorney's fees. A defendant Landlord may recover reasonable attorney's fees if the complaint brought by the Tenant is determined by a Court to be wholly without merit or frivolous. Court costs may be awarded to the prevailing party pursuant to state law.

(3) Costs of Investigation. In the event the City Attorney brings an administrative, civil, or special proceeding pursuant to Section 12-1.12, the City Attorney may recover its costs of investigation.

(m) The Rent Review Officer shall develop the notice form to implement Section 12-1.12(g). Any changes to the initial notice form shall be effective thirty (30) days after they are made available to the public at the office of the City's Housing Division, unless the City Manager, or his or her designee, makes a determination that an earlier date is necessary. All notice forms required by Section 12-1.12 are vital communication documents and shall be translated and distributed.

(n) ~~Waiver Prohibited. Non-waiverability.~~ Any provision, whether oral or written, in or pertaining to a Rental Agreement whereby any provision of Section 12-1.12 is waived or modified, is against public policy and void.

## SEC. 12-1.13 - JUST CAUSE FOR EVICTION.

(a) Applicability. Section 12-1.13 of this ordinance shall apply to all Rental Units, including where a notice to vacate/quit any such Rental Unit has been served as of the effective date of this Residential Rent Stabilization and Tenant Protection Ordinance but where any such Rental Unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this ordinance. The application of Section 12-1.13 includes residential Rental Units that are not included within the definition of Covered Rental Units. However, Section 12-1.13 shall not apply to the following types of Rental Units:

~~(1) Accommodations in any hospital, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by either an educational institution or a private organization which offers spaces in rooms for rent in conjunction with the providing of services such as meals, cleaning services, and social programs.~~

~~(2) Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses; provided that such accommodations are not occupied by the same Tenant for thirty (30) or more continuous days.~~

(13) Rental Units in a nonprofit cooperative that are owned, occupied, and controlled by a majority of the residents.

(24) Rental Units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

(35) Rental Units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than 24 months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

(46) Rental Units in a residential Property where the owner of record occupies a unit in the same Property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the Tenants of such Rental Units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's Property tax exemption on any other real Property in the State of California.

~~(7) Affordable housing acquisition and rehabilitation development projects that receive a subsidy or funding from a federal, state or local agency for the purpose of substantially rehabilitating a Property and converting the Rental Units to affordable rental housing subject to regulatory controls that impose Rent limitations, including but limited to low income housing tax credits under Section 42 of the Internal Revenue Code of 1986. The exemption only applies in connection~~

~~with, or related to a conversion, which includes such time as a an award of the subsidy or funding is made by the federal, state or local agency and to units that are not occupied by Tenants meeting the eligibility requirements of the program under which such subsidy or funding is made.~~

- (b) Just Cause for Evictions. No Landlord shall endeavor to recover possession, issue a notice terminating tenancy or temporarily terminating tenancy, nor shall its renewal be refused, unless the Landlord is able to prove the existence of one of the following grounds:
- (1) The Tenant has failed to pay Rent to which the Landlord is legally entitled pursuant to the lease or Rental Agreement and under the provisions of state or local law, unless the Tenant has withheld Rent pursuant to applicable law.
  - (2) The Tenant has continued, after written notice to cease, to substantially violate any of the material terms of the Rental Agreement, except the obligation to surrender possession on proper notice as required by law, and provided that such terms are reasonable and legal and have been accepted in writing by the Tenant or made part of the Rental Agreement.
  - (3) The Tenant has willfully caused or allowed substantial damage to the premises beyond normal wear and tear and has refused, after written notice, to pay the reasonable costs of repairing such damage and cease damaging said premises.
  - (4) The Tenant has refused to agree to a new Rental Agreement upon expiration of a prior Rental Agreement, but only where the new Rental Agreement contains provisions that are substantially identical to the prior Rental Agreement, and is not inconsistent with local, state, and federal laws.
  - (5) The Tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other Tenants or occupants of the premises.
  - (6) The Tenant has, after written notice to cease, refused the Landlord access to the unit as required by state or local law.
  - (7) The Landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to undertake substantial repairs which are necessary to bring the Property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building or where necessary under an outstanding notice of code violations affecting the health and safety of Tenants of the building, and where such repairs cannot be completed while the Tenant resides on the premises. Where the Landlord recovers possession under this subsection, the Tenant must be given the right of first refusal to re-occupy the unit upon completion of the required work. Where the Landlord recovers possession under this subsection, the tenant shall be entitled to relocation assistance pursuant to the provisions of Article 2, Chapter 12 of this Code.
  - (8) The Landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to recover possession of the Rental Units, in order to remove the Rental Unit from the market by demolition. Where the Landlord recovers possession under this subsection, the tenant shall be entitled to

relocation assistance pursuant to the provisions of Article 2, Chapter 12 of this Code.

- (9) The Landlord seeks in good faith to recover possession for his or her own use or occupancy as his or her principal residence, or for the use and occupancy as a principal residence ~~cedial~~ by the Landlord's spouse or domestic partner or by the Landlord's or the Landlord's spouse's child, parents, brother, sister, grandparents, or grandchildren. For the purposes of this subsection, the term Landlord shall be defined as the owner of record holding at least a fifty-one percent (51%) interest in the Property and shall not include a lessor, sublessor, or agent of the owner of record. The Landlord may not recover possession under this subsection if a comparable unit is already vacant and available in the Property. Where the Landlord recovers possession under this subsection, the tenant shall be entitled to relocation assistance pursuant to the provisions of Article 2, Chapter 12 of this Code.
- (10) A Landlord or lessor seeks in good faith to recover possession of the Rental Unit for his or her occupancy as a principal residence and has the right to recover possession of the unit for his or her occupancy as a principal residence under an existing Rental Agreement with the current Tenants. Where the Landlord recovers possession under this subsection, the tenant shall be entitled to relocation assistance pursuant to the provisions of Article 2, Chapter 12 of this Code.
- (11) The Tenant is convicted of using the Rental Unit for any illegal purpose.
- (12) The Tenant has used or allowed the use of the Rental Unit, or any other area owned or controlled by the Landlord, for the manufacture, sale, distribution, possession, or use of a controlled substance as defined in state law.
- (13) The Tenant has continued, after written notice to cease, to violate legal and reasonable written rules and regulations generally applicable to all tenancies within the premises provided that such terms have been accepted in writing by the Tenant.
- (14) The lawful termination of the Tenant's employment by the Landlord, where such employment was an express condition of, or consideration for, the tenancy under a written Rental Agreement, the notice of termination is given as provided in Section 1946 of the California Civil Code.
- (15) The Tenant has threatened, either verbally or in writing, to commit a crime which would result in death or great bodily harm to a Tenant, guest, manager, owner, or other person on the premises, for which a report has been filed with the Hayward Police Department.
- (c) Notice of Termination. The Landlord shall serve on the Tenant a written notice setting forth the reasons for the termination, including temporary termination, with specific facts to permit a determination of the date, place and circumstances concerning the reason. For a notice of temporary termination for reasons specified in 12-1.13(b)(7), the notice shall be given in the time required by state law for serving a notice of eviction. This notice shall be given in the manner prescribed by California

Code of Civil Procedure Section 1162 and may be combined with a written notice of termination of tenancy or as a separate written notice.

A Landlord's failure to specify in the notice either one or more grounds for eviction authorized by state or federal law or good cause as listed above in subsections 1 through 15 in the written notice, notice of termination or the notice to quit, and in the complaint for possession shall be a defense of any action for possession of a Rental Unit covered by the terms of this ordinance.

~~(de)~~ Notice of Ordinance. ~~A landlord shall provide n~~Notice of this section ~~e Just Cause for Eviction section, of the Residential Rent Stabilization and Tenant Protection Ordinance~~as well as the provisions of the Tenant Relocation Assistance Ordinance contained in Article 2, Chapter 12 of this Code to tenants ~~shall be given~~ in accordance with Sections 12-1.13, ~~and~~ 12-1.15(f), ~~and~~ 12-2.13. This notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162.

## SEC. 12-1.15 - INFORMATION TO BE SUPPLIED TO TENANT.

- (a) Applicability: Section 12-1.15, shall apply to all Rental Units, including Covered Rental Units, unless otherwise specified.
- (b) The City Manager may adopt or amend regulations for the administration and implementation of the Residential Rent Stabilization and Tenant Protection Ordinance. The Rent Review Officer, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of the Residential Rent Stabilization and Tenant Protection Ordinance. All forms and notices called for in this section shall be adopted by the Rent Review Officer unless otherwise indicated.
- (c) Notice of the Residential Rent Stabilization and Tenant Protection Ordinance to Tenant—Covered Rental Units Only.
  - (1) Within thirty (30) days after the effective date of this ordinance, each Landlord shall post a written notice and maintain such posting, on a form approved by the Rent Review Officer, of the applicability of Section 12-1.05 of the Residential Rent Stabilization and Tenant Protection Ordinance in a conspicuous location within each building containing one (1) or more Covered Rental Units. The Landlord shall have complied with this requirement by posting a Notice of the Residential Rent Ordinance in the same location as a notice to Tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a).
  - (2) Within thirty (30) days after the effective date of this ordinance, each Landlord shall notify all current Tenant(s) of the applicability of Section 12-1.05 of the Residential Rent Stabilization and Tenant Protection Ordinance for a Covered Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this section by providing (1) written notice that the Covered Rental Unit is subject to this ordinance and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or



handbook for Tenants of Covered Rental Units ("Informational Notice"), if such notice is available from the City of Hayward.

- (3) Each Landlord shall notify the Tenant of the applicability of Section 12-1.05 of the Residential Rent Stabilization and Tenant Protection Ordinance prior to entering an oral or written Rental Agreement for a new tenancy for a Covered Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this section by providing (1) written notice that the Covered Rental Unit is subject to this ordinance and, (2) a copy of the current City informational notice or handbook for Tenants of Covered Rental Units ("Informational Notice"), if such notice is available from the City of Hayward, to the Tenant upon entering an oral or written Rental Agreement for a new tenancy for the Covered Rental Unit.

- (d) Notice of a Rent Increase to Tenants—Covered Rental Units Only. Whenever the Landlord serves a notice of Rent Increase, the Landlord shall at the same time and in the same manner serve the Tenant with a notice that sets forth all of the following information:

- (1) That a petition to review the rent increase pursuant to Section 12-1.07 may be obtained from the Rent Review Officer and must be filed with the Rent Review Officer within 30 days of receiving notice of the rent increase;
- (2) The address, telephone number, and website of the Rent Review Officer and the fact that the Tenant is encouraged to contact the Officer for an explanation of the provisions of this ordinance;
- The amount of the current Rent and the Rent Increase both in dollars and as a percentage of existing Rent and a statement of the following:
- (i) That the Landlord considers the Rent Increase consistent with the five percent (5%) Rent Increase Threshold set forth in Section 12-1.05(a) of this ordinance; or
- (ii) The Landlord considers the Rent Increase coupled with a Banked Increase and/or any approved Capital Improvement costs not to exceed ten percent

~~(10%) to be consistent with the permissible threshold under this ordinance;  
or~~

~~(iii) Identify the reason for the increase above five percent (5%) or ten percent (10%), inclusive of Banking and/or any approved Capital Improvement costs; and documentation supporting the level of increase desired. Such documentation shall include at a minimum: the rental history of the unit if the Landlord considers Section 12-1.05(e) or Section 12-1.05(f) as providing authorization for the increase; a summary of the unavoidable increases in maintenance and Operating Expenses; or other relevant information that supports the level of Rent Increase desired.~~

~~(3) The address and telephone number of the Rent Review Officer and the fact that the Tenant is encouraged to contact the Officer for an explanation of the provisions of this ordinance; The amount of the current Rent and the Rent Increase both in dollars and as a percentage of existing Rent and a statement of the following:~~

~~(i) That the Landlord considers the Rent Increase consistent with the five percent (5%) Rent Increase Threshold set forth in Section 12-1.05(a) of this ordinance; or~~

~~(ii) The Landlord considers the Rent Increase coupled with a Banked Increase and/or any approved Capital Improvement costs not to exceed ten percent (10%) to be consistent with the permissible threshold under this ordinance; or~~

~~(iii) Identify the reason for the increase above five percent (5%) or ten percent (10%), inclusive of Banking and/or any approved Capital Improvement costs; and documentation supporting the level of increase desired. Such documentation shall include at a minimum: the rental history of the unit if the Landlord considers Section 12-1.05(e) or Section 12-1.05(f) as providing authorization for the increase; a summary of the unavoidable increases in maintenance and Operating Expenses; or other relevant information that supports the level of Rent Increase desired.~~

- (4) The name, address, and telephone number of the person whom the Tenant must attempt to contact within ten (10) days after filing a petition to satisfy the provisions of Section 12-1.07(d) of this ordinance and the best time(s) to attempt that contact; and
- (5) ~~A copy of the petition form prepared by the Rent Review Office which initiates the process established by this ordinance.~~
- (e) Notice of Increase in Governmental Utility Costs—Covered Rental Units Only. Within two (2) months receipt of a utility rate cost increase and/or any increase in utility services costs above one percent (1%) of the Tenant's existing Rent, upon request by the Tenant, the Landlord shall provide the Tenant(s) documentation supporting the level of increase in accordance with Section 12-1.05(d). Failure of the Landlord to comply with Section 12-1.05(d) shall be a defense in any action brought to recover possession of a Covered Rental Unit or to collect the disputed Governmental-Utility Service pass through costs.
- (f) Notice of Just Cause Protections and the Prohibition of Retaliatory Evictions and Harassment Against Tenants—All Rental Units. Within thirty (30) days after the effective date of this ordinance, each Landlord shall notify all current Tenants of the applicability of Section 12-1.12 and Section 12-1.13 of the Residential Rent Stabilization and Tenant Protection Ordinance for all Rental Units, including Covered Rental Units. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this section by providing (1) written notice that the Rental Unit is subject to this ordinance and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or handbook regarding the City's Prohibition of Retaliatory Evictions and Harassment Against Tenants, if such notice is available from the City of Hayward.
- (g) Notice of Tenant Relocation Assistance Ordinance – All Rental Units. Within thirty (30) days after the effective date of the Tenant Relocation Assistance Ordinance

(Hayward Municipal Code Article 2, Chapter 12), each Landlord shall notify all current Tenants of the applicability of the Tenant Relocation Assistance Ordinance for all Rental Units. The landlord shall have complied with the affirmative obligation to notify a Tenant under this section by providing (1) written notice that the Rental Unit is subject to the provisions of the Tenant Relocation Assistance Ordinance and, (2) a current copy of the Tenant Relocation Assistance Ordinance or summary thereof provided by the City.

Each Landlord shall notify the Tenant of the applicability of Section 12-1.12 and Section 12-1.13 of this ordinance, and the Tenant Relocation Assistance Ordinance (Hayward Municipal Code Article 2, Chapter 12), prior to re-renting a Rental Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this section by providing (1) written notice that the Rental Unit is subject to this ordinance and the Tenant Relocation Assistance Ordinance, and, (2) a current copy of the Residential Rent Stabilization and Tenant Protection Ordinance or City informational notice or handbook regarding the City's Prohibition of Retaliatory Evictions and Harassment Against Tenants, if such notice is available from the City of Hayward, and a current copy of the Tenant Relocation Assistance Ordinance or summary thereof provided by the City.

**(hg)** Acknowledgment of Receipt of Notice—All Rental Units. The Landlord and Tenant shall execute a single document stating that the information, documents, or notices required by Section 12-1.15 have been received by the Tenant. The original of the document acknowledging receipt of information, documents, or notices required by this section shall be retained by the Landlord and a copy thereof provided to the Tenant. In the event a Tenant fails or refuses to execute the document required herein within ten (10) days after the Landlord's request that the Tenant do so, the Landlord shall prepare a declaration under penalty of perjury stating that the information, documents, or notices required by this section have been delivered to the Tenant, the date the Landlord requested the Tenant to sign the joint document acknowledging receipt, and the date the declaration was executed.

**(ih)** Failure to Provide Notice of Rent Increase—Covered Rental Units Only. A Landlord's failure to provide a Tenant the information, documents, or notices required by this

section shall not be entitled to collect any Rent Increase otherwise authorized by this ordinance from that Tenant nor to any Rent Increase that might otherwise be awarded by an Arbitrator and such failure by the Landlord shall be a defense in any action brought by the Landlord to recover possession of a Covered Rental Unit or to collect any Rent Increase from the Tenant. A Landlord may cure the failure to serve any notice or the obligation to provide information to a Tenant which is required under this ordinance by giving such notice or information before initiating an action for possession of the unit or collecting any Rent Increase otherwise authorized hereunder.

ORDINANCE No. 20-

AN ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 2 TO CHAPTER 12 OF THE HAYWARD MUNICIPAL CODE RELATING TO TENANT RELOCATION ASSISTANCE.

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

Section 1. Article 2 is hereby added to Chapter 12 of the Hayward Municipal Code to read as follows:

SEC. 12-2.01 – TITLE

This Article shall be known and may be referred to and cited as the Tenant Relocation Assistance Ordinance.

SEC. 12-2.02 – DEFINITIONS

“Disabled” has the same meaning as in Section 12955.3 of the Government Code.

“Health or safety conditions” means conditions in a rental unit, not caused by a tenant, the occupants of the rental unit or the invitees/guests of the tenant, such as flooding, fire damage or smoke damage, that reasonably would affect the health or safety of the tenant if the tenant were occupy the rental unit while the conditions exist.

"Relocation payment" means the payment required to be paid by a landlord for any of the reasons set forth in Sec. 12-2.03 or 12-2.04 of this Code, separate from any security or other refundable deposits as defined in California Civil Code Section 1950.5.

"Rent differential payment" means the difference between the lawful rent that the tenant was paying at the time of displacement and the fair market rent, as established by the payment standards for the Section 8 Housing Choice Voucher Program in the City of Hayward based on rental market information published each year by the U.S. Department of Housing and Urban Development, for a comparable rental unit based on the number of bedrooms.

"Rent Review Officer" means the person or persons and/or entity designated by the City Manager to administer and enforce the provisions of this ordinance.

"Senior citizen" means any person aged 62 and older.

"Temporary relocation payment" means the payment required to be paid to a tenant by any landlord (i) who takes action to terminate a tenancy pursuant to Section 12-2.04 of this Code.

#### SEC. 12-2.03 – PERMANENT RELOCATION ASSISTANCE

(a) For a tenancy for which just cause is required to terminate the tenancy under section 12-1.13 of this Code, if a landlord issues a termination notice based on a no-fault just cause described in paragraph (8), (9), or (10) of section 12-1.13(b), or based on one or more grounds for no-fault eviction authorized by state or federal law, the landlord shall, regardless of the tenant's income, at the owner's option, do one of the following:

- (1) Assist the tenant to relocate by providing a direct payment to the tenant as described in 12-2.03(c).
- (2) Waive in writing the payment of rent for the final month of the tenancy, prior to the rent becoming due.

- (b) If a landlord issues a notice to terminate a tenancy for no-fault just cause described in paragraph (8), (9), or (10) of section 12-1.13(b), or based on one or more grounds for no-fault eviction authorized by state or federal law, the landlord shall notify the tenant of the tenant's right to relocation assistance or rent waiver pursuant to this section. If the landlord elects to waive the rent for the final month of the tenancy as provided in section 12-2.03(a)(2), the notice shall state the amount of rent waived and that no rent is due for the final month of the tenancy.
- (c)(1) The amount of relocation assistance or rent waiver shall be equal to one month of the tenant's rent that was in effect when the landlord issued the notice to terminate the tenancy. Any relocation assistance shall be provided within 15 calendar days of service of the notice.
- (2) If a tenant fails to vacate after the expiration of the notice to terminate the tenancy, the actual amount of any relocation assistance or rent waiver provided pursuant to this subdivision shall be recoverable as damages in an action to recover possession.
- (3) The relocation assistance or rent waiver required by this subdivision shall be credited against any other relocation assistance required by any other law.
- (d) A landlord's failure to strictly comply with this subdivision shall render the notice of termination void.

#### SEC. 12-2.04 – TEMPORARY RELOCATION ASSISTANCE

- (a) Temporary vacation in order to undertake substantial repairs and the tenant agrees to vacate. If (i) the landlord has served the tenant with a notice of a temporary termination of tenancy as provided in 12-1.13(b)(7) and 12-1.13(c), (ii) informs the tenant in writing of the expected duration of the repairs including anticipated dates for commencement and completion of the work, and (iii) the tenant, within 30 days after receipt of the notice of temporary termination of tenancy, agrees in writing to vacate the rental unit during the period required to complete the work:
- (1) The landlord shall immediately make temporary relocation payments to the tenant or the tenant may elect not to receive temporary relocation payments. If the



tenant receives temporary relocation payments, the tenant remains obligated to pay the lawful rent in effect when the landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code. If the tenant has elected not to receive temporary relocation payments, the tenant shall not be obligated to pay rent until the tenant re-occupies the rental unit.

- (2) If the work does not get completed within 60 days, the landlord shall continue to make temporary relocation payments to the tenant (if the tenant had been receiving such payments) or shall immediately make temporary relocation payments to the tenant if the tenant had previously not elected to receive such payments. Upon receipt of such payments, the tenant shall pay the lawful rent in effect when the landlord served notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code.
- (3) If the work does not get completed within 120 days, the landlord shall make rent differential payments to the tenant until the tenant re-occupies the rental unit or finds alternative, permanent housing. A tenant shall have no obligation to pay rent when receiving rent differential payments. If the tenant re-occupies the rental unit, the tenant shall pay the lawful rent that was in effect when the landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code. If the tenant finds alternative, permanent housing, the landlord shall make a permanent relocation payment pursuant to Section 12-2.03, in addition to other temporary or rent differential payments as set forth in this subsection (a).
- (4) This subsection (a) applies when the landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the buildings or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

(b) Temporary vacation in order to undertake substantial repairs and the tenant does not agree to vacate. If (i) the landlord has served the tenant with a notice of a temporary termination of tenancy as provided in 12-1.13(b)(7) and 12-1.13(c), (ii) informs the tenant in writing of the expected duration of the repairs including anticipated dates for commencement and completion of the work, and (iii) the tenant, does not agree in writing within 30 days after receipt of the notice of temporary termination of tenancy, to vacate the rental unit during the period required to complete the work, the landlord may take action to terminate temporarily the tenancy. Once the tenant has vacated the rental unit:

(1) The landlord shall immediately make temporary relocation payments to the tenant or the tenant may elect not to receive temporary relocation payments. If the tenant receives temporary relocation payments, the tenant remains obligated to pay the lawful rent in effect when the landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code. If the tenant has elected not to receive temporary relocation payments, the tenant shall not be obligated to pay rent until the tenant re-occupies the rental unit.

(2) If the work does not get completed within 60 days, the landlord shall continue to make temporary relocation payments to the tenant (if the tenant had been receiving such payments) or shall immediately make temporary relocation payments to the tenant if the tenant had previously not elected to receive such payments. Upon receipt of such payments, the tenant shall pay the lawful rent in effect when the landlord served notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code.

(3) If the work does not get completed within 120 days, the landlord shall make rent differential payments to the tenant until the tenant re-occupies the rental unit or finds alternative, permanent housing. A tenant shall have no obligation to pay rent when receiving rent differential payments. If the tenant re-occupies the rental unit, the tenant shall pay the lawful rent that was in effect when the landlord served the notice of temporary termination of tenancy, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code. If the tenant finds alternative,

permanent housing, the landlord shall make a permanent relocation payment pursuant to Section 12-2.03, in addition to other temporary or rent differential payments as set forth in this subsection (b).

(4) This subsection (b) applies when the landlord, after having obtained all necessary permits from the City of Hayward, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of tenants of the buildings or where necessary under an outstanding notice of code violations affecting the health and safety of tenants of the building, and where such repairs cannot be completed while the tenant resides on the premises.

(c) Governmental Agency's Order to Vacate or Tenant Vacates due to health or safety conditions. If a tenant has vacated a rental unit in compliance with a governmental agency's order to vacate affecting the health or safety of the tenant or due to other health or safety conditions, regardless of whether the landlord has served a notice to temporarily terminate a tenancy:

(1) For the first 60 days from the date the tenant vacates the rental unit, the landlord shall make temporary relocation payments to the tenant until the tenant re-occupies the rental unit and the tenant, upon receipt of the temporary relocation payment, shall be obligated to pay the lawful rent that was in effect at the time the tenant vacated the rental unit, plus any adjustments as permitted under Chapter 12, Article 1 of the Municipal Code.

(2) If the work to the rental unit takes longer than 60 days to complete, the landlord shall make rent differential payments to the tenant until either the work is completed and the tenant re-occupies the rental unit or the tenant finds alternative, permanent housing. A tenant shall have no obligation to pay rent to the landlord when receiving rent differential payments. If the tenant re-occupies the rental unit, the tenant shall pay the lawful rent in effect when the tenant vacated the rental unit, plus any rent adjustments as permitted under Chapter 12, Article 1 of the Municipal Code. If the tenant finds alternative, permanent housing, the landlord shall make a

permanent relocation payment, in addition to other relocation payments or rent differential payments as set forth in this subsection (c).

- (3) If there is a dispute whether there are health or safety conditions and/or whether such conditions were caused by the tenant, the occupants of the rental unit or the guests/invitees of the tenant, the Rent Review Officer, after conferring with City officials or other individuals who have expertise in such matters, shall decide the dispute.
- (d) Natural Disasters. Notwithstanding subsections (a), (b) or (c) of this Section, a landlord shall not be liable for a temporary relocation payment or a rent differential payment if the governmental agency that ordered the rental unit, or the structure in which the rental unit is located, to be vacated determines the rental unit or the structure must be vacated as a result of:
- (1) A fire, flood, earthquake or other natural disaster, or other event beyond the control of the landlord and the landlord did not cause or contribute to the condition giving rise to the governmental agency's order to vacate; or
  - (2) Any tenant, or the guest or invitee of any tenant, who has caused or substantially contributed to the condition giving rise to the order to vacate.
- (e) Offer of a Comparable Unit. Notwithstanding subsections (a), (b) or (c) of this section, a landlord, in lieu of making temporary relocation payments or rent differential payments may offer the tenant a comparable rental unit in Hayward while the work on the displaced tenant's rental unit is being completed. For purposes of this subsection, a comparable rental unit shall mean a rental unit that is similar in size or larger, has the same number of bedrooms or additional bedroom(s), is located in the same geographic area of the City, has similar amenities in the rental unit, such as cable television or a washer/dryer, has similar amenities on the rental unit property, such as on-site parking, covered parking, laundry facilities or exercise facilities, allows pets if the displaced tenant has a pet, and, as to a tenant who is disabled, is disability accessible and ADA compliant. The tenant, in the tenant's sole discretion may waive any of these factors in

deciding whether the rental unit is comparable. If the tenant accepts the offer and occupies the comparable rental unit, the tenant shall pay no more than the lawful rent the tenant was paying at the time the tenant was served with the notice to temporarily terminate the tenancy or at the time the tenant vacated the rental unit if a governmental agency ordered the rental unit vacated or due to health or safety conditions, and no notice of temporary termination of tenancy was served. If the tenant accepts the offer, the landlord shall (i) pay the tenant's reasonable and documented moving expenses to the comparable rental unit and from the comparable rental unit to the tenant's rental unit and (ii) continue to make temporary relocation payments or rent differential payments until the tenant has occupied the comparable rental unit. If the landlord and tenant have not agreed that a particular rental unit is comparable, have appealed to the Rent Review Officer pursuant to subdivision (g) of this Section, which has determined the rental unit is comparable, but the tenant chooses not to occupy the comparable rental unit, the landlord shall have no further obligation to make temporary relocation payments or rent differential payments and the tenant shall have no further obligation to pay Rent until the tenant has re-occupied the rental unit from which the tenant was displaced.

- (f) Good Cause to Vacate a Comparable Unit. If a tenant has occupied a comparable rental unit as provided in subsection (e) of this section for at least 120 days, a tenant for good cause may vacate the comparable rental unit and thereafter receive from the landlord rent differential payments until the tenant has re-occupied the rental unit from which the tenant was displaced or, if the tenant has found alternative, permanent housing, has received from the landlord a permanent relocation payment. The Rent Review Officer will determine good cause.
- (g) Appeals. The following decisions may be appealed pursuant to the procedures set forth in this subsection: Whether the landlord did not cause or contribute to the condition giving rise to the order to vacate or as to whether a tenant, or the guest or invitee of any tenant caused or substantially contributed to the condition giving rise to the order to vacate pursuant to subsection (d); the Rent Review Officer's decision under paragraph 3 of subsection (c) of this section or under subsections (e) or (f) of this Section.

- (1) A party may appeal a decision by submitting a written request to the Rent Review Officer within 10 business days of receiving the decision being appealed.
- (2) The Rent Review Officer shall designate a hearing officer to conduct the appeal hearing. The hearing officer shall not be a Hayward City employee. The employment, performance evaluation, compensation, and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the outcome of the hearing.
- (3) The appeal hearing shall be set for a date that is not less than fifteen (15) and not more than thirty (30) days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The person requesting the hearing shall be notified of the time and place set for the hearing at least fourteen (14) days prior to the date of the hearing.
- (4) The Hearing Officer shall ensure a record of the hearing is made and shall consider all relevant evidence presented by the parties.
- (5) The parties shall have the opportunity to testify and present witnesses on their behalf.
- (6) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision. The written decision shall be prepared and mailed to the parties within twenty (20) days of the conclusion of the hearing. The decision shall uphold or reverse the decision on appeal and shall state the reasons for that decision. The decision of the hearing officer shall be final.

#### SEC. 12-2.05 - NOTICE OF ENTITLEMENT TO PAYMENT

- (a) Any notice to terminate a tenancy temporarily which is served by a landlord to a tenant for any of the reasons set forth in subsections (a) or (b) of Section 12-2.04 shall be accompanied by the appropriate completed notice of entitlement to a temporary relocation payment form, a rent differential payment form and a permanent relocation payment form, available on the rent program website. As to any tenant who vacates a rental unit for any of the reasons set forth in subsection (c) of Section 12-2.04, the landlord must provide to the tenant within two business days of the tenant's vacating

the rental unit the appropriate completed notice of entitlement to a temporary relocation payment, a rent differential payment form and a permanent relocation payment form, available on the rent program website. The contents of such notice shall include but are not limited to a written statement of the rights and obligations of tenants and landlords under this Article.

- (b) A notice of entitlement to a temporary relocation payment and/or rent differential payment form shall include a summary of the repairs to be undertaken and the estimated duration of relocation. The landlord shall notify the tenant when repairs are completed and provide the tenant with the first right of refusal to re-occupy the unit pursuant to Section 12-1.13(b)(7) of this Code. If the estimated duration of relocation changes, the landlord shall provide the tenant with at least seven days' advance notice of such a change.
- (c) All landlords shall be required to file with the Rent Review Officer a copy of the notice of entitlement described in this Section 12-2.05 within thirty (30) days of serving the tenant such notice. A proof of service with time and date of service of such notice shall be included with the copy of such notice filed with the Rent Review Officer.
- (d) Nothing in this section shall relieve the landlord of the landlord's obligation to serve any notice that would otherwise be required pursuant to federal, state or local law.

#### SEC. 12-2.06 – AMOUNT OF RELOCATION PAYMENT.

- (a) The amount of the temporary relocation payment and the amount of the rent differential payments, payable pursuant to the provisions of this section shall be determined periodically by a resolution or ordinance of the City Council.
- (b) The temporary relocation payment may be based upon reasonable per diem rates, which may include safe and sanitary hotel, motel, or short term rental accommodations; meal allowance if the temporary accommodations lack cooking facilities; laundry allowance if the rental property included laundry facilities and the temporary accommodations lack laundry facilities; and pet accommodations if the

rental property allowed pets and the temporary accommodation does not accept pets, and costs associated with moving.

- (c) The relocation payment will be distributed on a pro-rata basis to each eligible tenant, but may include a maximum cap per rental unit.

SEC. 12-2.07 – DISTRIBUTION OF RELOCATION PAYMENT TO ELIGIBLE TENANTS. A landlord shall provide the relocation payment in the amount required by this Article to each eligible tenant.

- (a) After taking into account any adjustments in the amount of the relocation payment pursuant to Section 12-2.09, when the tenant has been served with a notice to vacate the rental unit under Section 12-1.13(b)(8), (9) or (10) of this Code (Owner move-in and withdrawal of the rental unit from the rental market), the landlord shall pay one-half ( $\frac{1}{2}$ ) of the applicable permanent relocation payment within three business days after the tenant has informed the landlord in writing that the tenant will vacate the rental unit on the date provided in the notice terminating the tenancy and the other half within three business days after the tenant has (i) vacated the rental unit by no more than two calendar days after the date provided in the notice and (ii) removed all of the tenant's personal property from the rental unit and/or from other property of the landlord, such as a storage unit.
- (b) After taking into account any adjustments in the amount of the relocation payment pursuant to Section 12-2.09, when the tenant has informed the landlord in writing the tenant has found permanent housing as provided in subsections (a), (b) or (c) of Section 12-2.04 (Temporarily vacate in order to undertake substantial repairs, governmental agency order to vacate, vacate due to health or safety conditions), the landlord shall pay the full amount of the applicable permanent relocation payment within three business days thereof or within three business days after the tenant has removed all of the tenant's personal property from the rental unit and/or other property of the landlord, such as a storage unit, whichever is later.



- (c) After taking into account any adjustment in the amount of the relocation payment pursuant to Section 12-2.09, as to any tenant who is entitled to receive a temporary relocation payment and/or a rent differential payment as provided in subsections (a), (b) or (c) of Section 12-2.04 (Temporarily vacate in order to undertake substantial repairs, governmental agency order to vacate, vacate due to health or safety conditions), the landlord shall make such payment in the amount and as provided in the Master Fee Schedule as may be amended from time to time by City Council Resolution or Ordinance on a monthly basis until the tenant re-occupies the unit.
- (d) A landlord shall within three business days of providing a tenant with a temporary relocation payment, a rent differential payment or a permanent relocation payment, file with the Rent Review Officer proof of service with the time and date when the landlord made such payment.

SEC. 12-2.08 – PROHIBITION AGAINST AGREEMENTS AND WAIVER OF RIGHTS UNDER THIS ARTICLE.

No landlord shall do any of the following with respect to a tenant:

- (a) Enter into an agreement or attempt to enforce an agreement with a tenant which prohibits or limits the tenant from participating in the City's public process, including speaking at a meeting of the City Council or any City Commission or Board, submitting written comments to the City, or otherwise communicating with City elected officials, appointed officials and employees on any subject. Any such contractual term which violates this section is against public policy and is void.
- (b) Unless otherwise specially authorized, no landlord shall attempt to secure from a tenant any waiver of any provision of this Article. Any agreement, whether written or oral, whereby any provision of this Article is waived, is against public policy and is void.

## SEC. 12-2.09 – COORDINATION WITH OTHER RELOCATION REQUIREMENTS

If a tenant(s) receives, as part of the termination of tenancy, relocation assistance from a governmental agency, then the amount of that relocation assistance shall operate as a credit against any relocation payment to be paid to the tenant(s) under Section 12-2.06 of this Article.

## SEC. 12-2.10 - REMEDIES

- (a) Any person or organization who believes that the provisions of this chapter have been violated shall have the right to file an action for injunctive relief and/or damages. Whoever is found to have violated this chapter shall be subject to injunctive relief and shall be liable for damages, costs and reasonable attorney's fees. Treble damages shall be awarded for willful failure to comply with the payment obligation established by this chapter.
- (b) Nothing in this chapter shall be deemed to interfere with the right of a property owner to file an action against a tenant or non-tenant third party for the damage done to said owner's property.
- (c) If a landlord fails or refuses to provide relocation payments required by this chapter, and the Rent Review Officer through adopted regulations chooses to provide such relocation payments to a tenant in the landlord's place, the City shall have the right to recover from the landlord as restitution in any legal action such monetary outlays, plus administrative fees, investigative costs, costs of enforcement, and reasonable attorneys' fees incurred by the City.
- (d) Any person violating this chapter shall be required to reimburse the City its full investigative costs, costs of enforcement and reasonable attorneys' fees.
- (e) The recovery of the costs and fees of the items set forth in subsections (c) and (d) of this section may also be recovered as provided in Section 12-2.11.
- (f) These remedies are not exclusive; the remedies included in Chapter 1, Article 3, Chapter 1, Article 7, and Chapter 12, Article 1 of the Municipal Code shall apply to this Article.

## SEC. 12-2.11 – RECOVERY OF COSTS

- (a) If (i) the Rent Review Officer has chosen to provide relocation payments to a tenant in place of the landlord as set forth in subsection (c) of Section 12-2.10 and (ii) such landlord fails or refuses to pay the City for providing relocation payments to a tenant and/or the City's/ investigative costs, costs of enforcement, administrative fees and reasonable attorneys' fees, the Rent Review Officer shall mail the landlord a final request for payment for the amounts owed. The final request shall include a warning notice that if these unpaid items are not paid within thirty (30) days, they will be placed on the landlord's real property tax rolls. The warning notice shall include information concerning the additional administrative charges that will become due if a lien is recorded against the landlord's property, and that the landlord's property will be assessed on the next property tax statement if these unpaid items charged to a landlord according to the most recent property assessment rolls of the County Assessor are unpaid.
- (b) If the payment is not made by the landlord within thirty (30) days, the Rent Review Officer shall send a certified notice which shall contain the name or names of the landlord, the address of the property and the amount unpaid.
- (c) The notice shall set a time and place for an administrative hearing before a hearing officer and shall be mailed to each person to whom the described property is assessed on the most recent property assessment rolls of the County Assessor. The notice shall be mailed not less than fifteen (15) days prior to the date of the hearing.
- (d) The hearing officer shall conduct a hearing to determine whether an assessment or lien should be imposed upon the landlord's property.
- (e) After the hearing, if the hearing officer approves the unpaid amount against the landlord's property and the landlord fails to pay said amount within a time specified by the hearing officer, and upon confirmation by the City Council, an assessment or lien on the real property may be recorded with the Recorder of Alameda County.

- (f) The unpaid amount which remains unpaid by the landlord shall, after confirmation by the City Council, constitute a special assessment or lien against the property and shall be collected at such time as established by the County Assessor for inclusion in the next property tax assessment.
- (g) The total sum of all unpaid amounts and administrative charges described in this Section 12-2.11, shall be provided to the County Assessor for inclusion in the next property tax assessment as a special assessment against the property. The assessment shall be collected at the same time and in the same manner as municipal taxes are collected. The assessment shall be subordinate to all existing special assessments previously imposed on the property. It shall have priority over other liens except for those State, County, and municipal taxes with which it shall have parity. The assessment shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment.

#### SEC. 12-2.12 – EXCEPTIONS

- (a) The provisions of Section 12-2.03 shall not apply to residential real properties or residential circumstances described in Civil Code section 1946.2(e).
- (b) The provisions of Section 12-2.04 shall not apply to residential real properties or residential circumstances described in Section 12-1.04(v)(1)-(3).

#### SEC. 12-2.13 NOTICE OF ORDINANCE

- (a) Within thirty (30) days after the effective date of this ordinance, each landlord shall notify all current tenants of the applicability of this ordinance. The landlord shall have complied with the affirmative obligation to notify a tenant under this section by providing (1) written notice that the rental unit is subject to this ordinance and, (2) a current copy of this Ordinance or summary thereof provided by the City. A landlord shall provide notice of this Article to tenants in accordance with Sections

12-1.13(d), and 12-1.15(f) of this Code. Notice shall be given in the manner prescribed by California Code of Civil Procedure Section 1162.

- (b) Each landlord shall notify the tenant of the applicability of this Ordinance prior to re-renting a rental unit. The landlord shall have complied with the affirmative obligation to notify a tenant under this section by providing (1) written notice that the rental unit is subject to this Ordinance and, (2) a current copy of this Ordinance or summary thereof provided by the City.

#### SEC. 12-2.14 ADMINISTRATIVE REGULATIONS

The Rent Review Officer may adopt or amend regulations for the administration and implementation of this Article. The Rent Review Officer, with the approval of the City Attorney, may adopt any forms and notices specified in this Article to facilitate the administration and implementation thereof.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. Pursuant to Section 620 of the Charter of the City of Hayward, this Ordinance shall become effective thirty (30) days from the date of its adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of, \_\_\_ 2020, by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_ day of \_\_\_\_\_ , 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBER

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

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION AUTHORIZING THE AMENDMENT TO RESOLUTION 20-060, THE RESOLUTION FOR THE CITY OF HAYWARD FISCAL YEAR 2021 MASTER FEE SCHEDULE ASSOCIATED WITH THE ADMINISTRATION OF CHAPTER 12, ARTICLE 2 OF THE HAYWARD MUNICIPAL CODE REGARDING THE TENANT RELOCATION ASSISTANCE ORDINANCE.

WHEREAS, Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;
3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing services areas; or
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by city Charter; and

WHEREAS, The City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions; and

WHEREAS, In November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) is compliant.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Master Fee Schedule relating to fees paid to tenants by landlords as temporary relocation benefit related to the implementation of the Tenant Relocation Assistance Ordinance, as reflected in Exhibit A.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2020

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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



**Exhibit A****TEMPORARY RELOCATION PAYMENT**

<b>PER DIEM CATEGORY</b>	<b>AMOUNT</b>	<b>PAYMENT TERM</b>
<b>HOTEL OR MOTEL</b>	\$161	Per day per household
<b>MEAL EXPENSES</b>	\$32	Per day per person
<b>LAUNDRY</b>	\$1	Per day per household
<b>PET ACCOMMODATIONS</b>	\$31 - Cat \$56 - Dog	Per day per animal

**PERMANENT RELOCATION PAYMENT**

<b>PER DIEM CATEGORY</b>	<b>AMOUNT</b>	<b>PAYMENT TERM</b>
<b>ONE MONTH'S RENT</b>	Varies	Per household

**Summary of Potential Revisions and Staff Recommendations**

Reason for Revision	Potential Revision	Staff Recommendation
Clarify language and conform to interpretation	Exempt motels/hotels and hospitals and long-term care facilities from the definition of a “rental unit.”	Accept revisions
	Clarify that the banking provision has an initial year of 2018 to reduce confusion and align with the fair return provision.	
	Clarify that capital improvement projects that were started and completed before the RRSO went into effect on July 25, 2019, are not eligible for the capital improvement pass-through.	
	Clarify that the requirement for Landlords to provide a copy of the RRSO only applies to new tenancies.	
	Remove the requirement that landlords must provide a paper copy of the Tenant Petition with every increase notice.	
	Change the rent increase noticing requirements to include that landlords must notice tenants, in writing, of their right to file a petition, that they have 30 days from the increase to file it, and where they can find a copy of the petition.	
	Clarify that tenants can petition the Rent Review Office for any violation of the Residential Rent Increase Threshold Section.	
	Change the CPI for comparison year in the Standards of Review Section from 285.550 to 289.896.	
Align RRSO with State Law	Update outdated language regarding mediation to reflect current practices and identify rent reduction as a possible resolution..	Reference AB 1482 in RRSO Section 12-1.05 Replicate the State’s relocation assistance policy
	Include reference to the State’s Tenant Protection Act in the Residential Rent Increase Threshold section. Provide the same relocation assistance established in the State’s Tenant Protection Act.	
Address specific policy issues	Remove the exemption for Affordable Housing Conversion Projects from Just Cause for Eviction.	Remove Affordable Housing Conversion exemption from RRSO Section 12-1.13(a)

Reason for Revision	Potential Revision	Staff Recommendation
	Add Temporary Relocation Assistance for tenants temporarily displaced from their units for significant repairs related to code compliance, major remodel, or substantially damaging events, such as a fire or flood.	Establish per diem temporary relocation assistance for significant repairs
Address other outstanding topics	Maintain current mediation services for Covered Rental Units.	Maintain current rent stabilization services for Covered Rental Units and expanded services for tenants and landlords impacted by COVID-19

## **Analysis of the Tenant Protection Act**

The Tenant Protection Act (TPA) includes provisions for a rent increase limit, just cause eviction, and tenant relocation assistance. Staff from the Rent Review Office have met with the City Attorney's Office to discuss the ways in which the TPA may apply to Hayward, given that the City's RRSO was enacted before the TPA. The TPA and RRSO each address just cause for eviction and rent increase limits; however, only the TPA addresses relocation assistance for no fault eviction. Attachment III provides a table with a detailed comparison of how the TPA and RRSO address each of these sections.

### **Just Cause and Relocation Assistance**

The TPA just cause provisions and tenant relocation do not apply to property "subject to a local ordinance requiring just cause for termination adopted on or before September 1, 2019" and sunsets on January 1, 2030.<sup>1</sup> Therefore, the City Attorney's Office and Housing Division Staff's interpretation is that Hayward's RRSO just cause provisions takes precedence over the TPA just cause provisions and Hayward residents are not eligible for relocation assistance under the state law.

### **Rent Increase Limitations**

The TPA's rent increase limitations do not apply to properties that have local rent control ordinances where the rent increase is below the threshold established in the TPA. However, the TPA may provide rent increase relief to some tenants who do not currently have protection under the RRSO due to Costa Hawkins. Rent Review Office staff estimate that approximately 6,300 rental units currently not covered under the RRSO's rent increase threshold are now covered under the TPA's rent increase limit.<sup>2</sup> With some exemptions (see **Error! Reference source not found.**), the TPA will provide a rent increase limit for properties built between 1979 and 2005. Properties not covered under the RRSO's residential rent increase threshold may be subject to state law.

### **Applicability of the Tenant Protection Act**

Staff have analyzed the legislation in consultation with the City Attorney's Office and have determined that revisions to the RRSO are necessary to both ensure Hayward residents are provided with the same protections afforded other Californians under the new State law and provide clarity for the application of the TPA in Hayward. With some exceptions (see Attachment III) all residential units are covered under the RRSO's just cause protections, which are similar to those established by the TPA; however, the TPA links no-fault evictions to relocation assistance, which is not provided for in the City's RRSO. Therefore, tenants in units covered by the RRSO are currently not entitled to the same relocation benefits provided to tenants living in units covered by the TPA. Additionally, as the RRSO provides for banked rent increases and pass-throughs for capital improvements or fair return up to 10%, it is possible that rent increases allowable under the RRSO could exceed the rent cap established by the

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<sup>1</sup> Assembly Bill No. 1482, Tenant Protection Act of 2019, Legislative Counsel's Digest: [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1482](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1482)

<sup>2</sup> Estimates are based on American Community Survey 2011-2015 5-Year Estimates Tenure by Year Structure Built data.

TPA (i.e., 5% plus the percentage change in the cost of living or 10%, whichever is lower). The TPA states in section 1947.12(d)(3) that housing subject to rent controls restricting increases to an amount less than the TPA's cap is exempt from the TPA cap. Increases in Hayward that reach the RRSO's 10% threshold could possibly exceed the TPA's cap, thus making those increases subject to the TPA. Currently, the RRSO has no language addressing this ambiguity and does not give local arbitrators the resources to resolve disputes that may involve the TPA's cap.

**Table 1. Comparison of the Tenant Protection Act and City of Hayward's RRSO**

Provision	Tenant Protection Act	City of Hayward's RRSO
<b>Rent Increase Limit</b>		
<b>Limit</b>	<p>Until January 1, 2030, an owner is prohibited from increasing, within a 12-month period, the total rent of a unit more than 5% plus the percentage change in the cost of living, or 10% whichever is lower.</p> <ul style="list-style-type: none"> <li>• Owners cannot increase the rent more than two times during a 12-month period</li> <li>• Owner is still able to establish the initial rent for a new tenancy, and the limitation on increases applies after that initial rate has been established.</li> <li>• Tenant may not enter a sublease that results in the total rent exceeding the allowable rental rate authorized.</li> </ul>	<p>A rent increase, including any increase of Housing Services, for any unit covered by the increase threshold that exceeds the five percent (5%) Rent Increase Threshold within a twelve (12) month period, may be challenged by a tenant and subject to the mediation/arbitration section of the ordinance.</p> <ul style="list-style-type: none"> <li>• Prohibits more than one increase in a 12- month period.</li> <li>• Owner is still able to establish the initial rent for a new tenancy after lawful eviction, voluntary vacancy. Rent threshold limitations apply thereafter.</li> </ul>
<b>Applicability</b>	<p>Limit only applies to residential rental units built more than 15 years ago.</p> <p>Limit applies to all residential rental units not covered by local rent control legislation.</p>	<p>Only applies to pre-1979 residential rental units.</p>
<b>Exemptions</b>	<p>The following units are exempt:</p> <ul style="list-style-type: none"> <li>• Housing restricted by deed, regulatory restriction in agreement with government agency (affordable housing)</li> <li>• Dormitories</li> <li>• Housing restricted by a public agency's police power consistent with Costa Hawkins that restricts annual increases in the rental rate to an amount less than that provided by the TPA</li> <li>• Housing that has been issued a COO in the last 15 years</li> </ul>	<p>The following units are exempt:</p> <ul style="list-style-type: none"> <li>• Mobile home units</li> <li>• Hospital, extended care facility</li> <li>• Dormitory/educational housing</li> <li>• Motels, hotels, tourists' houses, rooming house</li> <li>• Rental units in a nonprofit cooperative occupied and controlled by majority of residents</li> <li>• Rental Units controlled or regulated by another governmental agency during the specified contractual term</li> <li>• Rental Units with COO after July 1, 1979.</li> </ul>

Provision	Tenant Protection Act	City of Hayward's RRSO
	<ul style="list-style-type: none"> <li>• Single family house provided owner is not a real estate investment group/LLC/Corp.</li> <li>• Owner occupied duplex</li> </ul>	<ul style="list-style-type: none"> <li>• Rental units in lawful compliance with Hayward's ADU reg.</li> <li>• Single family homes (alienable separate)</li> <li>• Condos sold separately by a Subdivider</li> </ul>
<b>Just Cause for Eviction</b>		
<b>Reasons for Just Cause</b>	<p>The owner of a residential unit cannot terminate tenancy if the tenant has lawfully occupied the residence for 12 months, unless just cause. Just Cause reasons include:</p> <ul style="list-style-type: none"> <li>• Default in payment of rent</li> <li>• Breach of material term of lease</li> <li>• Maintaining, committing or permeating the presence of a nuisance</li> <li>• Committing waste</li> <li>• Tenant refused to execute a new lease with similar provisions that do not violate this legislation (rent limitations)</li> <li>• Criminal Activity on the residential property</li> <li>• Assigning or subletting in violation of lease</li> <li>• Tenant refusal to allow owner access to unit</li> <li>• Using unit for unlawful purpose</li> <li>• Tenant fails to deliver the premises after providing written notice of intent to vacate.</li> <li>• Owner, spouse, child, parent, grandparent intend to occupy the unit. For a lease after 1/1/2020, there must be a term in the lease to allow owner unilateral decision to do so.</li> <li>• Withdrawal of unit from the rental market</li> <li>• Intent to demolish or substantially remodel unit</li> </ul>	<p>Just Cause reasons include:</p> <ul style="list-style-type: none"> <li>• Tenant failed to pay rent</li> <li>• Tenant violated and continues after notice to cease, to violate a material term of the lease</li> <li>• Tenant caused or allowed substantial damage to the premises</li> <li>• Tenant refused to agree to a new rental agreement that is substantially identical to prior lease and not inconsistent with local/ca/us law</li> <li>• Tenant destroy peace and enjoyment of other tenants- after notice to cease</li> <li>• Tenant refused to allow landlord access -after notice to cease</li> <li>• LL seeks to undertake substantial repair in compliance with H&amp;S codes</li> <li>• LL seeks to remove unit from market and demolish</li> <li>• LL seeks to recover possession for his or his family member's occupancy</li> <li>• Tenant used rental unit for illegal purpose and convicted</li> <li>• Tenant rental unit for illegal drug manufacture, sale, distribution</li> <li>• LL terminated tenant's employment, where tenant employment was express condition of tenancy</li> <li>• Tenant threatened verbally or in writing to commit a crime that would result in death or GBI to LL/Tenants/Guests</li> </ul>

Provision	Tenant Protection Act	City of Hayward's RRSO
<b>Exemptions</b>	<p>The following units are exempt from Just Cause provisions:</p> <ul style="list-style-type: none"> <li>• Transient and tourist hotel occupancy</li> <li>• Nonprofit hospital, religious facility extended care, licenses residential care for elderly</li> <li>• Dormitories</li> <li>• Housing accommodations wherein tenant shares bathroom or kitchen with owner</li> <li>• Single-family owner-occupied residences</li> <li>• Duplex where owner occupies one unit as principal residence</li> <li>• Housing issued Cert. of Occupancy after 2005</li> <li>• Residential real property that is alienable and separate as long as the owner is not a real estate investment trust, LLC, or Corporation and for any lease entered into after July 1, 2020 the tenants have been provided notice in the agreement</li> </ul>	<p>The following units are exempt from Just Cause provisions:</p> <ul style="list-style-type: none"> <li>• Mobile home units</li> <li>• Hospital, extended care facility</li> <li>• Dormitory/educational housing</li> <li>• Motels, hotels, tourists' houses, rooming house</li> <li>• Rental units in a nonprofit cooperative occupied and controlled by majority of residents</li> <li>• Drug and alcohol treatment facilities</li> <li>• Nonprofit facility structured to help homeless</li> <li>• Rental units where the owner of record occupies a unit in the same property as a principal place of residence</li> <li>• Certain Affordable housing acquisition and rehab projects</li> </ul>
<b>Failure to Give Notice</b>	The owner's failure to comply with the notice provisions render the termination void.	The owner's failure to give notice shall be a defense for any action for possession of a rental unit covered by this ordinance.
<b>Relocation Assistance</b>		
	<p>When the owner issues a no-fault termination of the tenant, the owner is required to notify the tenant of their right to relocation assistance</p> <p>The owner is required to pay relocation assistance as a direct payment of one month's rent or as waiver of the final month's rent</p>	No relocation assistance required
<b>Recourse</b>		
	Tenants may pursue claims of unlawful rent increases or evictions through the court system.	Tenants may petition the Rent Review Office for any violation of the RRSO.



## **Tenant Relocation Assistance Ordinance Summary**

The proposed Tenant Relocation Assistance Ordinance creates Article 2 of Chapter 12 of the Hayward Municipal Code. Chapter 12, Article 1, contains the Residential Rent Stabilization and Tenant Protection Ordinance, enacted by City Council on July 25<sup>th</sup>, 2019. **Table 2** summarizes each section of the proposed Tenant Relocation Assistance Ordinance.

### **Permanent Relocation Assistance**

Requires that a landlord pay relocation assistance within 15 days of servicing notice to terminate tenancy to a tenant displaced as the result of a no-fault eviction. Landlords may do one of the following:

- Provide a direct payment in the amount of one month's rent
- Waive the payment of the final month's rent

If landlords do not provide the required relocation assistance for no-fault just cause evictions, the termination notice they issue will be void.

If a tenant does not leave the unit after the notice to terminate expires, the landlord can recover assistance payments as damages.

### **Temporary Relocation Assistance**

Requires that a landlord pay temporary relocation assistance within 3 days of servicing notice that tenant will be temporarily displaced as the result of:

- Substantial repairs being made to the unit, or
- A governmental agency (e.g., Code Enforcement) orders the tenant to vacate or the tenant vacates due to health/safety conditions

If a tenant does not agree to leave the unit, landlords may act to temporarily terminate the tenancy. In that case, tenants are still eligible for temporary relocation assistance.

Alternately, the landlord can offer a comparable housing unit. Landlords must still pay moving assistance.

*Payment of temporary relocation assistance.* Tenants may choose to receive relocation payments and continue paying rent, or to not receive relocation payments and not pay rent.

Temporary relocation assistance is provided on a per diem basis, meaning payments are to be made for every day a tenant household is displaced. Council may periodically change the per diem rates by resolution. Current proposed rates are:

- Hotel or motel - \$161, per day per household
- Meal expenses - \$32, per day per person
- Laundry - \$1, per day per household
- Pet - \$31 for cat, \$56 for dog, per day per animal

Payment of temporary relocation assistance when displacement exceeds 60 days. When tenants are temporarily vacated due to substantial repairs and repairs are not made within 60 days, tenants who opted to not receive payments shall begin receiving payments and will be required to pay rent again. When repairs are not made within 120 days, the landlord must make rent differential payments and tenants will not be required to pay rent. Rent differential payments are the difference between a tenant's rent at the time of displacement and the fair market rent. **Error! Reference source not found.** lists the current Department of Housing and Urban Development (HUD) fair market rents for Alameda County.

**Table 1. Fiscal Year 2020-2021 Alameda County Fair Market Rents (FMRs) by Unit Bedrooms**

Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
\$1,488	\$1,808	\$2,239	\$3,042	\$3,720

Landlords are not liable for temporary relocation payments:

- If a governmental agency determines a unit needs to be vacated because of a natural disaster, such as a fire, flood, or earthquake.
- If a governmental agency determines that the tenant or guest of the tenant caused or substantially contributed to the damage, the landlord is not required to pay assistance.

Appeals. Landlords can file an appeal with the Rent Review Officer for the following decisions:

- Whether or not the landlord caused or contributed to conditions leading to an order to vacate
- Whether or not a tenant or guest of the tenant caused or contributed to the conditions leading to an order to vacate
- The Rent Review Officer's determination of if there are health or safety conditions necessitating the tenant to vacate without an order to do so
- If a comparable unit qualifies as comparable under the ordinance
- If a tenant has good cause to vacate a comparable unit after 120 days

### ***Noticing***

Landlords must provide the tenants within 30 days of the effective date of the new ordinance a copy of the Tenant Relocation Assistance Ordinance or a summary prepared by the City.

Any time a landlord provides a tenant with a notice to terminate, the landlord is required to notify tenants that they may be eligible for relocation assistance.

The following table provides a section-by-section summary of the entire Tenant Relocation Assistance Ordinance, which includes both permanent and temporary relocation assistance.

**Table 2. Tenant Relocation Assistance Ordinance Summarized by Section**

No.	Title	Summary
12-2.01	Title	<ul style="list-style-type: none"> <li>The Ordinance is titled and can be referred to as the Tenant Relocation Assistance Ordinance</li> </ul>
12-2.02	Definitions	<ul style="list-style-type: none"> <li>Some key definitions introduced in this section include:                             <ul style="list-style-type: none"> <li>Health or safety conditions: Conditions, not caused by the tenant that would reasonably affect tenant health or safety</li> <li>Qualified tenant household: Households with a tenant displaced for eligible reasons who is a senior (62 and older), disabled, has at least one child under 18, resides in a lower income household, or has a terminal disease and is displaced through owner move-in</li> <li>Rent differential payment: The difference between a tenant’s rent at the time of displacement and the fair market rent as established by the Section 8 Housing Choice Voucher Program</li> </ul> </li> </ul>
12-2.03	Permanent Relocation Assistance	<ul style="list-style-type: none"> <li>Written to align with the permanent relocation assistance provided for in the Tenant Protection Act (TPA), requires landlords to pay relocation assistance for no-fault just cause evictions as outlined in the RRSO or in state or federal law</li> <li>Landlords may choose to provide payments in the form of:                             <ul style="list-style-type: none"> <li>Direct payment of one month’s rent</li> <li>Waiver of the final month’s rent</li> </ul> </li> <li>Landlords issuing a no-fault just cause eviction must notify the tenant of their right to relocation assistance and must pay assistance within 15 days of notice</li> <li>Assistance payments may be recovered as damages if the tenant fails to vacate after expiration of the notice to terminate</li> <li>If a landlord fails to comply with this section, the notice of termination is void</li> </ul>
12-2.04	Temporary Relocation Assistance	<ul style="list-style-type: none"> <li>This section outlines three scenarios in which a landlord must pay temporary relocation assistance:</li> </ul>

No.	Title	Summary
		<ul style="list-style-type: none"> <li>○ (a) Temporary vacation to undertake substantial repairs and the tenant agrees to vacate</li> <li>○ (b) Temporary vacation to undertake substantial repairs and the tenant does not agree to vacate</li> <li>○ (c) A Governmental Agency Order to Vacate or a tenant vacates due to health or safety conditions</li> <li>● In both (a) and (b) the landlord must pay temporary relocation payments immediately. If tenants choose to accept relocation payments, they must continue paying rent; however, they may choose not to receive payments and in that case are not required to pay rent until they re-occupy the unit. <ul style="list-style-type: none"> <li>○ If tenants were not receiving payments, landlords are required to make the payments after 60 days of work and tenants must begin paying rent again.</li> <li>○ If work is not complete after 120 days, landlords must make rent differential payments to the tenant until the tenant re-occupies the unit or finds other permanent housing. Tenants are not obligated to pay rent when receiving rent differential payments.</li> <li>○ In the case of (b), the landlord may take action to terminate the tenancy temporarily.</li> </ul> </li> <li>● In (c), if work takes longer than 60 days the landlord must make rent differential payments to the tenant until the tenant re-occupies the unit or finds other permanent housing.</li> <li>● Landlords are not liable for payments if a tenant must be vacated due to a natural disaster or if the tenant or a guest caused or substantially contributed to condition</li> <li>● Landlords may offer a comparable unit in lieu of making temporary relocation payments. In this instance, landlords must pay reasonable and documented moving expenses and must make relocation payments until the tenant occupies the comparable unit. Tenants may vacate the comparable unit after 120 days and landlords are obligated to make rent differential payments.</li> <li>● 12-2.04(g) describes a detailed appeals process for the above subsections.</li> </ul>

No.	Title	Summary
12-2.05	Notice of Entitlement to Payment	<ul style="list-style-type: none"> <li>• Notice to terminate a tenancy temporarily must be accompanied by notice that tenants are entitled to temporary relocation assistance                             <ul style="list-style-type: none"> <li>○ Landlords must provide a temporary relocation payment form, a rent differential payment form, and a permanent relocation form</li> </ul> </li> <li>• Relocation payments must be made within two business days of a tenant’s vacating the unit</li> </ul>
12-2.06	Amount of Relocation Payment	<ul style="list-style-type: none"> <li>• Temporary relocation assistance payment and rent differential payment amounts will be determined periodically by Council Resolution                             <ul style="list-style-type: none"> <li>○ Current proposed amounts for temporary relocation payments are:                                     <ul style="list-style-type: none"> <li>▪ Hotel or motel - \$161, per day per household</li> <li>▪ Meal expenses - \$32, per day per person</li> <li>▪ Laundry - \$1, per day per household</li> <li>▪ Pet - \$31 for cat, \$56 for dog, per day per animal</li> </ul> </li> <li>○ Council may adopt greater relocation payment amounts for a qualified tenant household</li> </ul> </li> </ul>
12-2.07	Distribution of Relocation Payment to Eligible Tenants	<ul style="list-style-type: none"> <li>• For permanent relocation payments, the landlord must pay half of the payment within three business days after the tenant informs in writing that they will vacate and the other half after the tenant has vacated</li> <li>• For temporary relocation payments, the landlord must make cumulative per diem payments every four weeks that a tenant is displaced</li> </ul>
12-2.08	Prohibition Against Agreements and Waiver of Rights Under this Article	<ul style="list-style-type: none"> <li>• Landlords are not allowed to enter into an agreement with that limits or prevents the tenant from communicating with the City</li> <li>• Landlords are not allowed to secure a waiver from the tenant of any part of the ordinance</li> </ul>
12-2.09	Coordination with Other Relocation Requirements	<ul style="list-style-type: none"> <li>• If a tenant gets relocation assistance from another government agency, that amount will be credited against the amount owed by the landlord</li> </ul>
12-2.10	Remedies	<ul style="list-style-type: none"> <li>• This section outlines the options for landlords and tenants who believe provisions of the ordinance have been violated</li> </ul>
12-2.11	Recovery of Costs	<ul style="list-style-type: none"> <li>• If the Rent Review Officer provides relocation payments in place of a landlord, then the City may place the payments on the landlord’s property tax rolls after giving warning notice. Section 12-2.11 details this process, including provision of</li> </ul>

No.	Title	Summary
		a hearing to determine if an assessment or lien should be imposed on the landlord's property.
12-2.12	Exceptions	<ul style="list-style-type: none"> <li>• 12-2.03 does not apply to properties exempted under section 1946.2(e) of the State's Tenant Protection Act</li> <li>• 12-2.04 does not apply to rental units exempted under 12-1.04(v) 1-3 of the revised RRSO</li> </ul>
12-2.13	Notice of Ordinance	<ul style="list-style-type: none"> <li>• Landlords must notify all current tenants of this ordinance within 30 days of its effective date and must provide notice prior to re-renting a unit</li> </ul>
12-2.14	Administrative Regulations	<ul style="list-style-type: none"> <li>• The Rent Review Officer may add or change regulations for the administration and implementation of the Ordinance and may create any forms to facilitate its administration</li> </ul>

## **Efforts to Disseminate Information about the New Residential Rent Stabilization and Tenant Protection Ordinance**

Throughout the implementation process, Rent Review Office staff have focused on developing materials, resources, and tools to improve understanding and facilitate compliance for tenants, landlords, advocacy groups, and real estate professionals.

### ***Marketing and Outreach***

Since the Ordinance was enacted in July 2019, staff have relied on several different marketing and outreach strategies to get the word out to community members about the RRSO. The outreach approach integrated grassroots efforts with innovative online tools to be as comprehensive as possible in reaching tenants, landlords, and advocates across the City.

Outreach efforts included:

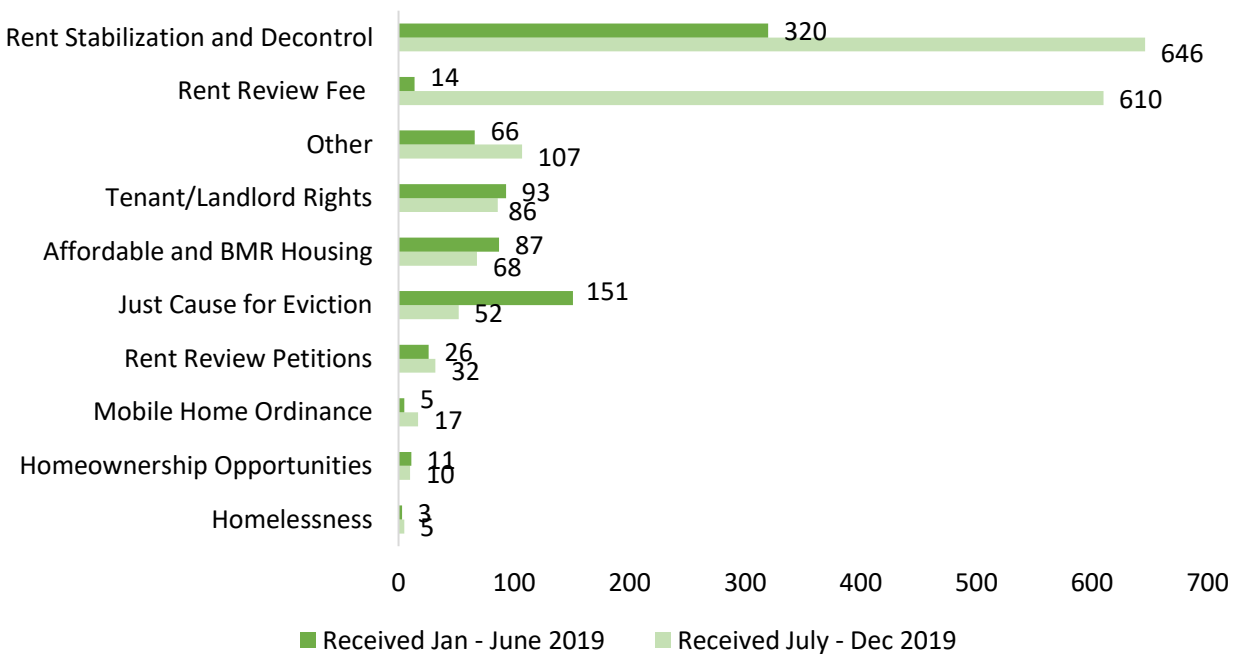
- *Initial landlord outreach mail:* Following Council's vote to pass the RRSO, staff sent a letter to the owners of 6,180 identified rental properties informing them about the new RRSO, noticing requirements, and contact information for the Rent Review Office if they had additional questions.
- *Outreach to Community-Based Organizations:* Staff distributed flyers and resources (described in detail in the following section) to over 40 stakeholder groups. They also offered to attend various meetings to provide in-person overviews of the RRSO and address stakeholders' questions and concerns.
- *Stakeholder email communication:* Staff used MailChimp for ongoing communication with a growing listserv of interested parties. Emails were sent with updates, new forms, and to promote workshops and other educational events.
- *Announcement in Stack newsletter:* The City of Hayward has an active distribution list of 71,825 individuals who receive the Stack newsletter. Through the Stack, staff have sent updates about the RRSO, including outreach about workshops and education opportunities as well as contact information for the Rent Review Office for individuals to reach out with specific questions or feedback.
- *Social media communication:* Along with email communication and the Stack, information with links to additional resources were shared on all of the City's social media outlets.
- *Press release and news media coverage:* The City of Hayward's Community and Media Relations Division prepared and distributed a press release to local news and media outlets which led to news media coverage in print and television to help increase education and awareness of the new RRSO when it was enacted.
- *Targeted marketing:* Staff contracted a marketing vendor to implement GeoFence technology at five locations throughout Hayward. With GeoFence, the vendor enables a geographic boundary that engages individuals with online advertisements for the RRSO and Housing Division's website when they pass through the boundary with location services enabled on their mobile devices. Through this process, we can drive Hayward residents who may not have convenient access to City Hall to our website where they can learn more about the RRSO and their rights as Landlords and Tenants. After two months of the campaign, the rate of individuals who see the advertisement and click on it has been twice the rate expected by the vendor.

**Education and Technical Assistance**

Staff provided education and technical assistance to tenants, landlords, real estate industry professionals, and tenant/landlord advocacy groups to help them understand their rights and responsibilities under the RRSO. Key to this effort were monthly workshops, delivered in collaboration with Project Sentinel to provide an overview of the RRSO as well as focus on special topics identified by staff through interactions with the Hayward community as needing additional education and support. Staff also partnered with ECHO Housing for Fair Housing workshops for tenants and landlords. Presentation slides were posted to the website and emailed to attendees.

Throughout 2019, staff tracked and categorized all individual inquiries made to the Housing Division. As expected, the number of inquiries received from July to December 2019 was more than double the number received in the first half of the year (prior to the enactment of the new RRSO). Eight out of ten inquiries from July through December were about rent stabilization or the rent review fee, as shown below in Figure 1.<sup>1</sup> Upon administering the updated rent review fee in November 2019, staff had the opportunity to interact with many of Hayward’s landlords. Through these interactions, staff educated landlords about the new RRSO, such as their noticing responsibilities to tenants and the City and provided resources in-person and electronically.

**Figure 1. Comparison of 2019 Housing Division Inquiries**



<sup>1</sup> Inquiry totals may reflect multiple interactions with one community member. Inquiries are only reported through December 2019 in order to demonstrate the increase in response to the new RRSO. Inquiries from January 2020 through March 2020 tapered, then increased substantially following the onset of COVID-19; however, the majority of those inquiries were about financial resources to cope with the pandemic.



**Resources and Materials**

Staff placed significant focus and effort on making sure tenants and landlords had the resources and tools necessary to understand their rights and responsibilities under the new RRSO. Staff started by creating a plain language summary of the RRSO along with topic-specific fact sheets. They also created documents to facilitate the petition process, including petition forms for landlords and tenants, flowcharts, infographics, and detailed worksheets to help landlords calculate potential pass-throughs. Tenants can use the City's petition form to petition a potentially unlawful rent increase, as well as other violations of the RRSO. Landlords can petition for passing through capital improvement costs or for a fair return. Staff also created documents to promote and facilitate compliance for landlords, including public notice and acknowledgement of receipt forms and an increase notice form. Table 1 lists all the materials and resources developed to help landlords and tenants understand their rights and responsibilities, along with the intended audience for each document and its available languages. All of the materials are available on the [City's Website](#).

**Table 1. RRSO Fact Sheets, Summaries, Petitions, and Compliance Documents created by Staff for RRSO Implementation**

	Audience		Translations		
	Landlords	Tenants	English	Spanish	Traditional Chinese
<b>Fact Sheets and Summaries</b>					
RRSO Summary	X	X	X	X	X
Landlord Compliance Guide	Under Review				
Rent Review Fact Sheet	X	X	X	X	X
Just Cause for Eviction Fact Sheet	X	X	X	X	X
Tenant Harassment and Retaliation Protection Fact Sheet	X	X	X	X	X
Prohibition of Discrimination Related to Sources of Income Fact Sheet	X	X	X	X	X
Mediation and Arbitration Fact Sheet	X	X	X	X	X
<b>Petition Process</b>					
Landlord Petition Flowchart	X		X	X	X
Tenant Petition Flowchart		X	X	X	X
Tenant Petition Process Infographic	X	X	X	X	X
Landlord Petition	X		X	X	X
Landlord Capital Improvement Schedule A	X		X	X	X
Landlord Fair Return Schedule	Under Review				
Tenant Petition		X	X	X	X

	Audience		Translations		
	Landlords	Tenants	English	Spanish	Traditional Chinese
<b>Compliance</b>					
Notice to Tenants Acknowledgement of Receipt	X		X	X	X
Public Notice to Tenants	X		X	X	X
Rent Increase Notice	X		X	X	X



# CITY OF HAYWARD

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

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**File #:** LB 20-038

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Finance Director

**SUBJECT**

Transient Occupancy Tax: Adopt Resolutions Establishing November 3, 2020 as the Date for a Proposed Ballot Measure Asking Hayward Voters to Approve an Increase in the City's Transient Occupancy Tax

**RECOMMENDATION**

That Council takes the following actions to place an increase in the City's Transient Occupancy Tax from 8.5 percent to up to 14 percent (Attachment II) before the voters of Hayward at the November 3, 2020 election:

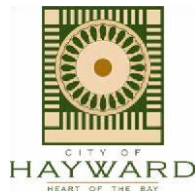
1. Adopts the attached resolutions approving the ballot question as it will appear on the ballot, the underlying ordinance to be enacted, and the request that the Alameda County Board of Supervisors authorize the City Clerk and Registrar of Voters to provide election services and canvass the returns; and
2. Directs the City Attorney to develop an impartial analysis of the proposed ballot measure.

**SUMMARY**

The purpose of this item is for the Council to take the necessary steps to place a revenue measure on the November 3, 2020 ballot to allow an increase to the Transient Occupancy Tax (TOT) of up to 14%, to be determined in the future by Council based on economic conditions. The steps include: 1) adopting a resolution calling for an election on the measure; 2) adopting a resolution establishing the ballot question for the proposed measure; 3) adopting a resolution establishing the schedule and policy for ballot arguments; and 4) directing the City Attorney to prepare an impartial analysis the ballot measure.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution for the TOT Ballot Measure
Attachment III	Resolution Establishing a Schedule and Policy for Arguments
Attachment IV	Exhibit A for TOT Ballot Measure, Ordinance Language
Attachment V	Exhibit A to Resolution Establishing Schedule, Signature Statement



**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** Director of Finance

**SUBJECT:** Transient Occupancy Tax: Adopt Resolutions Establishing November 3, 2020 as the Date for a Proposed Ballot Measure Asking Hayward Voters to Approve an Increase in the City's Transient Occupancy Tax

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### **BACKGROUND**

On January 15, 2020, staff updated the Council Budget and Finance Committee on the City's Long-Range Financial Model. Staff assumptions included a mild recession in FY 2021, resulting in a structural deficit in FY 2021, falling below the 20% target General Fund reserve in FY 2022, and depletion of the General Fund reserve by FY 2024. The Council Budget and Finance Committee requested an updated analysis of a potential ballot measure increasing the TOT and a request for direction be presented to the full Council.

At the June 30, 2020, meeting, the City Council considered a report from staff regarding a possible ballot measure to be submitted to Hayward voters at the November 3, 2020 general municipal election. The report considered regional TOT rates for cities with similar populations, results of polling carried out in 2018, and potential revenue impacts of increased TOT at various rates. The June 30, 2020 report can be found [here](#). After discussion, the Council, on a vote of 7-0, directed staff to prepare resolutions formally submitting said measure to Hayward voters. The resolutions are attached (Attachments II and III). The proposed measure is a general tax measure requiring a simple majority for approval.

**DISCUSSION**

The first of the two attached resolutions (Attachment II) sets forth the question that would be included on ballots Hayward voters would approve or reject by voting ‘yes’ or ‘no’ as follows:

<p>Shall amendments to the Hayward Transient Occupancy Tax be adopted?</p>	<p>YES</p>
<p>To support City of Hayward services, including: repairing streets and sidewalks; 911 emergency and firefighter response times; disaster preparedness; extended library hours and after-school programs; and other general City services with revenue that cannot be taken by the State; shall the City of Hayward increase the transient occupancy tax paid only by hotel and motel guests from 8.5% to up to 14%, providing an estimated \$3,000,000 annually, until repealed by voters, all funds benefiting Hayward?</p>	<p>NO</p>

The resolution also directs the City Clerk to ask the Alameda County Board of Supervisors to authorize the Registrar of Voters to provide election services and to canvass the returns.

The resolution also directs the City Attorney to prepare an impartial analysis of the measure, which would be printed in the voter information guide.

The second attached resolution (Attachment III) establishes the schedule and policies governing the filing of ballot arguments for the TOT measure. The primary argument filing period closes at noon on August 11, 2020. The rebuttal argument period closes on August 21, 2020. Each argument period shall be followed by a ten-day public review period.

The resolution also includes a Certification of Author(s) and Proponents (s) in Attachment V - Exhibit A. Per Elections Code §9600, all arguments must be accompanied by a completed Certification at the time of submission.

**ECONOMIC & FISCAL IMPACT**

Based on staff analysis, the increase in the TOT could result in up to \$1.6 million in additional revenues annually, based on actual TOT revenues for the last five fiscal years and a TOT rate set at the maximum amount of 14 percent. Exact revenues will be dependent on the TOT level and the total rents charged by hotel operators.

The cost of the November 3, 2020 election is estimated to be \$250,000, which would include this ballot measure, and four seats on the City Council.

## STRATEGIC ROADMAP

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

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

## PUBLIC CONTACT

This agenda item was published in compliance with the requirements of the Brown Act. In addition, the Director of Finance presented to the Chamber of Commerce Government Relations Committee on Friday, July 10. Feedback from that meeting will be presented to Council at the Council meeting.

## NEXT STEPS

The calendar below outlines key dates related to these measures.

Date	Action
July 14, 2020	Presentation of proposed TOT increase ballot measure language to Council.
August 7, 2020	Deadline to deliver City resolution calling ballot measure election and request election consolidation.
August 11, 2020	Deadline for submission of Direct Arguments for/against proposed ballot measure. <b>(12pm - Noon)</b>
August 21, 2020	Close of Public Examination Period for Primary Arguments. Deadline for submission of Rebuttal Arguments for/against proposed ballot measure. <b>(12pm - Noon)</b>
August 31, 2020	Close of Public Examination Period for Rebuttal Arguments.
September 24, 2020	First Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 7/1/20 - 9/22/20.
October 19, 2020	Last day to register to vote (for the November 3, 2020 election).
October 22, 2020	Second Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 9/23/20 - 10/20/20.
November 3, 2020	Election Day. Polls open at 7am and close at 8pm.
December 3, 2020	Last day for Alameda Registrar of Voters to certify results to City.
December 8, 2020	Council to certify election results.
January 31, 2021	Semi-Annual Filing Campaign Statement Deadline FPPC Forms - Period covers 10/21/20 - 12/31/20.

*Prepared and Recommended by:*

Dustin Claussen, Director of Finance  
Rick Rivera, Management Analyst I  
Miriam Lens, City Clerk

Approved by:

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

---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_

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

RESOLUTION CALLING A MUNICIPAL ELECTION IN THE CITY OF HAYWARD FOR THE PURPOSE OF SUBMITTING TO THE VOTERS A BALLOT MEASURE RELATING TO AN INCREASE IN THE CITY'S TRANSIENT OCCUPANCY TAX; SETTING FORTH THE STATEMENT OF THE MEASURE TO BE VOTED UPON; FIXING THE DATE AND MANNER OF HOLDING THE ELECTION; AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY TO PROVIDE FOR THE CONSOLIDATION OF THE MUNICIPAL ELECTION WITH THE PRESIDENTIAL ELECTION TO BE HELD ON NOVEMBER 3, 2020, AND TO PROVIDE ELECTION SERVICES

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

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

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

SECTION 1.

That the City of Hayward General Municipal Election is hereby called and ordered to be consolidated with the Presidential Election to be held on Tuesday, November 3, 2020, for the purpose of submitting to the voters a ballot measure.

SECTION 2.

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



<p>Shall amendments to the Hayward Transient Occupancy Tax be adopted?</p> <p>To support City of Hayward services, including: repairing streets and sidewalks; 911 emergency and firefighter response times; disaster preparedness; extended library hours and after-school programs; and other general City services with revenue that cannot be taken by the State; shall the City of Hayward increase the transient occupancy tax paid only by hotel and motel guests from 8.5% to no more than 14%, providing an estimated \$3,000,000 annually, until repealed by voters, all funds benefiting Hayward?</p>	YES
	NO

**SECTION 3.**

That the proposed complete text of the measure (Ordinance) submitted to the voters is attached as Exhibit A.

**SECTION 4.**

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

**SECTION 5.**

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

**SECTION 6.**

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

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

SECTION 7.

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

SECTION 8.

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

IN COUNCIL, HAYWARD, CALIFORNIA July 14, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_

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

RESOLUTION ESTABLISHING THE SCHEDULE AND POLICY PROVIDING FOR  
THE FILING OF BALLOT ARGUMENTS FOR THE TRANSIENT OCCUPANCY  
TAX BALLOT MEASURE AT THE NOVEMBER 3, 2020 ELECTION

WHEREAS, the City Council of Hayward will likely submit a ballot measure to the voters at the November 3, 2020 Municipal Election; and

WHEREAS, it is necessary to establish a schedule and policy for the filling of ballot measures.

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

SECTION 1. The Primary Argument filing period closes at noon, 12:00 p.m. on Tuesday, August 11, 2020. The Rebuttal Argument filing period closes at noon, 12:00 p.m. on Friday, August 21, 2020.

SECTION 2. The ten-day public review period for primary arguments closes at noon, 12:00 p.m. on August 21, 2020, and the ten-day public review period for rebuttal arguments closes at noon, 12:00 p.m. on August 31, 2020.

SECTION 3. In accordance with Elections Code 9282 and 9285, primary arguments for or against ballot measures shall not exceed 300 words in length. Rebuttal arguments for or against ballot measures shall not exceed 250 words in length. Word count will be determined using the standards set forth in Elections Code Section 9.

SECTION 4. According to Elections Code 9287, if more than one argument is submitted, the City Clerk shall select the argument and shall give preference, in the order named, to arguments of the following:

- a) The legislative body, or member or members of the legislative body authorized by that body.
- b) The individual voter or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure,
- c) Bona fide associations of citizens.
- d) Individual voters who are eligible to vote on the measure.

SECTION 5. Each ballot argument must be accompanied by the printed name(s) and signature(s) of the person or persons submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The Certification of the Author(s) and Proponent(s), in Exhibit A, must be submitted at the time the respective Primary Argument or Rebuttal Argument is filed. The names and titles of proponents will be printed exactly as they appear in Exhibit A. Arguments received prior to the deadline are confidential until the deadline.

SECTION 6. No more than five signatures shall appear with any argument. In case any argument is signed by more than five individuals, the signature of the first five shall be printed. Authors must list the signors names on the argument in the order they are to be printed.

SECTION 7. Consent forms are required for persons and/or organizations listed as supporters in the text of the argument.

SECTION 8. The City Clerk, upon receipt of arguments and after the filing deadline, will transmit copies of arguments to authors of opposing arguments who may then submit rebuttals within the established period.

SECTION 9. In accordance with Elections Code 9285, only the author whose primary argument has been selected by the City Clerk may file a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument.

SECTION 10. Rebuttal arguments shall be printed in the same manner as direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

IN COUNCIL, HAYWARD, CALIFORNIA July 14, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

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

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING SECTION  
8-4.20 OF THE HAYWARD MUNICIPAL CODE RELATING TO TRANSIENT  
OCCUPANCY TAX

THE PEOPLE OF THE CITY OF HAYWARD DO ORDAIN AS FOLLOWS:

Section 1. Section 8-4.20 of the Hayward Municipal Code is hereby amended to read as follows:

**SEC. 8-4.20 - TAX IMPOSED.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of ~~eight and one-half percent (8½%)~~ up to fourteen percent (14%) of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax and License Administrator may require that such tax shall be paid directly to the Tax and License Administrator.

Section 2. To the extent allowed under Article XIII C of the California Constitution, this Ordinance may be amended by the City Council without a vote of the people, except that voter approval shall be required for any amendment that increases the tax, within the meaning of Government Code section 53750(h), beyond the levels authorized by this chapter.

Section 3. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant

effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 4. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 5. This Ordinance shall become effective 10 days after the certification of its approval by the voters at the Election pursuant to Elections Code section 9217.

Section 6. Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

\* \* \* \* \*

It is hereby certified that this Ordinance was duly adopted by the voters at the November 3, 2020 Election and took effect 10 days following adoption of a resolution declaring the results of the election at a regular meeting of the Hayward City Council held on \_\_\_\_\_, 2020 by the following vote:

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



**CERTIFICATION OF THE AUTHOR(S) AND PROPONENT(S)  
SIGNATURE STATEMENT  
PRIMARY ARGUMENT**

Authors and proponents (signers) of arguments must be individual voters who are eligible to vote on the measure, or a bona fide association of citizens, or any combination of voters and associations at the time of signing the argument.

**Elections Code §9600:** All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:

The undersigned proponent(s) or author(s) of the Argument \_\_\_\_\_ In Favor of \_\_\_\_\_ Against the TRANSIENT OCCUPANCY TAX at the General Municipal Election for the City of Hayward to be held on November 3, 2020, hereby state that this argument is true and correct to the best of his/her/their knowledge and belief.

Print Name	Signature
Title (if any) to appear on Argument	Email Address
Residence Address	City & Zip Code

**CERTIFICATION OF THE AUTHOR(S) AND PROPONENT(S)  
SIGNATURE STATEMENT  
REBUTTAL ARGUMENT**

Authors and proponents (signers) of arguments must be individual voters who are eligible to vote on the measure, or a bona fide association of citizens, or any combination of voters and associations at the time of signing the argument.

**Elections Code §9600** All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:

The undersigned proponent(s) or author(s) of the Argument \_\_\_\_\_ In Favor of \_\_\_\_\_ Against the TRANSIENT OCCUPANCY TAX at the General Municipal Election for the City of Hayward to be held on November 3, 2020, hereby state that this argument is true and correct to the best of his/her/their knowledge and belief.

Print Name	Signature
Title (if any) to appear on Argument	Email Address
Residence Address	City & Zip Code



# CITY OF HAYWARD

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

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**File #:** LB 20-037

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**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Manager  
City Clerk  
City Attorney

## **SUBJECT**

Hayward City Charter: Adopt Resolutions Establishing November 3, 2020 as the Date for One Proposed Ballot Measure Asking Hayward Voters to Approve Amendments to the Hayward City Charter

## **RECOMMENDATION**

That Council takes the following actions to place a City Charter amendment before the voters of Hayward at the November 3, 2020 election: 1) Adopts a resolution (Attachment II) approving the ballot question as it will appear on the ballot, and requests that the Alameda County Board of Supervisors authorize the City Clerk and Registrar of Voters to provide election services and canvass the returns; and directs the City Attorney to develop an impartial analysis of the proposed ballot measure and 2) Adopts a resolution (Attachment III) establishing the schedule and policy for the filing of ballot arguments for the Charter amendment.

## **SUMMARY**

The purpose of the report is for the Council to take the necessary steps to place a City Charter amendment on the November 3, 2020 ballot to allow residents who are not qualified electors to serve on advisory commissions, and to eliminate gender-based titles and designations and replace them with neutral, gender-free titles and designations.

## **ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution for Charter Amendment
Attachment III	Resolution for Ballot Arguments



**DATE:** July 14, 2020

**TO:** Mayor and City Council

**FROM:** City Manager  
City Clerk  
City Attorney

**SUBJECT:** Hayward City Charter: Adopt Resolutions Establishing November 3, 2020 as the Date for One Proposed Ballot Measure Asking Hayward Voters to Approve Amendments to the Hayward City Charter

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## **SUMMARY**

The purpose of the report is for the Council to take the necessary steps to place a City Charter amendment on the November 3, 2020 ballot to allow residents who are not qualified electors to serve on advisory commissions, and to eliminate gender-based titles and designations and replace them with neutral, gender-free titles and designations.

## **BACKGROUND**

On June 23, 2020, the City Council considered a proposal from the City Manager, City Clerk, and City Attorney to submit to the voters on November 3, 2020, a possible City Charter amendment. The Council unanimously directed staff to move forward with a possible ballot measure to amend the City Charter to allow residents who are not qualified electors to serve on Council-appointed advisory bodies such as commissions, boards, and task forces. In addition, the Council directed staff to draft the Charter amendment to include elimination of gender-based titles and designations and to replace them with neutral, gender-free titles and designations.

Staff has surveyed surrounding jurisdictions and determined that qualified elector/registered voter status is not required to be eligible for appointment to advisory commissions, boards, committees, task forces, and similar bodies (TABLE A).

<b>TABLE A</b>		
<b>CITY</b>	<b>QUALIFIED ELECTOR/ REGISTERED VOTER?</b>	<b>RESIDENT?</b>
<b>City of Berkeley</b>	<b>NO</b>	<b>YES</b>
<b>City of Fremont</b>	<b>NO</b>	<b>YES</b>
<b>City of Hayward</b>	<b>YES</b>	<b>YES</b>
<b>City of Newark</b>	<b>NO</b>	<b>YES</b>
<b>City of Oakland</b>	<b>NO</b>	<b>YES</b>
<b>City of Union City</b>	<b>NO</b>	<b>YES</b>
<b>Link to sample Board/Commission application:</b> <a href="https://www.unioncity.org/DocumentCenter/View/137/Human-Relations-Commission-Application-PDF">https://www.unioncity.org/DocumentCenter/View/137/Human-Relations-Commission-Application-PDF</a>		

Staff has surveyed surrounding jurisdictions and determined that gender-based titles and designations in their charters and codes have been updated (see TABLE B). The Hayward charter includes gender-based references such as ‘Councilman,’ ‘Councilmen,’ ‘he’ ‘him,’ and ‘his.’ If the Charter amendment is approved, neutral, gender-free titles such as ‘Council members,’ ‘Council member,’ or the titles (Mayor, City Manager) would be used instead.

<b>TABLE B</b>	
<b>CITY</b>	<b>GENDER BASED</b>
<b>City of Berkeley</b>	<b>NO</b>
<b>City of Fremont</b>	<b>NO</b>
<b>City of Hayward</b>	<b>YES</b>
<b>City of Newark</b>	<b>NO</b>
<b>City of Oakland</b>	<b>NO</b>
<b>City of Union City</b>	<b>NO</b>

The first of the two resolutions (Attachment II) sets forth the question that would be included on the ballot Hayward voters would approve or reject by voting 'yes' or 'no' as the following:

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

The resolution, pursuant to direction by the City Clerk, also asks the Alameda County Board of Supervisors to authorize the Registrar of Voters to provide election services and to canvass the returns.

The resolution also directs the City Attorney to prepare impartial analysis, which would be printed in the voter information guide.

The second attached resolution (Attachment III) establishes the schedule and policies governing the filing of ballot arguments for the City Charter. The primary argument filing period closes at noon on August 11, 2020. The rebuttal argument period closes on August 21, 2020. Each argument period shall be followed by a ten-day public review period.

**ECONOMIC & FISCAL IMPACT**

The cost of the November 3, 2020 election is estimated to be \$250,000, which would include this ballot measure, and four seats on the City Council.

**STRATEGIC ROADMAP**

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

**PUBLIC CONTACT**

This agenda item was published in compliance with the requirements of the Brown Act.

**NEXT STEPS**

The calendar below outlines key dates related to these measures.

<b>DATE</b>	<b>ACTION</b>
July 14, 2020	Presentation of proposed Charter Amendment ballot measure language to Council.
August 7, 2020	Deadline to deliver City resolution calling ballot measure election and request election consolidation.
August 11, 2020	Deadline for submission of Direct Arguments for/against proposed ballot measure. (12pm – Noon)
August 21, 2020	Close of Public Examination Period for Primary Arguments. Deadline for submission of Rebuttal Arguments for/against proposed ballot measure. (12pm – Noon)
August 31, 2020	Close of Public Examination Period for Rebuttal Arguments.
September 24, 2020	First Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 7/1/20 - 9/22/20.
October 19, 2020	Last day to register to vote (for the November 3, 2020 election).
October 22, 2020	Second Pre-Election Campaign Statement Deadline FPPC Form 460 - Period covers 9/23/20 - 10/20/20.
November 3, 2020	Election Day. Polls open at 7am and close at 8pm.
December 3, 2020	Last day for Alameda Registrar of Voters to certify results to City.
December 8, 2020	Council to certify election results.
January 31, 2021	Semi-Annual Filing Campaign Statement Deadline FPPC Forms - Period covers 10/21/20 - 12/31/20.

*Prepared and Recommended by:*

Kelly McAdoo, City Manager  
 Miriam Lens, City Clerk  
 Michael Lawson, City Attorney

Approved by:



\_\_\_\_\_  
 Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_

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

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

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

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

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

SECTION 1.

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

SECTION 2.

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



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

SECTION 3.

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

SECTION 4.

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

SECTION 5.

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

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

SECTION 6.

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

SECTION 7.

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

IN COUNCIL, HAYWARD, CALIFORNIA July 14, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

**EXHIBIT A TO RESOLUTION  
PROPOSED CHARTER AMENDMENTS**

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

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

**TEXT OF CHARTER AMENDMENT**

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

**SECTION 900. IN GENERAL.**

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

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

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

**FULL TEXT OF CHARTER AMENDMENT**

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

## **REDLINED HAYWARD CITY CHARTER**

### **HAYWARD CITY CHARTER**

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

#### **SECTION 100. - NAME OF CITY.**

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

#### **SECTION 101. - RIGHTS AND LIABILITIES.**

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

#### **SECTION 102. - BOUNDARIES.**

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

#### **SECTION 103. - ORDINANCES.**

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

#### **SECTION 104. - CONTINUANCE OF PRESENT OFFICERS AND EMPLOYEES.**

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

#### **SECTION 105. - EFFECTIVE DATE OF CHARTER.**

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

#### **SECTION 200. - GENERAL POWERS.**

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

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

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

SECTION 201. - CONTRACT FOR MUNICIPAL SERVICES.

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

SECTION 300. - COUNCIL-MANAGER FORM.

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

SECTION 400. - GENERAL MUNICIPAL ELECTIONS.

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

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

SECTION 401. - SPECIAL MUNICIPAL ELECTIONS.

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

SECTION 402. - PROCEDURE FOR HOLDING ELECTIONS.

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

SECTION 403. - INITIATIVE, REFERENDUM AND RECALL.

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

SECTION 500. - ENUMERATION (ELECTIVE OFFICERS).

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

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 501. - VACANCY IN ELECTIVE OFFICE.

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

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

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

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

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

(AMENDED: STATS. 1964 CH. 41)

#### SECTION 600. - ELECTIVE OFFICERS.

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

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

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

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

#### SECTION 600(a). - COUNCIL COMMITTEES.

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

#### SECTION 601. - ELIGIBILITY.

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

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

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

#### SECTION 603. - COMPENSATION (MEMBERS OF COUNCIL).

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

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

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 604. - MAYOR (POWERS AND DUTIES).

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

SECTION 605. - MAYOR PRO TEMPORE.

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

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 606. - POWERS OF THE COUNCIL.

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

SECTION 607. - MEETINGS OF COUNCIL.

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

SECTION 609. - CITIZEN PARTICIPATION.

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

SECTION 610. - ADMINISTERING OATHS. SUBPOENAS.

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

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

SECTION 611. - RULES OF PROCEEDING.

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

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

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

SECTION 613. - AYES AND NOES.

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 614. - MAJORITY VOTE OF COUNCIL.

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

SECTION 615. - SUBJECT OF TITLE.

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

SECTION 616. - ENACTING CLAUSE OF ORDINANCES.

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

SECTION 617. - REQUIREMENTS OF ORDINANCES, EMERGENCY ORDINANCES.

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

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

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

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



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

(AMENDED: STATS. 1982 CH. 38)

SECTION 618. - RECONSIDERATION.

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

SECTION 619. - SIGNING AND ATTESTING.

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

SECTION 620. - ORDINANCES (EFFECTIVE DATE).

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

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 621. - RECORD OF CITY ORDINANCES.

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

SECTION 622. - CODIFICATION OF ORDINANCES.

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

## SECTION 623. - ORDINANCE VIOLATION. PENALTY.

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

(AMENDED: STATS. 1982 CH. 38)

## SECTION 700. - CITY MANAGER.

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

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

## SECTION 701. - POWERS AND DUTIES.

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

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

## SECTION 702. - PARTICIPATION IN COUNCIL ACTION.

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

## SECTION 703. - RULES AND REGULATIONS.

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

## SECTION 704. - MANAGER PRO TEMPORE.

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

## SECTION 705. - NON-INTERFERENCE WITH ADMINISTRATIVE SERVICE.

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

## SECTION 800. - ENUMERATION.

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

## SECTION 801. - APPOINTMENT AND REMOVAL.

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

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

## SECTION 802. - DUTIES OF OFFICERS AND EMPLOYEES.

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

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

## SECTION 803. - COMPENSATION OF OFFICERS AND EMPLOYEES.

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

## SECTION 804. - OATH OF OFFICE.

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

## SECTION 805. - OFFICIAL BONDS.

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

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

## SECTION 806. - ILLEGAL CONTRACTS, FINANCIAL INTEREST PROHIBITED.

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

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

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

(AMENDED: STATS. 1964 CH 41)

## SECTION 807. - NEPOTISM.

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

## SECTION 808. - CITY ATTORNEY. POWERS AND DUTIES.

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

The City Attorney shall have power and be required to:

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

(AMENDED: STATS. 1992 CH. 30)

#### SECTION 809. - ARBITRATION FOR FIRE DEPARTMENT EMPLOYEES.

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

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

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

(AMENDED: STATS. 1975 CHARTER CHAPTER 28)

#### SECTION 900. - IN GENERAL.

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

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

(AMENDED: STATS. 1959 CH. 82)

**SECTION 901. - APPROPRIATIONS.**

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

**SECTION 902. - APPOINTMENTS. TERMS.**

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

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

**SECTION 903. - EXISTING BOARDS AND COMMISSIONS.**

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

**SECTION 904. - MEETINGS. CHAIRMAN.**

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

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

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

**SECTION 905. - COMPENSATION. VACANCIES.**

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

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

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

SECTION 906. - PLANNING COMMISSION. POWERS AND DUTIES.

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

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

SECTION 907. - PERSONNEL BOARD. POWERS AND DUTIES.

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

The Personnel Board shall have power and be required to:

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

SECTION 908. - PUBLIC SERVICES COMMISSION.

**Note**— (REPEALED: STATS. 1964 CH. 41)

SECTION 909. - AIRPORT COMMISSION.

**Note**— (REPEALED: STATS. 1964 CH. 41)

SECTION 910. - PARKS COMMISSION.

**Note**— (REPEALED: STATS. 1964 CH. 41)

SECTION 911. - LIBRARY COMMISSION.

**Note**— (REPEALED: STATS. 1964 CH. 41)

SECTION 912. - INDUSTRIAL COMMISSION.

**Note**— (REPEALED: STATS. 1964 CH. 41)



SECTION 1000. - RETIREMENT SYSTEM.

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

SECTION 1001. - AUTHORITY TO JOIN OTHER SYSTEMS.

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

SECTION 1100. - UNCLASSIFIED AND CLASSIFIED SERVICE.

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

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

SECTION 1101. - MERIT PRINCIPLE.

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

SECTION 1102. - PERSONNEL RULES AND REGULATIONS.

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

SECTION 1103. - POLITICAL ACTIVITIES PROHIBITED.

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

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

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

#### SECTION 1200. - THE FISCAL YEAR.

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

#### SECTION 1201. - ANNUAL BUDGET.

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

#### SECTION 1202. - PUBLIC HEARING ON THE BUDGET.

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

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

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

#### SECTION 1203. - ADOPTION OF THE BUDGET.

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

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

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

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

#### SECTION 1204(a). - TAX SYSTEM.

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

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

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

## SECTION 1205. - INDEPENDENT AUDIT.

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

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

## SECTION 1206. - BONDED DEBT LIMIT.

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

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

## SECTION 1207. - CASH BASIS FUND.

**Note—** (REPEALED: STATS. 1982 CH. 38)

## SECTION 1208. - CAPITAL OUTLAYS FUND.

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

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

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

SECTION 1209. - OTHER FUNDS.

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

SECTION 1210. - DEMANDS OR CLAIMS AGAINST THE CITY.

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

(AMENDED: STATS. 1964 CH. 41)

SECTION 1211. - REGISTERING WARRANTS.

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

SECTION 1212. - ACTIONS AGAINST THE CITY.

**Note**— (REPEALED: STATS. 1964 CH. 41)

SECTION 1300. - FORM OF CONTRACTS.

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

SECTION 1301. - CONTRACTS FOR OFFICIAL ADVERTISING.

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

SECTION 1302. - CENTRALIZED PURCHASING.

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

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

SECTION 1303. - PUBLIC WORKS CONTRACTS.

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

(AMENDED: STATS. 1982 CH. 38)

SECTION 1304. - REQUIREMENTS OF BIDS.

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

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

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

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

SECTION 1400. - GENERAL.

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

SECTION 1401. - DEFINITIONS.

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

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

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

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

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

#### SECTION 1402. - GRANT OF POWER.

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

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

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

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

#### SECTION 1403. - PLEDGE OF NET PARKING METER REVENUES.

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

#### SECTION 1404. - AUTHORIZATION OF REVENUE BONDS.

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

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

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

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

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

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

**SECTION 1407. - SECURITY.**

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

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

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

**SECTION 1409. - SALE OF BONDS.**

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



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

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

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

**SECTION 1411. - CONSTRUCTION FUND; INVESTMENT.**

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

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

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

**SECTION 1413. - RATES, FEES AND OTHER CHARGES.**

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

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

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

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

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

#### SECTION 1415. - COMPETITIVE PROJECTS.

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

#### SECTION 1416. - USE OF SURPLUS.

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

#### SECTION 1417. - RIGHTS OF BONDHOLDERS.

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

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

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

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

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

## SECTION 1500. - FRANCHISES TO OPERATE.

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

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

## SECTION 1501. - AUTHORITY TO GRANT FRANCHISES.

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

## SECTION 1502. - FRANCHISE TERMS, CONDITIONS AND PROCEDURES.

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

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

## SECTION 1503. - METHOD OF GRANTING FRANCHISE.

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

## SECTION 1504. - TERM OF FRANCHISE.

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

## SECTION 1505. - PURCHASE OR CONDEMNATION BY CITY.

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

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

SECTION 1506. - ADEQUATE COMPENSATION.

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

SECTION 1507. - ARTICLE NOT APPLICABLE TO CERTAIN CASES.

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

SECTION 1508. - EXERCISING RIGHT WITHOUT FRANCHISE.

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

SECTION 1509. - ARTICLE NOT APPLICABLE TO CITY.

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

SECTION 1600. - EFFECT OF CHARTER.

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

SECTION 1700. - VALIDITY OF CHARTER.

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

SECTION 1701. - VIOLATIONS.

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

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_

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

RESOLUTION ESTABLISHING THE SCHEDULE AND POLICY PROVIDING FOR  
THE FILING OF BALLOT ARGUMENTS FOR THE CHARTER AMENDMENT  
BALLOT MEASURE AT THE NOVEMBER 3, 2020 ELECTION

WHEREAS, the City Council of Hayward will likely submit a ballot measure to the voters at the November 3, 2020 Municipal Election; and

WHEREAS, it is necessary to establish a schedule and policy for the filling of ballot measures.

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

SECTION 1. The Primary Argument filing period closes at noon, 12:00 p.m. on Tuesday, August 11, 2020. The Rebuttal Argument filing period closes at noon, 12:00 p.m. on Friday, August 21, 2020.

SECTION 2. The ten-day public review period for primary arguments closes at noon, 12:00 p.m. on August 21, 2020, and the ten-day public review period for rebuttal arguments closes at noon, 12:00 p.m. on August 31, 2020.

SECTION 3. In accordance with Elections Code 9282 and 9285, primary arguments for or against ballot measures shall not exceed 300 words in length. Rebuttal arguments for or against ballot measures shall not exceed 250 words in length. Word count will be determined using the standards set forth in Elections Code Section 9.

SECTION 4. According to Elections Code 9287, if more than one argument is submitted, the City Clerk shall select the argument and shall give preference, in the order named, to arguments of the following:

- a) The legislative body, or member or members of the legislative body authorized by that body.
- b) The individual voter or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure,
- c) Bona fide associations of citizens.
- d) Individual voters who are eligible to vote on the measure.

SECTION 5. Each ballot argument must be accompanied by the printed name(s) and signature(s) of the person or persons submitting it or, if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers who is the author of the argument. The Certification of the Author(s) and Proponent(s), in Exhibit A, must be submitted at the time the respective Primary Argument or Rebuttal Argument is filed. The names and titles of proponents will be printed exactly as they appear in Exhibit A. Arguments received prior to the deadline are confidential until the deadline.

SECTION 6. No more than five signatures shall appear with any argument. In case any argument is signed by more than five individuals, the signature of the first five shall be printed. Authors must list the signors names on the argument in the order they are to be printed.

SECTION 7. Consent forms are required for persons and/or organizations listed as supporters in the text of the argument.

SECTION 8. The City Clerk, upon receipt of arguments and after the filing deadline, will transmit copies of arguments to authors of opposing arguments who may then submit rebuttals within the established period.

SECTION 9. In accordance with Elections Code 9285, only the author whose primary argument has been selected by the City Clerk may file a rebuttal argument or may authorize in writing another person or persons to prepare, submit, or sign the rebuttal argument.

SECTION 10. Rebuttal arguments shall be printed in the same manner as direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

IN COUNCIL, HAYWARD, CALIFORNIA July 14, 2020.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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

**CERTIFICATION OF THE AUTHOR(S) AND PROPONENT(S)  
SIGNATURE STATEMENT  
PRIMARY ARGUMENT**

Authors and proponents (signers) of arguments must be individual voters who are eligible to vote on the measure, or a bona fide association of citizens, or any combination of voters and associations at the time of signing the argument.

**Elections Code §9600:** All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:

The undersigned proponent(s) or author(s) of the Argument \_\_\_\_\_ In Favor of \_\_\_\_\_ Against the CITY OF HAYWARD CHARTER AMENDMENT at the General Municipal Election for the City of Hayward to be held on November 3, 2020, hereby state that this argument is true and correct to the best of his/her/their knowledge and belief.

Print Name	Signature
Title (if any) to appear on Argument	Email Address
Residence Address	City & Zip Code



**CERTIFICATION OF THE AUTHOR(S) AND PROPONENT(S)  
SIGNATURE STATEMENT  
REBUTTAL ARGUMENT**

Authors and proponents (signers) of arguments must be individual voters who are eligible to vote on the measure, or a bona fide association of citizens, or any combination of voters and associations at the time of signing the argument.

**Elections Code §9600** All arguments concerning measures filed pursuant to this division shall be accompanied by the following form statement, to be signed by each proponent and by each author, if different, of the argument:

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Print Name	Signature
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Residence Address	City & Zip Code