

TENTATIVE

SIDE LETTER OF AGREEMENT

between

CITY OF HAYWARD

and

HAYWARD ASSOCIATION OF MANAGEMENT EMPLOYEES (HAME)

Representatives of the City of Hayward (the “City”) and Hayward Association of Management Employees (the “Association”) have met and conferred in good faith on the City’s anticipated revenue shortfall for FY 2021 resulting from the COVID-19 pandemic. The parties have reached this Side Letter of Agreement (the “Agreement”) to institute a furlough leave program (the “Furlough Program”) for FY 2021 for all Association members in order to aid the City’s ability to maintain routine and necessary services while attempting to minimize negative fiscal impacts for employees. The terms and conditions of the Furlough Program and cost savings measures are outlined below.

In recognition of the Association’s historic and continued leadership and concessions in the face of the City’s fiscal shortfalls, the City agrees to provide a single, one-time lump sum payment to employees if a certain set of criteria is met, as provided below.

If there is any conflict in language between this Agreement and the Memorandum of Understanding, the provisions in this Agreement will supersede.

Fiscal Year 2021 Furlough Program

Furlough Obligation

1. Between July 1, 2020 and June 30, 2021, all full-time employees must meet a furlough obligation of eighty (80) furlough hours.
2. Part-time employees who regularly work twenty (20) or more hours per week will be required to take a pro-rated number of furlough hours based on their regularly scheduled hours. For example, if an employee is budgeted to work twenty (20) hours per week, then their furlough obligation would be fifty percent (50%) or forty (40) furlough hours.

Furlough Days

1. An employee will be allowed to meet their furlough obligation through hours off of their choosing, provided the requests for hours off are approved in advance by the employee's supervisor. Supervisors will be encouraged to approve requests for the use of furlough hours unless operational necessity precludes approval.
2. In the event of a dispute regarding the approval of furlough hours, the employee's supervisor shall forward the reason for denial to the City Manager for review, whose decision shall be final.
3. Furlough hours can be taken in any increment and may be combined with an employee's time off for holiday, vacation, management leave, or days off due to alternate work schedule (AWS). Employees will be eligible for holiday pay as if they were in a paid status.
4. Employees must first meet their furlough obligation prior to taking accrued vacation or compensatory time off.
5. An employee must submit their request for the use of floating furlough hours no later than May 1, 2021. Absent such a timely request, the employee's supervisor can unilaterally schedule the furlough hours to be taken by the employee.
6. An employee's use of furlough time shall not adversely impact the employee. For example, an employee's use of approved furlough time off shall not adversely impact the employee's performance evaluation.

Furlough Payback

1. In order to mitigate the financial impact of the Furlough Program on employees, employees may elect to spread the payback of the furlough obligation over 26 pay periods in FY 2021. Employees must make this election on or before June 15, 2020.
2. Employees who elect to have the furlough obligation spread over FY 2021 shall have 3.077 hours of paid time deducted from each paycheck beginning the pay period including July 1, 2020 and ending with the pay period including June 30, 2021. The deduction will be adjusted for part-time employees based on their regularly scheduled hours.
3. The City will provide a Furlough Letter to employees who elect to take the furlough obligation in one lump sum. Although eligibility for California Unemployment Insurance (UI) is solely determined by the Employment Development Department (EDD), the City will respond to UI claims timely and will not contest applications for employees who take a furlough of ten (10) consecutive workdays that start on a

Monday and end on the following Friday. Employees must make this election on or before June 15, 2020.

4. Employees who do not elect either options (1) or (3) above by June 15, 2020, will pay their furlough obligation upon use of furlough hours. Employees will be responsible for keeping track of their furlough obligation payback.
5. Any employee who leaves City employment prior to completely reimbursing the City for the furlough hours taken will have any remaining balance of owed furlough payback hours deducted from their final paycheck.

Exceptions to Furlough Obligation

1. Employees working 19 hours per week or less and temporary employees will be exempt from participating in the Furlough Program.
2. Any new employees or employees returning from an unpaid status will have a prorated furlough obligation based on the number of pay periods remaining in FY 2021.
3. Any employee paid under Workers' Compensation will not be expected to participate in the Furlough Program until they have returned to work. At that time, a determination will be made to calculate the employee's prorated furlough obligation based on the number of pay periods remaining in FY 2021.

Furlough Impacts

1. Implementation of the Furlough Program will not cause any decrease in vacation or sick leave accruals.
2. Vacation accrual caps will not be enforced through fiscal year 2022. Employees must reduce their vacation leave balances to the vacation leave cap prior to the end of the final pay period in fiscal year 2022. Employees who are above their vacation accrual cap in the pay period including June 30, 2022 shall forfeit any hours in excess of the cap. If an employee separates from City service, any vacation leave hours in excess of their cap shall be forfeited.
3. Supervisors will be encouraged to approve the use of vacation unless operational necessity precludes approval.
4. In the event an employee has made a good faith effort to utilize excess vacation hours and the employee's request is denied by their supervisor prior to the deadline, the employee may submit a request for review of the reasons for denial to the City Manager, whose decision shall be final.

One-Time Lump-Sum Payment

The City agrees to provide a single, one-time lump sum payment to employees if a certain set of criteria (“Criteria 1” or “Criteria 2”) is met, as provided below, and where making the associated payment under one set of criteria cancels the City’s obligation to the other. In no event shall the City be obligated to provide payment under both sets of criteria.

Criteria 1

Should both financial indicators described below be met on or before June 30, 2022, the City will pay:

- a. A one-time lump sum payment (the “Payment”) equal to 3% of the employee’s base wages as of January 2, 2021.

Financial Indicators

1. Revenue recovery: (1) the sum total of the following revenue sources (as reported in the City’s CAFR) for FY 2021 is the same or greater than FY 2018; or (2) the sum total of the following revenue sources (as reported in the City’s CAFR) for FY 2022 is the same or greater than FY 2018:
 - a. Sales Tax,
 - b. Property Tax,
 - c. Utility Users Tax, and
 - d. Transient Occupancy Tax.
2. The City’s General Fund reserves are restored to 17% of the budgeted annual operating expense budget.

Reporting

Following execution of this agreement, the City agrees to provide the Association with a written report on an annual basis within 15 days after the City’s CAFR is published to summarize the financial health of the City and provide updated projections on when the above financial indicators may be met. Any projections on when Association members can anticipate receiving the Payment are solely projections and shall not be construed as agreement to pay the Payment until and unless the above financial indicators are met.

Payout Schedule

In the event that the financial indicators are met, employees will receive the Payment in the first pay period after the Association has received the annual report from the City affirming that the financial indicators have been met.

Criteria 2

Should the City receive financial aid through a federal stimulus package that meets the criteria provided below, and should a certain financial indicator be met on or before June 30, 2022, the City will pay:

- a. A one-time lump sum payment (the “Payment”) equal to 3% of the employee’s base wages as of January 2, 2021.

The stimulus funding must be:

1. More than \$3.5M in Fiscal Year 2021,
2. Specifically related to COVID-19 relief, and
3. Discretionary or able to be used to offset revenue loss in the General Fund and/or for currently funded General Fund positions.

Financial Indicator

The City’s General Fund reserves are restored to 17% of the budgeted annual operating expense budget.

Reporting

Following official notice that the City has been awarded funding through a federal stimulus package, the City agrees to provide a copy of the notification to the Association within five (5) business days of receiving the notice. The City also agrees to provide the Association with a written report on an annual basis within 15 days after the City’s CAFR is published to summarize the financial health of the City and provide updated projections on when the above financial indicator may be met. Any projections on when Association members can anticipate receiving the Payment are solely projections and shall not be construed as agreement to pay the Payment until and unless the above financial indicators are met.

Payout Schedule

In the event that the City receives funding through a federal stimulus package and the financial indicator is met, employees will receive the Payment in the first pay period after the Association has received the annual report from the City affirming that the financial indicator has been met.

Dispute Resolution Procedure

This agreement shall not be subject to the dispute resolution procedure contained in the Memorandum of Understanding between the City and the Association.

TENTATIVE AGREEMENT
HAME

The parties acknowledge that the furlough is a concession voluntarily made by the employees represented by the Union. This agreement shall expire at the end of the pay period including December 31, 2022, or sixty (60) days after the opinion date of the FY 22 CAFR.

For the City:

For the Association:




