



# CITY OF HAYWARD

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

## Agenda - Final City Council

---

**Tuesday, September 22, 2020**

**7:00 PM**

**Remote Participation**

---

### CITY COUNCIL MEETING

COVID-19 Notice: 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, the City Council will be participating in public meetings via phone/video conferencing.

*How to watch the meeting from home:*

1. Comcast TV Channel 15
2. Live stream <https://hayward.legistar.com/Calendar.aspx>
3. YouTube Live stream: <https://www.youtube.com/user/cityofhayward>

*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.

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. Documents received after 3:00 p.m. through the adjournment of the meeting will be included as part of the meeting record and published the following day.

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

*Click the link below to join the meeting:*

<https://hayward.zoom.us/j/95403631765?pwd=dFEzeUZSYUdSK1FuWWFsVytMZUdrdz09>

Passcode: @am-9D&M2A

or

Dial: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592  
or +1 312 626 6799 or 888 788 0099 (Toll Free) or 833 548 0276 (Toll Free) or 833 548 0282 (Toll Free)  
or 877 853 5247 (Toll Free)

Meeting ID: 954 0363 1765

Password: 5355517052

A Guide to attend virtual meetings is provided at this link: <https://bit.ly/3jmaUxa>

**CALL TO ORDER Pledge of Allegiance: Council Member Lamnin****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PUBLIC COMMENTS**

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

**ACTION ITEMS**

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

**CONSENT**

1. [CONS 20-432](#) Adopt a Resolution Approving Amendment No. 5 increasing the Professional Services Agreement with CSG Consultants Inc., for Development Review Services, Extending the Date of the Agreement and Authorizing an Increase in the Amount of \$320,000 for a Total Not-To-Exceed \$1,200,000

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

2. [CONS 20-474](#) Adopt a Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Homebase to Prepare a Five-Year City of Hayward Homelessness Reduction Strategic Plan

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Resolution](#)  
[Attachment III Homebase DRAFT Scope of Work](#)

3.     [CONS 20-460](#)     Adopt a Resolution Accepting the Resignation of Ms. Isabel Pimentel from the Community Services Commission, Effective Immediately
- Attachments:**     [Attachment I Staff Report](#)  
                              [Attachment II Resolution](#)  
                              [Attachment III Resignation Letter](#)
4.     [CONS 20-463](#)     Adopt a Resolution Appointing Ms. Lenora Taylor to the Community Services Commission to Fulfill the Unexpired Term of Ms. Isabel Pimentel
- Attachments:**     [Attachment I Staff Report](#)  
                              [Attachment II Resolution](#)
5.     [CONS 20-466](#)     Adopt a Resolution Authorizing the Forgiveness of the Promissory Note for the City Manager After the City Received Full Repayment of the City-Issued Home Loan
- Attachments:**     [Attachment I Staff Report](#)  
                              [Attachment II Resolution](#)
6.     [CONS 20-476](#)     Motion to Renew Debate on Proposed Development of a Fuel Facility with Related Site Improvements at the Costco Business Center Located at 22330 Hathaway Avenue, Application No. 201706217 (Assessor Parcel No. 429-0082-003-00)
- Attachments:**     [Attachment I Staff Report](#)

**LEGISLATIVE BUSINESS**

7.     [LB 20-043](#)     Temporary Limit on Third-Party Food Delivery Fees: Adoption of Emergency Ordinance Establishing a Temporary Limit of 15 Percent Limit on Fees of Food Delivery Service Providers to Support Restaurants in Hayward During the COVID-19 Pandemic (Report from Deputy City Manager Ott)
- Attachments:**     [Attachment I Staff Report](#)  
                              [Attachment II Emergency Ordinance](#)

8. [LB 20-045](#) Extend Commercial Evictions Moratorium: Adopt an Emergency Ordinance Amending Temporary Moratorium on Evictions to Extend the Moratorium for Commercial Evictions until January 31, 2021 (Report from Deputy City Manager Ott)

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

9. [LB 20-044](#) League of California Cities Annual Policy Resolutions: Adopt a Resolution Supporting the Singular League of California Cities Policy Resolution Being Considered at the 2020 League of California Cities Annual Business Meeting (Report from City Manager McAdoo)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Resolution](#)  
[Attachment III LCC 2020 Conference Resolutions Packet](#)

10. [LB 20-046](#) City Attorney Employment Agreement Extension: Adopt a Resolution Approving a One-Month Extension to the Employment Agreement Between the City of Hayward and the City Attorney and Authorizing the Mayor to Execute the Agreement (Report from Assistant City Manager Hurtado)

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

11. [LB 20-047](#) City Clerk Employment Agreement Extension: Adopt a Resolution Approving the Extension and Modification to the Employment Agreement Between the City of Hayward and the City Clerk and Authorizing the Mayor to Execute the Agreement (Report from Assistant City Manager Hurtado)

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

**CITY MANAGER'S COMMENTS**

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

**COUNCIL REPORTS AND ANNOUNCEMENTS**

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

**COUNCIL REFERRALS**

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

**ADJOURNMENT****NEXT SPECIAL MEETING, September 29, 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  
Hayward, CA 94541  
www.Hayward-CA.gov

---

**File #:** CONS 20-432

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt a Resolution Approving Amendment No. 5 increasing the Professional Services Agreement with CSG Consultants Inc., for Development Review Services, Extending the Date of the Agreement and Authorizing an Increase in the Amount of \$320,000 for a Total Not-To-Exceed \$1,200,000

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Manager to execute Amendment No. 5 to the Professional Services Agreement (Agreement) with CSG Consultants, Inc., (CSG) for Private Development Plan Check Review and Related Services, extending the date of the agreement and authorizing an increase in the amount of \$320,000 for a total not-to-exceed contract amount of \$1,200,000.

**SUMMARY**

The City entered into an Agreement with CSG on November 18, 2016, to assist with development review. Due to staff vacancies and continued significant private development workload, staff is requesting an additional amendment to continue receiving these services.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT:** Adopt a Resolution Approving Amendment No. 5 increasing the Professional Services Agreement with CSG Consultants Inc., for Development Review Services, Extending the Date of the Agreement and Authorizing an Increase in the Amount of \$320,000 for a Total Not-To-Exceed \$1,200,000

## **RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Manager to execute Amendment No. 5 to the Professional Services Agreement (Agreement) with CSG Consultants, Inc., (CSG) for Private Development Plan Check Review and Related Services, extending the date of the agreement and authorizing an increase in the amount of \$320,000 for a total not-to-exceed contract amount of \$1,200,000.

## **SUMMARY**

The City entered into an Agreement with CSG on November 18, 2016, to assist with development review. Due to staff vacancies and continued significant private development workload, staff is requesting an additional amendment to continue receiving these services.

## **BACKGROUND**

Public Works staff is responsible for reviewing grading plans, subdivision maps, improvement plans, and soils and geological reports for private development projects. Due to staff vacancies and significant private development workload, the City entered into an Agreement with CSG on November 18, 2016, to provide these plan review services on a temporary basis. On September 19, 2017, Council approved Amendment No. 1, increasing the original \$75,000 Agreement amount by an additional \$425,000, for a total Agreement amount of \$500,000, and extending the Agreement to June 30, 2018. Amendment No. 2, which was approved on May 22, 2018, increased the total of the Agreement to \$680,000 and extended the Agreement to December 31, 2018. Amendment No. 3, which was approved on January 8, 2019, extended the Agreement to June 30, 2019. On June 25, 2019<sup>1</sup>,

---

<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=3993701&GUID=84297268-7A43-4F53-8674-B64A2D980093&Options=&Search=>



Council approved amendment No. 4, for a total Agreement amount of \$880,000 and extended the Agreement to June 30, 2020.

## **DISCUSSION**

The current Agreement with CSG for Development Review Services expired on June 30, 2020 and due to the extended need for CSG services, the Agreement amount of \$880,000 has been nearly expended. Due to staff vacancies in Public Works & Utilities and Development Services Department, and significant private development workload, staff anticipates that these services will be required through the end of FY2021. Staff requests approval of Amendment No. 5 to extend the term of the Agreement to June 30, 2021, and to increase the Agreement amount by \$320,000. The Public Works & Utilities and Development Services Departments will share this cost, as both departments receive professional services through this Agreement. Approximately 17% of this cost will be provided by the Development Services Department.

## **ECONOMIC IMPACT**

This Agreement facilitates timely development in the City, which impacts and improves the local economy.

## **FISCAL IMPACT**

This amendment would increase the Agreement's not-to-exceed amount from \$880,000 to \$1,200,000 for Development Review Services. An increase to the Public Works – Engineering and Transportation Administration budget in the amount of \$320,000 for this amendment was approved in the FY2021 Budget. Given that the private consultant's hourly rates are typically much higher than City staff's rates in comparable positions, the consultant's fees are not currently fully recovered through charges to projects. Staff anticipates that most of the expenses will be offset by charges to developers.

Staff will be evaluating the approach taken in current charging practices for development review and will adjust accordingly in order to reduce the impact on the General Fund.

## **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority to Grow the Economy by providing professional services to the Development Services and Public Works & Utilities Departments by assisting in finalizing planning on redevelopment of six remaining parcel groups. Specifically, this item relates to the implementation of the following:

Project 5, Part 5a:       Finalize planning on redevelopment of six remaining parcel groups

This agenda item also supports the Strategic Priority to Improve Infrastructure. Specifically, this item relates to the implementation of the following:

Project 10: Investigate major municipal building upgrade needs  
Project 11, Part 11b: Upgrade and maintain Airport infrastructure and facilities

By receiving professional services from CSG, the City is taking steps to improve infrastructure within the City. This achievement is through reviewing and conditioning large developments projects to improve Hayward's utilities, street improvements including but not limited to traffic calming initiatives.

**PUBLIC CONTACT**

No public contact has been made related to this amendment.

**NEXT STEPS**

If Council approves this request, the City Manager will execute an amendment to the agreement with CSG to increase the Agreement amount to \$1,200,000 and extend the term to June 30, 2021.

*Prepared by:* Kathy Garcia, Deputy Director of Public Works

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

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT No. 5 TO THE AGREEMENT WITH CSG CONSULTANTS, INC., FOR PLAN CHECK REVIEW AND RELATED SERVICES ASSOCIATED WITH THE CITY OF HAYWARD DEVELOPMENT REVIEW

WHEREAS, the aforesaid parties have entered into that certain Agreement dated the 18th day of November 2016, entitled "Agreement for Professional Services between the City of Hayward and CSG CONSULTANTS, INC.," for temporary Development Review Services; and

WHEREAS, the City and Consultant amended that certain Agreement with Amendment No.1 dated the 19<sup>th</sup> day of October 2017 increasing the agreement to \$500,000 and extending the termination date to June 30, 2018; and

WHEREAS, the City and Consultant amended that certain Agreement with Amendment No. 2 dated the 6th day of June 2018 increasing the agreement to \$680,000 and extending the termination date to December 31, 2018; and

WHEREAS, the City and Consultant amended that certain Agreement with Amendment No. 3 dated the 8th day of January 2019 extending the termination date to June 30, 2019; and

WHEREAS, the City and Consultant amended that certain Agreement with Amendment No. 4 dated the 25th day of June 2019 extending the termination date to June 30, 2020; and

WHEREAS, the City and the Consultant desire to further amend the Agreement in certain respects; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute, on behalf of the City of Hayward, an amendment to the agreement with CSG CONSULTANTS INC., for additional services in the amount of \$320,000, resulting in an increase of the total contract, inclusive of all prior amendments, to an amount not-to-exceed \$1,200,000 associated with the City of Hayward temporary Development Review Services and extending the term to June 30, 2021.

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



# CITY OF HAYWARD

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

---

**File #:** CONS 20-474

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT**

Adopt a Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Homebase to Prepare a Five-Year City of Hayward Homelessness Reduction Strategic Plan

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) to authorize the City Manager to execute a professional services agreement with Homebase to prepare a five-year City of Hayward Homelessness Reduction Strategic Plan.

**SUMMARY**

The City Council has long identified homelessness and housing affordability as key issues in the community and has supported local efforts to address these issues in conjunction with larger regional efforts, as evidenced by the recently approved Hayward Strategic Roadmap. One of the Council's six priority areas for the next three years is to Preserve, Protect, and Produce Housing for All. Within this priority are ten different projects to address affordable housing and homelessness in the City, including the creation of a City of Hayward Plan to End Homelessness.

On June 3, 2020, staff released a request for proposals (RFP) for consultants with experience in homelessness strategic planning. In total, ten firms provided a response. An interdepartmental team reviewed and ranked these proposals and selected four firms to interview. Staff recommends Homebase, a San Francisco based firm with expertise in homelessness reduction strategic planning, to work with the City of Hayward to prepare the City's homelessness reduction strategic plan.

As outlined in the RFP, the plan must utilize a racial equity analysis, align with the EveryOne Home Strategic plan, include people with lived experience with homelessness in the outreach process, and address the unique challenges of a mid-sized city addressing a complex regional crisis. In light of the recent COVID-19 global pandemic, the plan should also address the rapidly changing needs of the homeless community, as well as the financial and economic impacts of the global pandemic.

---

**File #:** CONS 20-474

---

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Draft Scope of Work



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Adopt a Resolution Authorizing the City Manager to Execute Professional Services Agreement with Homebase to Prepare a Five-Year City of Hayward Homelessness Reduction Strategic Plan

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) to authorize the City Manager to execute a professional services agreement with Homebase to prepare a five-year City of Hayward Homelessness Reduction Strategic Plan.

### **SUMMARY**

The City Council has long identified homelessness and housing affordability as key issues in the community and has supported local efforts to address these issues in conjunction with larger regional efforts, as evidenced by the recently approved Hayward Strategic Roadmap.<sup>1</sup> One of the Council's six priority areas for the next three years is to Preserve, Protect, and Produce Housing for All. Within this priority are ten different projects to address affordable housing and homelessness in the City, including the creation of a City of Hayward Plan to End Homelessness.

On June 3, 2020, staff released a request for proposals (RFP) for consultants with experience in homelessness strategic planning. In total, ten firms provided a response. An interdepartmental team reviewed and ranked these proposals and selected four firms to interview. Staff recommends Homebase, a San Francisco based firm with expertise in homelessness reduction strategic planning, to work with the City of Hayward to prepare the City's homelessness reduction strategic plan.

As outlined in the RFP, the plan must utilize a racial equity analysis, align with the EveryOne Home Strategic plan, include people with lived experience with homelessness in the outreach process, and address the unique challenges of a mid-sized city addressing a complex regional

---

<sup>1</sup> January 28, 2020 Hayward City Council meeting, <https://hayward.legistar.com/LegislationDetail.aspx?ID=4315589&GUID=1F328D58-C3FC-41E5-8BF7-A17E4E09DDCB&Options=&Search=>

crisis. In light of the recent COVID-19 global pandemic, the plan should also address the rapidly changing needs of the homeless community, as well as the financial and economic impacts of the global pandemic.

## BACKGROUND

On February 4, 2020, the Hayward City Council endorsed<sup>2</sup> the *EveryOne Home Plan to End Homelessness* (EveryOne Home Plan)<sup>3</sup>, laying out a county-wide approach to ending homelessness.

The EveryOne Home Plan recommends four broad strategies that together bring the necessary capacity, investment, partnership, and collective impact to end homelessness:

- *Expand Capacity* – the Alameda County system needs to expand temporary financial assistance and legal support, add more units of permanent supportive housing, add more units of subsidized permanent housing units, and expand street outreach and other services to unsheltered individuals.
- *Increase Investment* – there is a need to identify new sources of financial investment from all levels of government.
- *Build Stronger Partnerships* - engaging in the leadership and expertise of people experiencing homelessness in governance, policy, planning, and service delivery, and expanding employment opportunities and career development within our system
- *Align Public Policies* – advancing policies to reduce homelessness, such as protecting renters, increasing affordable housing, protecting dignity, health, and safety of those living on the streets, and counteracting disparate racial impacts of housing policies.

On June 3, 2020, staff released a request for proposals (RFP) for consultants with experience in homelessness strategic planning. As outlined in this RFP, the plan must utilize a racial equity analysis, align with the EveryOne Home Strategic plan, include people with lived experience with homelessness in the outreach process, and address the unique challenges of a mid-sized city addressing a complex regional crisis. In light of the recent COVID-19 global pandemic, the plan should also address the rapidly changing needs of the homeless community, as well as the financial and economic impacts of the global pandemic. A full copy of the RFP can be found online.<sup>4</sup>

## DISCUSSION

Staff recommends that Council adopts a resolution authorizing the City Manager to execute a professional services agreement with Homebase to prepare the City's homelessness reduction plan in an amount not to exceed \$101,953. Staff recommends this based on the following:

---

<sup>2</sup> February 4, 2020 Hayward City Council meeting,

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4321500&GUID=2A65C2DC-C510-4662-AF34-BE7A0FF18D7B&Options=&Search=>

<sup>3</sup> 2018 EveryOne Home Strategic Plan, <http://everyonehome.org/wp-content/uploads/2016/02/FINAL-EveryOne-Home-Plan.pdf>

<sup>4</sup> <https://www.hayward-ca.gov/sites/default/files/rfp/City-of-Hayward-Homelessness-Reduction%20Strategic%20Plan.pdf>



**Comprehensive, cost-reasonable, and responsive proposal:** Ten proposals were submitted in response to the June 2020 RFP for Homelessness Reduction Strategic Planning services. Homebase submitted a comprehensive and cost-reasonable proposal that was responsive to the needs of the City.

**Subject matter expertise:** Homebase brings 30 years of experience in working with communities to identify and analyze the root causes of homelessness and develop effective systems and solutions to prevent and end homelessness. A key area of focus for Homebase is assisting communities and agencies with the development of strategic plans. Homebase has facilitated multi-sector strategic planning processes to address homelessness in dozens of states and communities, including but not limited to plans for El Dorado County (current), Stockton/San Joaquin County (2020), Marin County (2019), and Santa Clara County (2014-20).

**Racial equity lens:** Homebase considers equity analysis to be a critically important aspect of all of their work, and looks at more than just resource gaps, but also who is being underserved or not served at all.

A summary of Homebase's proposal is outlined below. A copy of their draft scope of work submitted as part of their RFP can be found in Attachment III (note: the timeline listed in this draft scope of work will need to be updated).

The Homebase proposal will include the following four phases:

**Phase 1: Assessment of Existing Systems and Services (October 2020 – December 2020)**

Phase I will focus on gathering information and data to develop a baseline understanding of the City of Hayward's strengths, needs, and gaps in relation to homelessness. As part of this phase, Homebase will carry out a needs assessment and gap analysis that identifies existing housing and services, unmet needs, and priority gaps to be addressed. This assessment will be conducted based on: review of key documents; analysis of the Homeless Management Information System (HMIS) and other data on numbers, needs and performance; targeted discussions with key stakeholders to contextualize the data and information gathered; client focus groups; and/or provider e-surveys.

The gap analysis will look at the homelessness system of care overall and at sub-population and sub-regional needs and differential access, and it will consider both the need for new programs as well as improvements to the operation of existing housing and services. Homebase will also review and analyze the Alameda County EveryOne Home Strategic Plan, the Hayward Strategic Roadmap, and other initiatives underway in the City, County, and region to ensure that the plan is informed by and aligned with the work that has already begun. During Phase I, Homebase proposes to convene a Steering Committee that includes key cross-sector stakeholders and is responsible for overseeing the process and ensuring implementation of the plan.

### **Phase II: Stakeholder Engagement/Input (October 2020 – January 2021)**

Homebase will facilitate a comprehensive community engagement process to ensure that planning and recommendation development is based on concrete information about local needs and resources. Building upon the needs assessment and gaps analysis begun during Phase I, Homebase will conduct a deeper environmental review/assessment grounded in community engagement via a community kick-off event, virtual stakeholder interviews, community work sessions, and meetings with City staff.

### **Phase III: Synthesis and Draft Plan Development (January 2021 – February 2021)**

Phase III will focus on culling information gathered during the assessment and stakeholder engagement processes in Phases I and II to identify overall strengths, unmet needs, priority gaps, and opportunities present in Hayward to address homelessness. Homebase will work with the Steering Committee and/or City staff to flesh out and refine the mission, goals, objectives, and strategies/action steps, in alignment with the EveryOne Home Strategic Plan and Hayward Strategic Roadmap, to guide the City in addressing homelessness over the next five years. Recognizing the Hayward City Council's commitment to addressing homelessness, Homebase will propose preliminary strategies for the City to consider ahead of Fiscal Year 2022 (FY 2022) budget planning to maximize the impact of its housing and service dollars and to ensure appropriate coordination with the County.

### **Phase IV: Finalization and Approval of Strategic Plan (February 2021 – April/May 2021)**

Homebase will incorporate the feedback received during Phase III into a final version of the Hayward Homelessness Reduction Strategic Plan. The Plan will identify City actions that support the EveryOne Home Strategic Plan for Alameda County goals and strategic priorities, are not duplicative, and leverage additional resources for collective impact on homelessness. Homebase will incorporate an implementation plan, roles and responsibilities, and milestones into the final plan.

### **ECONOMIC IMPACT**

At this time, there is no associated economic impact with this item. Once the City has developed its plan to end homelessness, there may be economic impacts associated with its implementation, including the creation and retention of jobs, creation of affordable housing, and reduced poverty rates in the City.

### **FISCAL IMPACT**

The Homelessness Reduction Strategic Plan will be funded primarily through Community Development Block Grant (CDBG) administrative funds and will not take-away from available funding for nonprofits. Staff proposes to reallocate up to \$2,000 in available General Fund monies from the Community Agency Funding Process to use for stipends for focus group and interview participants. This funding was made available by the St. Rose Hospital Foundation

FACES program, which will be unable to utilize their grant this year due to the impacts of COVID-19.

ITEM	AMOUNT	FUNDING SOURCE
Total Project Budget	\$99,953	CDBG
Focus group and interview stipends	\$2,000	General Fund
	<b>Total</b>	<b>\$ 101,953</b>

## STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Preserve, Protect & Produce Housing. Specifically, this item relates to the implementation of the following project(s)

Project 2, Create a Homelessness Reduction Strategic Plan

Part 2.a: Create a Homelessness Reduction Strategic Plan modeled on an empowerment approach and best practices, as well as after Alameda County’s EveryOne Home Plan

## PUBLIC CONTACT

On February 4, 2020, staff presented a Homelessness Update to the Hayward City Council.<sup>5</sup> During this presentation, staff shared preliminary plans for developing a five-year homelessness reduction plan. Staff intends to encourage and include the participation of individuals with lived experience, homeless services providers, and other community stakeholders in the development of the City’s plan to end homelessness.

## NEXT STEPS

If Council approves this recommendation, staff will execute an agreement with Homebase to provide homelessness reduction strategic planning services and create the City of Hayward Homelessness Reduction Five Year Strategic Plan.

TASK	TIMEFRAME
Phase I: Assessment of Existing Systems and Services	October 2020 – December 2020
Phase II: Stakeholder Engagement/Input	October 2020 – January 2021
Phase III: Synthesis and Draft Plan Development	January 2021 – February 2021
Phase IV: Finalization and Implementation Suggestions	February 2021 – April/May 2021

<sup>5</sup> February 4, 2020 Hayward City Council meeting, <https://hayward.legistar.com/LegislationDetail.aspx?ID=4321500&GUID=2A65C2DC-C510-4662-AF34-BE7A0FF18D7B&Options=&Search=>

Staff recognize the above timeline is ambitious and will work with Homebase to identify preliminary strategies prior to the FY 2022 budget process to identify potential budgetary needs and priorities.

*Prepared by:* Jessica Lobedan, Management Analyst II

*Recommended by:* Jennifer Ott, Deputy City Manager

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 TO AUTHORIZE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES AGREEMENT WITH HOMEBASE TO PROVIDE HOMELESSNESS REDUCTION STRATEGIC PLANNING SERVICES AND CREATE A FIVE-YEAR HOMELESSNESS REDUCTION STRATEGIC PLAN

WHEREAS, the City of Hayward City Council has identified the creation of a Homelessness Reduction Strategic Plan, modeled on an empowerment approach and best practices, as well as after Alameda County's EveryOne Home Plan, as one of the City's Strategic Priorities; and

WHEREAS, the City of Hayward City Council has endorsed the EveryOne Home Plan through Resolution 20-024, "Resolution Endorsing the Everyone Home Plan to End Homelessness: 2018 Strategic Update"; and

WHEREAS, the City of Hayward has issued a competitive Request for Proposals (RFP) for consultants with experience in homelessness strategic planning; and

WHEREAS, through this RFP process ten firms submitted proposals and Homebase has been identified as the most highly qualified firm to prepare the City of Hayward Homelessness Reduction Strategic Plan; and

WHEREAS, the City of Hayward has researched the capabilities of Homebase to provide homelessness reduction strategic planning professional services and create a five-year homelessness reduction strategic plan; and

WHEREAS, executing an agreement with Homebase is necessary to create a five-year homelessness reduction strategic plan; and

WHEREAS, the entire project will not exceed \$101,953, of which \$99,953 will be funded through Community Development Block Grant funds and of which \$2,000 will be funded through General Funds.

THEREFORE, BE IT RESOLVED, that the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement for services with Homebase in an amount not-to-exceed \$101,953.

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

## Proposed Scope of Work

### Approach, Strategy and Execution Plan

#### ***Homebase Offers a Proven Approach Tailored to Local Context and Needs***

Homebase will work with the City of Hayward to develop a five-year strategic plan to make homelessness in the City of Hayward rare, brief, and non-recurring. The plan will be developed through an inclusive, community-based planning process with a racial equity lens that both aligns with the EveryOne Home Strategic Plan for Alameda County and addresses the unique challenges faced by the City, within the context of the larger Bay Area. The plan will also be rooted within the current context of the COVID-19 global pandemic and the rapidly changing needs of the homeless community – taking into consideration the short- and long-term fiscal and economic implications for unemployment, housing instability, and homelessness. The plan will identify specific policies, initiatives, and tasks that will support the implementation of the goals and priorities of the plan and result in a coordinated housing and service system that will effectively address homelessness through use of best practices and innovative solutions.

Homebase's approach to strategic planning recognizes that the planning process is an opportunity to engage and empower the full community and is vital to the successful implementation of the plan. As such, we structure a transparent and open process that engages a full array of stakeholders, providing multiple opportunities to provide input through a variety of methods (interviews, surveys, focus groups, planning meetings) while being respectful of time constraints and other obligations, and involves stakeholders in consensus-based decision making whenever possible. We also ensure that planning is based on a full understanding of local data and needs, aligns with state and federal policy and funding requirements, and incorporates best practices from around the nation. To this end, our agendas and planning tools are developed to provide participants with information that allows them to focus and target their input to be most useful and encourages innovation by tailoring approaches to respond to the local context. We have a strong focus on developing an actionable plan, and each action step includes the detail necessary to support implementation. Through the planning process, we seek to engage mainstream partners and build community support essential to the successful implementation of the plan and concrete impact in reducing homelessness.

Homebase will develop a unique planning process for the City of Hayward informed by a range of best practices which we have honed during recent homelessness strategic planning processes in communities that are similar in nature, size and scope such as Stockton/San Joaquin County, Tulare/Kings County, and Santa Clara County in California, Tulsa, Oklahoma, and San Antonio, Texas. We have learned from these processes that key elements of successful strategic planning processes, regardless of the community, include:

- Early recruitment and engagement of a **strategic planning steering committee** that includes key cross-sector stakeholders and is responsible for overseeing the process and ensuring implementation of the plan.
- Identification of **topical subcommittees** to facilitate investigation of high priority issues and strategies and work with the steering committee to develop key elements of the plan - clarifying key issues and gaps and developing targeted recommendations for addressing them, including budgets and implementation plans.
- A **public community-wide planning kick-off event**, inviting government officials and staff, housing and service providers, representatives from schools, criminal justice, health care, and other affected systems, business and community leaders, members of the general public, and individuals with lived experience of homelessness to build support for the process and gather initial information to guide planning.
- **Assessing community resources and needs**, informed by key informant interviews, consumer and provider focus groups, surveys, an online forum to gather and share information, review of key documents (including related state and local plans), and analysis of HMIS and other data.
- **Engaging cross-system partners** in the planning and implementation processes, including physical and behavioral healthcare, education, local police departments, court and probation systems, and elected officials.
- Identification of key points of contact in the community who can facilitate connections with unsheltered, sheltered and housed **individuals with lived experience of homelessness** and experts who confront homelessness on the front lines daily through various systems of care.

Elements of the planning process for the City of Hayward which will be unique include how it is situated within Alameda County, which involves regional factors that impact homelessness and housing. Homebase is familiar with the Alameda County EveryOne Home Strategic Plan and will be able to ensure that the Hayward Homelessness Reduction Strategic Plan is in alignment with the county plan. Furthermore, the unique strengths and challenges that the City faces in addressing homelessness, including resources, location, direct service providers, and demographics, will inform the development of the strategic plan, resulting in a tailored roadmap that is based on local needs and strategies that work to reduce homelessness within a regional context.

### Detailed Work Plan

Homebase will pursue a community-led, data-driven process, combining research on national best practices and emerging models with information and feedback on the current system to identify community strengths and weaknesses. After identifying specific community needs, Homebase will provide locally-tailored recommendations and options for the City of Hayward to pursue in addressing homelessness.

One of Homebase's senior staff members, Amanda Wehrman, JD, will act as the Principal-in-Charge for this project, heading up a five-member team with significant experience in consensus-based strategic planning. Ms. Wehrman is a Deputy Director



at Homebase with over 8 years of experience supporting numerous communities with strategic planning and implementation. She will be the primary point-of-contact with the City, ensure that the work plan is carried out and all deadlines achieved, and provide day-to-day management and oversight for the project team. The team will include Lauren Larin, Ph.D., a Policy Analyst with over 12 years of experience related to homelessness and housing; Miguel Becerra, MSW, MA, a Policy Analyst with deep quantitative skills, who is fluent in Spanish; Melissa Hong, JD, a Staff Attorney with strong research and writing skills; and Erika Siao, a Research Associate with analytical skills and advanced proficiency in Spanish. Ms. Wehrman, with support from Homebase's Executive Leadership, will ensure quality control and accuracy of all deliverables.

Homebase will adhere to an empowering process that is equitable, inclusive, and authentically allows for stakeholders to take part in and influence decisions. While we will be responsive to community input and guidance about what would work best, based on the information provided in the RFP we propose the following four-phase planning process to best accomplish the City of Hayward's strategic planning goals.

#### PHASE I: Assessment of Existing System and Services July – Sept. 2020

Phase I will focus on gathering information and data to develop a baseline understanding of the City of Hayward's strengths, needs, and gaps in relation to homelessness. As part of this phase, Homebase will carry out a **needs assessment and gaps analysis** that identifies existing housing and services, unmet needs, and priority gaps to be addressed. This assessment will be conducted based on review of key documents; analysis of HMIS and other data on numbers, needs and performance; targeted discussions with key stakeholders to contextualize the data and information gathered; client focus groups; and/or provider e-surveys. The gaps analysis will look at the homelessness system of care overall and at sub-population and sub-regional needs and differential access, and it will consider both the need for new programs as well as improvements to the operation of existing housing and services. Homebase will also review and analyze the Alameda County EveryOne Home Strategic Plan, the Hayward Strategic Roadmap, and other initiatives underway in the city, county, and region to ensure that the plan is informed by and aligned with the work that has already begun.

Through our extensive experience with other communities, Homebase has found the early recruitment and engagement of a **Strategic Planning Steering Committee** has been key to the overall success of the process. This Steering Committee would oversee and advance the strategic planning process and include representatives of the City of Hayward Community Service Commission, City Council, Housing and Homelessness Task Force, members of the community with lived experience of homelessness, and/or any other stakeholders identified by the City. If Hayward chooses to convene a Steering Committee, Homebase would attend and facilitate monthly meetings and develop agendas, announcements, and meeting materials. Homebase would also host the meetings via a virtual platform in light of any ongoing public health concerns due to the COVID-19 pandemic. During this phase, the Steering Committee would be a forum for initial discussion of persistent challenges and emerging opportunities for critical

investment. The Steering Committee would also review and approve Homebase's Planning Process and Stakeholder Engagement Plan to establish a guiding vision and goals for the planning process and subsequent Plan implementation.

## PHASE II: Stakeholder Engagement/Input

Sept. – Nov. 2020

Homebase has found that engaging people in the planning process and getting their support is paramount for a successful strategic plan and implementation. As such, Homebase will facilitate a **comprehensive community engagement process** that ensures that planning and recommendation development is based on concrete information about local needs and resources. Building upon the needs assessment and gaps analysis begun during Phase I, we will conduct a deeper environmental review/assessment grounded in community engagement via a **community kick-off event, virtual stakeholder interviews, community work sessions, and meetings with City staff**. While we will employ these key methods, we have found that community outreach and engagement is often an iterative process where new ideas, additional gaps, and questions arise throughout the planning process. We therefore develop our processes to leave room to weave in additional outreach and engagement as needed to fully assess community needs and resources for addressing homelessness.

Homebase will facilitate the kick-off event and work sessions in both English and Spanish, and hold interviews in either language, according to the preference of interviewees. Homebase will work with the City of Hayward to design and facilitate virtual convenings in light of ongoing public health concerns due to the COVID-19 pandemic. Homebase has deep experience conducting online meetings with diverse stakeholders that leverage technology, use adult learning principles, and are inclusive of people with varying degrees of access, comfort, and facility with technology. We will work with the City to develop agendas, discussion questions, infographics, and other materials necessary for the following engagement activities:

**Community Kick-Off Event:** Homebase proposes that community engagement begins with a planning process Community Kick-Off Event that takes the place of one of the community work sessions proposed in the RFP. This event would be an open virtual meeting aimed at achieving early engagement and buy-in from key stakeholders. The event will be organized with the goal of inviting everyone with any interest in the plan, including City officials and staff, housing and service providers, representatives from schools, law enforcement, healthcare and other affected systems, business and community leaders, individuals with lived experience of homelessness, and members of the general public. This event will be structured to both build community-wide support for the planning process and gather initial information to guide planning. As such, meeting participants will receive information about homelessness in the City of Hayward and general information on best practices and will have the opportunity to provide initial feedback to the process about needs, gaps, and existing service system performance. Homebase will facilitate the event, arrange for Spanish translation, and will also develop appropriate presentation materials in both English and Spanish.

**Key Stakeholder Interviews:** From our extensive experience in various communities and processes throughout the country, Homebase has found that identifying the right stakeholders to provide in-depth information via individual interviews is an important element of the strategic planning process. We will work with the City and/or Strategic Planning Steering Committee to identify key stakeholders for initial interviews. We have also found that important stakeholders who may best inform the process via interviews are often identified during the process of community meetings and outreach. As such, we propose beginning with 5-10 key individuals representing a cross-section of the system. Those individuals may in turn identify others to reach out to for input either via interviews or engaging them further in the planning process, with the goal of interviewing a total of 10-15 key stakeholders.

**Work Sessions and Meetings:** We will become further informed of the community resources and needs and guide the development of the Plan through facilitating a second open community engagement work session; an internal inter-departmental City staff meeting; and a joint work session of the Community Services Commission and City Council Housing and Homelessness Task Force that is inclusive of community engagement session participants. These meetings will seek to engage the knowledge and experiences of a cross-section of those most involved with addressing homelessness in Hayward, including City staff, City Council members, housing and homeless service providers, those with lived experience, public and behavioral health providers, business groups, civil rights organizations, court officials, public safety providers, education providers, economic and workforce development providers, and neighborhood associations.

In addition to the community-wide kickoff event, individual interviews, and work sessions/meetings, we propose conducting a **provider e-survey and 2-4 consumer focus groups**, if budget and circumstances allow. We have found that focus groups that engage those with direct experiences of homelessness, organized by geography, sub-population, or program component, are a key source of information to guide the strategic plan. The structure of these focus groups, who will be invited to participate, and outreach and engagement methods will be determined in consultation with the Steering Committee and/or City staff and will take into consideration logistical constraints due to COVID-19 as necessary. We have also found that e-surveys allow for an additional avenue to gain input from a full array stakeholders while being respectful of time constraints and other obligations.

### PHASE III: Synthesis and Draft Plan Development. Dec. 2020 – Jan. 2021

Phase III will focus on culling the information gathered during the assessment and stakeholder engagement processes in Phases I and II to identify overall strengths, unmet needs, priority gaps, and opportunities present in Hayward to address homelessness. Homebase will work with the Steering Committee and/or City staff to flesh out and refine the mission, goals, objectives, and strategies/action steps, in alignment with the EveryOne Home Strategic Plan and Hayward Strategic Roadmap, to guide the City in addressing homelessness over the next five years.

**Topical Subcommittee Planning Process:** Based on previous experience, we propose that the process of developing the Strategic Plan is done through establishing 3-4 Topical Subcommittees of the Strategic Planning Steering Committee to facilitate investigation of the highest priority issues and strategies identified during the assessment and stakeholder engagement processes. Subcommittees will be designated by the Steering Committee, and participation will be open to all those interested in that topic. Homebase will develop user-friendly meeting materials to help frame issues and guide Subcommittees in setting priorities and developing recommendations. Subcommittees will be responsible for developing key elements of the Plan, including clarifying key issues and gaps and developing targeted recommendations for addressing them. The Steering Committee will continue to meet on a monthly basis during this phase and will consider the recommendations as they are developed by the Subcommittees, as well as draft iterations of the Strategic Plan as it is developed.

**Best Practices and Data Analysis:** Homebase will carry out relevant data analysis and research on evidence-based and best practices in similar communities and high performing continuums of care. This will be informed by our extensive experience developing, implementing and evaluating coordinated entry systems; planning and supporting homeless response and affordable housing systems; providing technical assistance to actualize Housing First programs; and building Continuum of Care capacity through funding, staffing, strong governance structures, community coordination and optimized Homeless Management Information Systems. Homebase will also analyze data related to racial and ethnic disparities and homelessness in Hayward. This information will support the work of the subcommittees in identifying key elements and recommendations for the strategic plan and ensure that they are not further contributing to inequalities by having a disparate impact on people based on their race or ethnicity.

**Plan Drafting and Feedback:** Based on plan draft iterations and Subcommittee Plan elements and recommendations, all of which will have been reviewed by the Steering Committee and/or City staff, Homebase will develop a draft of the Strategic Plan. This will include:

- The overall vision statement and mission of the Plan;
- Information from the community resources and needs assessment phases, identifying strengths, unmet needs, priority gaps, and opportunities;
- Priority areas for action, as defined by the Steering Committee and Subcommittees, with information clarifying the issues and needs;
- Goals, objectives, and recommendations for each priority area of action;
- Plan cost analysis; and
- Concrete implementation plan, identifying responsible parties, timelines, funding sources, and establishing metrics to be used, with data sources, for evaluating success in Plan implementation.



The draft will be presented to the Steering Committee for initial feedback and then to the Community Services Commission, Homelessness and Housing Task Force, Hayward City Council and other community bodies, with established deadlines for feedback.

**Cost-Analysis Development:** As the Subcommittee recommendations are solidified, Homebase will begin work on a cost analysis. The cost analysis will provide estimates of the overall cost for Plan implementation, based on existing homeless housing and service expenditures plus the estimated costs of additional actions called for in the recommendations. It will include data on how Plan recommendations will help to reduce costs in other public systems, including healthcare, behavioral health, criminal justice, and general assistance, and it will make suggestions on how to strategically allocate existing resources to maximize impact, leverage mainstream resources, and identify potential new sources of funding.

**Begin Preliminary Implementation:** Although the Plan is not yet finished and approved, Homebase has found that there are often recommendations identified which have broad consensus and which can begin to be implemented immediately. This initial implementation action offers a chance to practice new partnerships, collaboration, and communication, all of which will be essential to full Plan implementation, and it helps to reinforce planning process momentum and purpose. Towards the end of Stage III, we will work with City staff, the Steering Committee, and Subcommittees to identify actions whose implementation can begin immediately. These may be framed as “The First 100 Days” and other very short-term targets to practice aiming at collective targets and achieving success that fuels action for longer-term gains.

#### PHASE IV: Finalization and Approval of Strategic Plan. Jan. – Feb. 2021

Homebase will incorporate the feedback received during Phase III into a final version of the Hayward Homelessness Reduction Strategic Plan. The Plan will identify City actions that support the EveryOne Home Strategic Plan for Alameda County goals and strategic priorities, are not duplicative, and leverage additional resources for collective impact on homelessness. Recognizing the Hayward City Council’s commitment to addressing homelessness (as evidenced by its continuing designation of homeless services as a priority and inclusion of housing and reducing homelessness as key priorities within the Hayward Strategic Roadmap), its recognition of the need for affordable housing, and its desire to ensure that funds are used effectively, Homebase will propose ideas for the City to consider to maximize the impact of its housing and service dollars and to ensure appropriate coordination with the County.

The final Strategic Plan will be presented for approval by the Hayward City Council, as well as by any other appropriate bodies. The final document will be user-friendly, easy to read, and accessible for a lay audience, making use of graphics to illustrate key concepts. It will be focused on key goals and outcomes, and it will be useable in both print and electronic formats.

#### Timeline, Milestones, and Deliverables

The following timeline assumes that the work will be carried out over the course of eight months, from July 2020 – February 2021, in accordance with the plan presented in the RFP.

**PHASE I: Assessment of Existing System and Services      July – Sept. 2020**

**Activities:**

**Months 1-2 (July – August 2020)**

- Initial meeting with primary City of Hayward staff contacts to finalize contract and work plan and identify potential data and information sources.
- Needs assessment and gaps analysis begins. Will include document and data review, development of stakeholder engagement plan, and initial identification of stakeholders to be invited to Kick-Off Event and/or be contacted for interviews. City to provide background documents, data, and list of stakeholders to contact/interview.
- Strategic Planning Steering Committee convened for initial meeting/retreat. Agenda will cover the following, resulting in a workplan outlining planning process activities:
  - Approval of strategic planning process, stakeholder engagement plan, and timeline.
  - Development of a draft shared, clear, compelling, and timely strategic vision.
  - Plan logistics for Community Kick-Off Event.

**Months 2-3 (August – September 2020):**

- Analysis of capacity, available resources, and demographic trends, including racial disparities of City of Hayward homeless population
- Finalize needs assessment and gaps analysis.
- Steering Committee to review needs assessment findings, discuss persistent challenges and emerging opportunities for critical investment, and identify goals and strategic priorities for addressing homelessness.
- Finalize plans for Community Kick-Off Event.

**Milestones and Deliverables**

- ✓ Workplan outlining planning process activities.
- ✓ Needs Assessment and Gaps Analysis write-up.
- ✓ Strategic Planning Steering Committee Meeting/Retreat, including related agenda, materials, and tools.
- ✓ Strategic Planning Steering Committee Monthly Meetings, including agenda and materials.

- ✓ Consensus-based vision, Plan goals and strategic priorities developed.

## PHASE II: Stakeholder Engagement/Input

Sept. – Nov. 2020

### Activities:

Months 3-5 (September - November 2020):

- Community Kick-Off Event to engage a broad cross-section of community stakeholders for input about persistent challenges and emerging opportunities for addressing homelessness in their communities, with a focus on identification and engagement of disproportionately impacted racial groups.
- Gather initial information from Kick-Off Event to guide planning goals and strategic priorities. Meeting logistics arranged in coordination with Strategic Planning Steering Committee; agenda and materials developed by Homebase.
- Monthly Steering Committee meetings to:
  - review input from Community Kick-Off Event,
  - identify key stakeholders for initial interviews (5-10 people),
  - plan the second open community engagement work session (to follow-up on the Kick-Off Event),
  - plan internal inter-departmental City staff meeting and joint work session,
  - plan consumer focus groups (if budget and circumstances allow)
  - identify topical subcommittees to be convened in Phase III.
- Facilitate 10-15 key stakeholder interviews, community engagement work session, internal inter-departmental City staff meeting, joint work session of the Community Services Commission and City Council Housing and Homelessness Task Force (including community engagement participants), consumer focus groups, and provider e-survey.

### Milestones and Deliverables

- ✓ Communication and Engagement Plan, including:
  - Completion of stakeholder interviews, meetings, work sessions, focus groups and e-survey.
- ✓ Reports and Presentations at community engagement sessions, including:
  - Community Kick-Off Event, including related agenda, materials, and tools.
  - Strategic Planning Steering Committee Monthly Meetings, including agenda and materials.

## PHASE III: Synthesis and Draft Plan Development.

Dec. 2020 – Jan. 2021

### Activities:

Months 6-7 (December 2020 - January 2021)

- Monthly Strategic Planning Steering Committee meetings to review input from community engagement activities, review topical subcommittee recommendations, and finalize action steps.
- Topical Subcommittees meet 2-3 times to develop recommendations for Strategic Planning Steering Committee.
- Additional community outreach and information-gathering, as needed.
- Best practices and data analysis.
- Drafting of Strategic Plan and feedback.
- Preparation of Draft Strategic Plan based on the assessment, community engagement sessions, City staff meeting, and joint work session.
- Presentation of Draft Plan to Community Services Commission, Homelessness and Housing Task Force, Hayward City Council, and other community bodies.
- Review, synthesis, and incorporation of community input on Draft Plan.
- Cost analysis development, including identification of infrastructure and funding sources needed to support implementation.
- Identification of initial implementation actions that can begin immediately.

**Milestones and Deliverables**

- ✓ Draft Hayward Homelessness Reduction Strategic Plan completed, including cost analysis and implementation framework.
- ✓ Presentations and reports, including:
  - Strategic Planning Steering Committee Monthly Meetings, including agenda and materials.
  - Topical Subcommittee Meetings, including agenda and materials.
- ✓ Initial implementation actions

**PHASE IV: Finalization and Approval of Strategic Plan. Jan. – Feb. 2021**

**Activities:**

Months 7-8 (January - February 2021)

- Update and finalize the Draft Plan based on internal and external stakeholder input.
- Production of Final Strategic Plan with graphic design elements. Final plan will include a proposed phasing plan with implementation timelines for strategies, clear metrics of success, and data collection plans.
- Presentation of Final City of Hayward Homelessness Reduction Strategic Plan to Community Services Commission, Homelessness and Housing Task Force, Hayward City Council, and other community bodies.

**Milestones and Deliverables**



- ✓ Strategic Planning Steering Committee Monthly Meetings, including agenda and materials.
- ✓ Final Hayward Homelessness Reduction Strategic Plan completed, including cost analysis and implementation framework.
- ✓ Presentation of Final Strategic Plan to Hayward City Council and community.

DRAFT



# CITY OF HAYWARD

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

---

**File #:** CONS 20-460

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adopt a Resolution Accepting the Resignation of Ms. Isabel Pimentel from the Community Services Commission, Effective Immediately

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) accepting the resignation of Ms. Isabel Pimentel from the Community Services Commission, effective immediately.

**SUMMARY**

Ms. Isabel Pimentel was appointed to the Community Services Commission on January 28, 2020. Ms. Pimentel's resignation becomes effective August 18, 2020, per her resignation letter (Attachment III).

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Resignation Letter



**DATE:** September 22, 2020  
**TO:** Mayor and City Council  
**FROM:** City Clerk  
**SUBJECT** Adopt a Resolution Accepting the Resignation of Ms. Isabel Pimentel from the Community Services Commission, Effective Immediately

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) accepting the resignation of Ms. Isabel Pimentel from the Community Services Commission, effective immediately.

### **SUMMARY AND DISCUSSION**

Ms. Isabel Pimentel was appointed to the Community Services Commission on January 28, 2020. Ms. Pimentel resignation becomes effective August 18, 2020, per her resignation letter (Attachment III).

### **FISCAL IMPACT**

There is no fiscal impact associated with this action.

### **STRATEGIC ROADMAP**

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

### **NEXT STEPS**

The Council will consider an action item on this same agenda to consider filling Ms. Pimentel's vacancy with one of the listed alternates for the Commission.

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

Approved by:

---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION ACCEPTING THE RESIGNATION OF MS. ISABEL PIMENTEL FROM THE COMMUNITY SERVICES COMMISSION

WHEREAS, Ms. Isabel Pimentel was appointed to the Community Services Commission on January 28, 2020; and

WHEREAS, Ms. Isabel Pimentel submitted a resignation letter on August 18, 2020.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby accepts the resignation of Ms. Isabel Pimentel; and commends her for her civic service to the City.

IN COUNCIL, HAYWARD, CALIFORNIA, September 22, 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

-----Original Message-----

From: isabel morelos < >

Sent: Tuesday, August 18, 2020 4:40 PM

To: Monica Davis <Monica.Davis@hayward-ca.gov>

Subject: Resigning my position

Hello Monica,

I hope this message finds you well. I am contacting you because unfortunately I need to resign my position as a commissioner. Covid 19 has brought unexpected challenges at my church and my responsibilities there are now requiring me to be more present than before. Serving with the commission was although short lived it was very pleasant. I hope there will be another opportunity to serve in some capacity in the future. Please let me know if there is an official document, I must provide to make this resignation official. I thank you for your leadership and kindness.

Most Sincerely,  
Isabel Pimentel

Sent from my iPhone



# CITY OF HAYWARD

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

---

**File #:** CONS 20-463

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adopt a Resolution Appointing Ms. Lenora Taylor to the Community Services Commission to Fulfill the Unexpired Term of Ms. Isabel Pimentel

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) appointing Ms. Lenora Taylor to the Community Services Commission to fulfill the unexpired term of Ms. Isabel Pimentel, which will expire on September 30, 2021.

**SUMMARY**

Following the July 28, 2020 City Commission interviews, the City Council established an alternate list comprising eligible applicants who were not selected to fill vacancies because there were not enough vacant seats to appoint them. The alternate list comprises four Hayward residents who were nominated for specific commissions as follows: Ms. Lenora Taylor (Community Services Commission); Ms. Kelly Peterson (Library Commission); Ms. Carrie Casillas (Personnel Commission); and Mr. Zachariah Oquenda (Planning Commission). The alternate list will be valid for one year and will expire at the beginning of the new recruitment process.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT:** Adopt a Resolution Appointing Ms. Lenora Taylor to the Community Services Commission to Fulfill the Unexpired Term of Ms. Isabel Pimentel

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) appointing Ms. Lenora Taylor to the Community Services Commission to fulfill the unexpired term of Ms. Isabel Pimentel, which will expire on September 30, 2021.

### **SUMMARY AND DISCUSSION**

Following the July 28, 2020 City Commission interviews, the City Council established an alternate list comprising eligible applicants who were not selected to fill vacancies because they were not enough vacant seats to appoint them. The alternate list comprises four Hayward residents who were nominated for specific commissions as follows: Ms. Lenora Taylor (Community Services Commission); Ms. Kelly Peterson (Library Commission); Ms. Carrie Casillas (Personnel Commission); and Mr. Zachariah Oquenda (Planning Commission). The alternate list will be valid for one year and will expire at the beginning of the new recruitment process.

On August 18, 2020, Ms. Isabel Pimentel, now former member of the Community Services Commission, submitted a letter of resignation which created an unexpected vacancy on the Community Services Commission.

The City Council, during its September 15, 2020 Council meeting<sup>1</sup>, confirmed the list of alternates for each commission.

Ms. Lenora Taylor, who is a Community Services Commission alternate, was contacted to confirm her eligibility status and her interest in serving on the Community Services Commission. If appointed to the Community Services Commission, Ms. Lenora Taylor's term would be effective immediately and would end on September 30, 2021.

---

<sup>1</sup> September 15, 2020 City Council Meeting:  
<https://hayward.legistar.com/LegislationDetail.aspx?ID=4640099&GUID=B3155A48-7987-4059-BCA3-3E831569DE83&Options=&Search=>

It is worth noting that Ms. Lenora Taylor is currently a member of the Keep Hayward Clean and Green Task Force, and if selected to serve on the Community Services Commission, there would be a vacancy on the Task Force, which could be filled as part of the annual appointment process for the City's appointed officials to Commissions and the Keep Hayward Clean and Green Task Force.

**FISCAL IMPACT**

There is no fiscal impact associated with this report.

**STRATEGIC ROADMAP**

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

**NEXT STEPS**

Following Council's action, the City Clerk would administer the oath of affirmation to Ms. Taylor prior to her first Community Services Commission meeting.

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

Approved by:



---

Kelly McAdoo, City Manager



HAYWARD CITY COUNCIL

RESOLUTION No. 20-

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

RESOLUTION APPOINTING MS. LENORA TAYLOR TO THE COMMUNITY SERVICES COMMISSION TO FULFILL THE UNEXPIRED TERM OF MS. ISABEL PIMENTEL

WHEREAS, the City Council conducted its annual recruitment for City Commissions and the Keep Hayward Clean and Green Task Force from April 14, 2019 to June 30, 2020; and

WHEREAS, on July 28, 2020, the City Council interviewed applicants to fill vacancies on the Community Services Commission, Library Commission, Personnel Commission, and Planning Commission; and

WHEREAS, following the interviews, the City Council established an alternate list comprising eligible applicants who were not selected to fill vacancies because there were not enough seats to appoint them; and

WHEREAS, Ms. Lenora Taylor was nominated as an alternate for the Community Services Commission; and

WHEREAS, Community Services Commissioner Isabel Pimentel resigned due to unforeseen circumstances, effective August 18, 2020, which created a vacancy on the Community Services Commission.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Ms. Lenora Taylor is selected from the alternate list and appointed to fulfill Ms. Pimentel's unexpired term, which will expire on September 30, 2021.

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



# CITY OF HAYWARD

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

---

**File #:** CONS 20-466

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Director of Finance

**SUBJECT**

Adopt a Resolution Authorizing the Forgiveness of the Promissory Note for the City Manager After the City Received Full Repayment of the City-Issued Home Loan

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the forgiveness of the promissory note the City entered into with the City Manager after the City has received full repayment of the City-issued home loan.

**SUMMARY**

In July 2017, the City entered into a loan agreement with City Manager McAdoo for the purchase of a home in the City of Hayward. In August 2020, City Manager McAdoo has repaid this loan in its entirety. This action will complete the release of liability for City Manager McAdoo with the City for the loan. Staff is requesting that Council approves the attached resolution to accept this payment and forgive the promissory note as completely satisfied.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Director of Finance

**SUBJECT:** Adopt a Resolution Authorizing the Forgiveness of the Promissory Note for the City Manager After the City Received Full Repayment of the City-Issued Home Loan

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the forgiveness of the promissory note the City entered into with the City Manager after the City has received full repayment of the City-issued home loan.

### **SUMMARY**

In July 2017, the City entered into a loan agreement with City Manager McAdoo for the purchase of a home in the City of Hayward. In August 2020, City Manager McAdoo has repaid this loan in its entirety. This action will complete the release of liability for City Manager McAdoo with the City for the loan. Staff is requesting that Council approves the attached resolution to accept this payment and forgive the promissory note as completely satisfied.

### **BACKGROUND AND DISCUSSION**

Council has expressed a desire to have City employees live in the community they serve. To assist in advancing this desire, Council offered a home purchase loan to City Manager McAdoo with the following terms:

- \$650,000 maximum loan
- 105% loan to value, inclusive of all costs
- Interest rate fixed for 5 years at 1% above City's portfolio interest rate (2.38% for first 5 years); interest thereafter, for years six (6) through thirty (30) of the loan, will be set annually and shall accrue at a rate equal to the "Yield at Market" achieved by the City's Managed Portfolio for the quarter ended on June 30 of the previous calendar year, plus 100 basis points or 1%, but shall not exceed 6%.
- If employment terminates for any reason, loan must be repaid within 12 months
- Personal guaranty in case of default and if home value does not cover outstanding balance of loan

- City listed on title as first lien holder of property
- Appraisal: City to select appraiser and Finance Director to approve appraisal
- First payment due 60 days after close of escrow
- An interest rate of 1% above the City's Managed portfolio
- 30-year term
- The residence had to be within Hayward city limits
- No prepayment penalty

On July 5, 2017, the loan of \$616,599 was recorded with the County recorder and a promissory note was secured. Since the time the loan was secured, payments have been made by City Manager McAdoo on time and all terms of the agreement have been met.

On August 11, 2020, the City received \$573,361 paying off the remaining principal and interest accrued between the most recent monthly payment and the date of full repayment, resulting from refinancing via another financial institution.

Staff is requesting that Council approves the attached resolution to accept this payment and forgive the promissory note as completely satisfied.

#### **ECONOMIC IMPACT**

There is no economic impact associated with this action.

#### **FISCAL IMPACT**

All funds due on the loan have been returned to the City; to date principal and interest payments received by the City total \$616,599 and \$59,028 respectively.

#### **STRATEGIC ROADMAP**

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

*Prepared and Recommended by:* Dustin Claussen, Director of Finance

Approved by:



---

Maria A. Hurtado, Assistant City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION RECOGNIZING THE REPAYMENT OF THE HOME LOAN ISSUED TO CITY MANAGER MCADOO AND FORGIVING THE PROMISSORY NOTE USED TO SECURE THE LOAN

WHEREAS, the City issued a loan to Ms. Kelly McAdoo on July 5, 2017 in the amount of \$616,599 for the purchase of a home within City Limits; and

WHEREAS, as of August 11, 2020 Ms. Kelly McAdoo was current on all principal and interest payments for the above-mentioned loan; and

WHEREAS, on August 11, 2020 Ms. Kelly McAdoo wired funds to the City's account paying the entire outstanding principal and interest amount totaling \$573,361.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that Ms. Kelly McAdoo has satisfied all conditions for repayment of the loan for forgiveness of the promissory note used to secure the loan and release from all related liability to the City.

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



# CITY OF HAYWARD

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

---

**File #:** CONS 20-476

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT**

Motion to Renew Debate on Proposed Development of a Fuel Facility with Related Site Improvements at the Costco Business Center Located at 22330 Hathaway Avenue, Application No. 201706217 (Assessor Parcel No. 429-0082-003-00)

That the City Council votes to renew debate on the proposed Costco Fuel Facility to allow consideration of the project by the full Council. A vote to renew does not constitute a vote in favor of the project. Rather, an affirmative vote merely expresses a willingness to continue debate on the matter at a future noticed hearing.

**SUMMARY**

The proposed Costco Business Center Fuel Facility was considered by City Council on July 21, 2020. Although several motions were made, Council could not achieve four affirmative votes one way or the other, and the matter failed. On September 15, 2020, an oral request was made to put a Motion to Renew on the next agenda.

**ATTACHMENTS**

Attachment I Staff Report



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Motion to Renew Debate on Proposed Development of a Fuel Facility with Related Site Improvements at the Costco Business Center Located at 22330 Hathaway Avenue, Application No. 201706217 (Assessor Parcel No. 429-0082-003-00)

### **RECOMMENDATION**

That the City Council votes to renew debate on the proposed Costco Fuel Facility to allow consideration of the project by the full Council. A vote to renew does not constitute a vote in favor of the project. Rather, an affirmative vote merely expresses a willingness to continue debate on the matter at a future noticed hearing.

### **SUMMARY**

The proposed Costco Business Center Fuel Facility was considered by City Council on July 21, 2020. Although several motions were made, Council could not achieve four affirmative votes one way or the other, and the matter failed. On September 15, 2020, an oral request was made to put a Motion to Renew on the next agenda.

### **BACKGROUND**

On July 21, 2020, the City Council considered Costco's proposal, Major Modification to an Existing Planned Development (Application No. 201702617), to add a Fuel Facility to their business center located on Hathaway Avenue in the City of Hayward.<sup>1</sup> Six Council Members were present. Following a full and fair public hearing, several motions were made. None of the motions garnered four affirmative votes. Because four votes were not reached as to any motion, they all failed.

---

<sup>1</sup> Based on comments made during the July 21<sup>st</sup> meeting, the Sustainability Committee scheduled a meeting in November to discuss a possible moratorium on gas stations.



On September 15, 2020, an oral motion was made to add a Motion to Renew to the next agenda. Accordingly, this item was added to tonight's agenda.

## **DISCUSSION**

A Motion to Renew is a procedural device that allows continued debate on a previously heard item. A vote to renew does not constitute a vote in favor of the project. Rather, an affirmative vote merely expresses a willingness to continue debate on the matter. If there are four votes in favor of renewing debate on the project, the item will be brought back to Council on a later agenda for continued debate. Council can approve, with or without additional conditions, or deny the project at that time. A motion to renew differs from a motion to reconsider, as a motion to reconsider typically occurs at the same or next meeting. A motion to reconsider also requires that the motion be made by the prevailing side. Here there was no prevailing side. A motion to renew can be made by any member at a subsequent meeting.

## **ECONOMIC AND FISCAL IMPACT**

There is no economic or fiscal impact from this procedural matter.

## **STRATEGIC ROADMAP**

This is not applicable as this is a procedural matter.

## **SUSTAINABILITY FEATURES**

This is not applicable as this is a procedural matter.

## **PUBLIC CONTACT**

This is a procedural matter which does not require additional public contact beyond inclusion on the published agenda. If Council votes to renew the motion, the matter will be put on a future City Council Agenda and notice will be sent consistent with prior noticing of this matter.

## **NEXT STEPS**

Following City Council approval, Costco's request will return to the City Council for further consideration.

*Prepared by:* Joseph Brick, Assistant City Attorney

*Recommended by:* Michael Lawson, City Attorney

Approved by:



---

Kelly McAdoo, City Manager



# CITY OF HAYWARD

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

---

**File #:** LB 20-043

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT**

Temporary Limit on Third-Party Food Delivery Fees: Adoption of Emergency Ordinance Establishing a Temporary Limit of 15 Percent Limit on Fees of Food Delivery Service Providers to Support Restaurants in Hayward During the COVID-19 Pandemic

**RECOMMENDATION**

That Council adopts an emergency ordinance that establishes a temporary 15 percent limit on fees charged by third-party food delivery service providers to Hayward restaurants during the COVID-19 pandemic.

**SUMMARY**

As a result of the State of Emergency declarations and the Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, Hayward businesses have experienced severe disruptions to normal operations and revenue streams. The Order's restrictions have particularly impacted the restaurant industry, which relies heavily on indoor dining services for income. During this time, online ordering and delivery of food has become a critical lifeline for restaurants.

Restaurants are relying on third-party app-based service companies to facilitate mobile ordering for pick-up or delivery to the consumer. These third-party delivery service providers include companies such as DoorDash, Grubhub, Postmates, and Uber Eats. Several Hayward restaurants have indicated that between 30 and 40 percent of their total sales are now derived from orders placed through these platforms. Staff estimates approximately half of Hayward restaurants and food establishments subscribe to one or more third-party delivery platforms.

While these companies are providing a critical service for Hayward restaurants that do not have existing delivery service and/or online ordering capacity, the fees charged are impacting the sector's ability to survive during the pandemic. According to the San Francisco Chronicle, third-party delivery service providers charge commission fees that ranges from 10 to 30 percent of the total value of an order. Interviews with restaurant owners and third-party delivery company representatives indicate fees can be as high as 35 percent. These fees eat away at restaurant profitability margins. During the pandemic,

---

**File #:** LB 20-043

---

some Hayward restaurant owners are indicating they are losing money through these platforms. They are not recouping enough net revenue to cover the daily operating expenses and may end up closing permanently.

To ease the economic burden on restaurant and food businesses during the pandemic, staff recommends the adoption of an emergency ordinance, which limits the fees charged by third-party delivery service providers to 15 percent per order. The provisions of the proposed ordinance are consistent with those adopted by other communities in the Bay Area region and, in some cases, go further to provide protections to the struggling restaurant sector.

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

## **ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Emergency Ordinance



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT:** Temporary Limit on Third-Party Food Delivery Fees: Adoption of Emergency Ordinance Establishing a Temporary Limit of 15 Percent Limit on Fees of Food Delivery Service Providers to Support Restaurants in Hayward During the COVID-19 Pandemic

#### **RECOMMENDATION**

That Council adopts an emergency ordinance that establishes a temporary 15 percent limit on fees charged by third-party food delivery service providers to Hayward restaurants during the COVID-19 pandemic.

#### **SUMMARY**

As a result of the State of Emergency declarations and the Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, Hayward businesses have experienced severe disruptions to normal operations and revenue streams. The Order's restrictions have particularly impacted the restaurant industry, which relies heavily on indoor dining services for income. During this time, online ordering and delivery of food has become a critical lifeline for restaurants.

Restaurants are relying on third-party app-based service companies to facilitate mobile ordering for pick-up or delivery to the consumer. These third-party delivery service providers include companies such as DoorDash, Grubhub, Postmates, and Uber Eats. Several Hayward restaurants have indicated that between 30 and 40 percent of their total sales are now derived from orders placed through these platforms. Staff estimates approximately half of Hayward restaurants and food establishments subscribe to one or more third-party delivery platforms.

While these companies are providing a critical service for Hayward restaurants that do not have existing delivery service and/or online ordering capacity, the fees charged are impacting the sector's ability to survive during the pandemic. According to the San Francisco Chronicle, third-party delivery service providers charge commission fees that ranges from 10 to 30

percent of the total value of an order.<sup>1</sup> Interviews with restaurant owners and third-party delivery company representatives indicate fees can be as high as 35 percent. These fees eat away at restaurant profitability margins. During the pandemic, some Hayward restaurant owners are indicating they are losing money through these platforms. They are not recouping enough net revenue to cover the daily operating expenses and may end up closing permanently.

To ease the economic burden on restaurant and food businesses during the pandemic, staff recommends the adoption of an emergency ordinance, which limits the fees charged by third-party delivery service providers to 15 percent per order. The provisions of the proposed ordinance are consistent with those adopted by other communities in the Bay Area region and, in some cases, go further to provide protections to the struggling restaurant sector.

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

## **BACKGROUND**

On March 1, 2020, the Alameda County Public Health Department and Solano County Public Health Department reported two presumptive cases of COVID-19, pending confirmatory testing by the Centers for Disease Control (CDC), prompting Alameda County to declare a local health emergency. On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19.

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

On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.

On March 16, 2020, the Health Officer of Alameda County issued an Order directing all individuals to shelter in their homes to slow the progression of the COVID19 pandemic (hereinafter, "Shelter-In-Place order"). The order allowed restaurants to operate only for delivery and takeout options. The Health Officer of the County of Alameda has issued revised Shelter-In-Place Orders on March 31, 2020, May 18, 2020, June 5, 2020, June 18, 2020, July 15, 2020, and August 20, 2020, extending restrictions on activities and requiring individuals to shelter at home. On July 15, 2020, Alameda County's attestation to become a variance county was approved by the State, which allowed for outdoor dining to resume. This order is still in effect today.

---

<sup>1</sup> Phillips, J. "San Francisco mayor caps Uber, Postmates, DoorDash delivery commissions" Dated April 10, 2020 at <https://www.sfchronicle.com/business/article/San-Francisco-mayor-caps-Uber-Postmates-15192738.php> Last accessed August 31, 2020.

### *Shelter-in-Place Order Impacts on Hayward Restaurants*

Based on an analysis of the City's business license database, there are approximately 340 restaurants and related food establishments in Hayward. This figure includes chain and independently-owned restaurants, fast food restaurants, cafes, and other prepared-food establishments such as bakeries and ice cream parlors. These businesses have been negatively impacted by the Shelter-in-Place Order. Dine-in services have been prohibited since mid-March with restaurants restricted to takeout or delivery service. These restrictions have severely reduced revenue, especially for those restaurants that did not have a strong delivery service model prior to the pandemic.

As a result, Hayward restaurants have turned to third-party delivery services to implement delivery services as a lifeline. These include companies such as DoorDash, Grubhub, Postmates, and Uber Eats. These third-party companies have grown in popularity because they offer consumers a single consistent platform to find restaurants, transact orders, and receive contactless delivery. Based on recent outreach to restaurants, staff estimates approximately 170 or half of the restaurants in Hayward subscribe to one or more of the third-party delivery service providers. Several of these businesses have indicated that between 30 and 40 percent of their total sales are attributed to online orders through these platforms.

While outdoor dining is currently permitted by the County, only approximately 27 Hayward restaurants offer outdoor seating. Over the last few months, Hayward restaurant owners have indicated to staff a reluctance to expand outdoors due to several factors. These include: 1) cost of rehiring staff, 2) availability of labor, 3) complexity and cost of compliance with State and County safe operating guidelines, 4) limited ability to expand outside due to lack of physical space in public right-of-way and/or private parking lots, 5) potential liability from worker or customer COVID-19 infections, and 6) uncertainty regarding their ability to generate sufficient revenue from outdoor operations to offset operating costs.

### *Third-Party Delivery Service Industry Overview*

While many Americans shelter in their homes during the pandemic, meal delivery sales are soaring. According to data published by Second Measure, a technology industry data analytics firm, sales for meal delivery services through the end of July have grown 150 percent year-over-year. This trend has led to the rise of third-party delivery services. Approximately, 95 percent of online sales are processed through four firms: Door Dash, Grubhub, Uber Eats, and Postmates. Transaction data available for the month of July indicates that in the San Francisco Bay Area, the shares of sales between these companies are as follows: Door Dash (65%), Grubhub (14%), Uber Eats (14%) and Postmates (6%).<sup>2</sup>

---

<sup>2</sup> Second Measure, "Which company is winning the restaurant food delivery war?" Dated August 18, 2020 at <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-doordash-postmates/> Last Accessed: August 31, 2020

The dramatic increase in sale transactions has led to growth and consolidation in this business sector. For example, Doordash acquired competitor Caviar in 2019. In May 2020, Uber launched a bid to acquire Grubhub, which would give the company a reported 55 percent of the delivery market share.<sup>3</sup> Additional industry consolidation could limit restaurants' ability to negotiate contract terms with third-party delivery service providers while, at the same time, making them more reliant on their services.

### *Third-Party Delivery Service Provider Fees*

Research shows that many third-party delivery service providers charge restaurants fees up to 30 percent of an order amount. The fees vary and are agreed upon between the restaurant and third-party delivery service provider. The fees can be paid by the restaurant while others are paid directly by the consumer. Fees also vary on a number of different factors including: what service package the business selected with the third-party delivery service; whether the order is placed through an app, through the delivery company website or business' own website; whether pick-up or delivery is selected; the distance of delivery; and whether the restaurant is paying for additional promotional or other services from the third-party delivery service provider.

The fees typically include a service fee, marketing, order processing, delivery, and credit card processing. Credit card processing fees are set by the credit card issuer (bank or financial institution), card network (e.g. Visa, Mastercard, American Express, etc.), and payments processor (a financial institution that securely processes payments). These fees currently range between 3 to 4 percent.

According to industry representatives, these fees are used for:

- Paying driver wages
- Background checks for drivers
- Providing customer support agents for restaurant and consumers
- Paying for insurance, including on-the-job injuries, auto and commercial insurance
- Advertising and marketing the restaurants
- Building and maintaining website and mobile platform

Third-party delivery service companies are supplying an essential service of providing consumers with food options and creating employment opportunities for drivers during the Shelter-in-Place Order.

### *Summary of Other Local Jurisdiction Fee Cap Ordinances*

In an effort to protect and support the struggling restaurant industry, several cities across the country have placed limits on the fees charged by third-party delivery service providers

---

<sup>3</sup> Sorvino, Chloe, "Uber's Grubhub Play: A Desperate Bid To Save A Business Everyone Hates" Dated May 13, 2020 at <https://www.forbes.com/sites/chloesorvino/2020/05/13/ubers-grubhub-play-a-desperate-bid-to-save-a-business-everyone-hates/#6853eb464389> Last Accessed: September 1, 2020

including: San Francisco (15%), Los Angeles (15% for delivery orders, 10% for pick-up), Seattle (15%), and New York City (15% for delivery orders, 5% for all other fees). As shown in Table 1 below, five of the 14 cities in Alameda County have adopted local ordinances to place a temporary cap on these fees of between 15 and 20 percent. Staff at three other cities (Alameda, Dublin, and Newark) have indicated they are considering taking action on this topic.

**Table 1: Summary of Third-Party Food Delivery Service Fee Cap Ordinances in Alameda County\***

City	Fee Cap	Total Effective Cap	Grace Period	Termination Clause	Effective Date
<b>Alameda</b>	No**				
<b>Albany</b>	No				
<b>Berkeley</b>	15% on delivery orders No delivery fee on orders that do not involve delivery No more than 5% in other fees or costs	20%	None specified	Termination of local state of emergency	7/7/2020
<b>Dublin</b>	No**				
<b>Emeryville</b>	No				
<b>Fremont</b>	15%	15%	7 days	Termination of local state of emergency	7/23/2020
<b>Livermore</b>	15%	15%	7 days	When dine in service is permitted by the County	8/12/2020
<b>Newark</b>	No**				
<b>Oakland</b>	15% + credit card processing costs	18%-19%	30 days	90 days after end of local declared emergency	7/28/2020
<b>Piedmont</b>	No				
<b>Pleasanton</b>	No				
<b>San Leandro</b>	15%	15%	None	When dine in service is permitted by the County or termination of the state of emergency	7/13/2020
<b>Union City</b>	No				

\* Based on information available at time of report preparation



\*\* Agency reportedly considering fee cap, but no official action taken at time of report preparation.

## **DISCUSSION**

As a result of the State of Emergency declarations and Alameda Shelter-in-Place Order during the COVID-19 pandemic outbreak, Hayward businesses have experienced severe disruptions to revenue streams. The Order's restrictions have particularly impacted the restaurant and food service industry, which relies heavily on indoor dining for revenue. During this time, online ordering and delivery of food has become a critical lifeline for restaurants and food businesses. Many are relying on third-party food delivery service providers to facilitate ordering and delivery to the consumer.

Over the summer, Councilmembers Wahab, Lamnin, and Zermeno all independently expressed to the City Manager their support for Council consideration of a temporary limit on food service delivery fees based on the actions taken in surrounding communities. The City Manager then polled the remaining Councilmembers to determine if there were a majority of members in support of agendizing this item for Council consideration.

### *Summary of Proposed Ordinance*

Staff recommends the adoption of the proposed emergency ordinance, which limits the fees charged by third-party delivery service providers to 15 percent per order. This ordinance is required for the immediate preservation of public health and economic vitality in the restaurant sector. If restaurants permanently close, essential workers will be displaced, storefronts will be vacant, and residents will lose access to contactless delivery of locally prepared meals. Restaurants require immediate relief under the current local state of emergency, which can be accomplished through adoption of this emergency ordinance.

Key provisions of the proposed ordinance are as follows:

1. Limits the fees charged by third-party delivery service providers to 15 percent per order.
2. Establishes a grace period from the effective date of the ordinance to October 6, 2020, provided that third-party delivery service providers refund the portion of the fee exceeding the 15 percent limit. Refunds must be paid no later than 15 calendar days after the purchase date.
3. Establishes a process for restaurants to, within seven calendar days of the excessive charge, request from third-party delivery service providers a refund for fees charged above the limit. The third-party delivery service providers must repay the fee charged in excess of the limit within seven calendar days of the request.

4. Sets penalties for violations in accordance with section 623 of the Charter of the City of Hayward. The fine amount for any violation of any section of the Municipal Code is set forth in the FY 2021 Master Fee Schedule and is as follows:
  - First Violation - \$100.00
  - Second Violation - \$200.00
  - Third and Subsequent Violations \$500.00
5. Establishes an effective date and expiration date for the fee cap. The ordinance will be effective immediately upon adoption of the emergency ordinance and will terminate 90 days after the Hayward City Council terminates the declared local emergency.

It is important to note that the proposed ordinance goes a step further in providing protections for restaurants than some of our neighboring communities. The proposed 15 percent cap is inclusive of all the types of fees third-party delivery service providers charge a restaurant. As shown in Table 1, the City of Berkeley's ordinance established a 15 percent cap on delivery fees *and* a 5 percent cap on all other fees. This essentially establishes a fee cap of 20 percent. The City of Oakland's ordinance establishes a 15 percent fee cap on delivery fees and allows service providers to pass through actual costs of credit card processing fees, which current range between 3 and 4 percent. This establishes a fee cap ranging between 18 and 19 percent.

Furthermore, the proposed ordinance provides greater recourse to covered establishments in the compliance and enforcement arena. As proposed, the ordinance sets forth the following options for enforcement:

1. Within seven days of the charge in excess of the fee limit, restaurants may request a refund, which the third-party delivery service providers must issue within seven days.
2. Restaurants may take civil action seeking damages and injunctive relief if a third-party delivery service provider refuses to provide a requested refund.
3. The City may issue fines for violations of the Municipal Code in accordance with section 623 of the Charter of the City of Hayward.

This enforcement approach goes beyond other local jurisdictions which only include provisions for restaurants to seek refunds and/or individually take civil action against third-party delivery service providers.

#### *Other Issues to Consider*

During the preparation of this proposed ordinance, staff engaged representatives of Grubhub and Doordash to understand their perspectives and identify other potential economic impacts of the regulation on the Hayward restaurant and resident community. These potential impacts include the following:

1. **A fee cap may reduce the level of marketing services by third-party delivery companies for Hayward restaurants and result in reduced sales.** According to

communications with GrubHub, restaurants in communities with capped commission fees on average received 20 percent fewer orders than restaurants with uncapped commission fees. Representatives noted that fees cover more than just the delivery costs. The fees are used to provide vital marketing and advertising services that drive orders to the small businesses.

2. **A fee cap may reduce driver tips.** Third-party delivery service providers argue that fee caps also impact the income of delivery drivers. Reduced sale volumes translates into reduced work opportunities for drivers. Industry representatives contend that their proprietary data shows that driver tips have been reduced in proportion to lower order volumes.

In New Jersey, for example, delivery service providers have instituted a diner or delivery surcharge paid by consumers that live further away from restaurant locations. Industry representatives contend these fees, which were necessary to recoup costs, have resulted in lower tips to drivers.

Data on the number of Hayward residents who work as food delivery drivers is not publicly available. However, one industry representative indicated there are “hundreds” of Hayward residents working as delivery drivers.

3. **Fee caps may result in discontinued delivery service in the City of Hayward.** In April, following the City of San Francisco’s enactment of a 15 percent cap on delivery service fees, Uber Eats discontinued all service to Treasure Island. Uber Eats argued that the fee cap made the food delivery business too expensive to deliver out to Treasure Island as they could not cover operational costs.<sup>4</sup> After a public outcry, delivery services were restored.

While staff believes a full withdrawal of these companies from the Hayward market is a low risk, it is worth noting that the Hayward restaurant industry does exist in a competitive regional market. Third-party delivery service providers could stop serving Hayward restaurants without major impacts to their revenue streams.

Overall, staff believes these risks to Hayward restaurants and residents are partially mitigated by elements in the proposed ordinance, specially the temporary duration of the fee cap, grace period, and a right to private action model.

## **ECONOMIC IMPACT**

The economic impact of the proposed ordinance cannot be quantified due to a lack of publicly available data on the total amount of fees paid by Hayward restaurants to third-party delivery service providers. However, it is reasonable to expect that the savings resulting from the fee

---

<sup>4</sup> Rodriguez, Joe. “SF vs. Uber Eats: Service stops food delivery to Treasure Island citing fee cap” Dated April 24, 2020 at <https://www.sfxaminer.com/news/sf-vs-uber-eats-service-stops-food-delivery-to-treasure-island-citing-fee-cap/> Last Accessed September 3, 2020

cap will be a significant boost to an already struggling restaurant industry. Many restaurants report relying on third-party delivery service providers for up to 40 percent of their order volume and are paying up to 30 percent of total sales in fees to the third-party delivery service providers.

### **FISCAL IMPACT**

Existing staff resources were used to prepare this report. The potential fiscal impacts to the City pertaining to enforcement is unknown as comparative data on the number of violations or amount of staff resources to enforce this policy are not yet available from cities that have adopted similar fee limits.

### **STRATEGIC ROADMAP**

This agenda item supports the Strategy Priority of Grow the Economy. This item is not specially related to a project identified in the Strategic Roadmap. Staff is bringing this item forward because of the economic impacts of COVID-19 on residents, workers, and businesses. Staff will include this item in the next update to Council on the Strategic Roadmap.

### **PUBLIC CONTACT**

Economic Development staff conducted outreach to the Hayward restaurant community and third-party delivery service companies during preparation of this report. Staff contacted 220 restaurants via email addresses culled from the City's business license database to request comments. A request for comments was also sent to the Chamber of Commerce to distribute to their membership. At time of this report's preparation, staff received three written responses and received four calls from restaurant owners, all of whom supported adoption of the proposed fee limit.

### **NEXT STEPS**

If the proposed emergency ordinance is approved, Economic Development staff will send a notice to all Hayward restaurant owners, Hayward business associations, and major third-party delivery service providers.

*Prepared by:* Paul Nguyen, Economic Development Manager

*Recommended by:* Jennifer Ott, Deputy City Manager

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

ORDINANCE NO. 20-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD ESTABLISHING A TEMPORARY 15 PERCENT LIMIT ON FEES OF FOOD DELIVERY SERVICE PROVIDERS TO SUPPORT RESTAURANTS IN HAYWARD DURING THE COVID-19 PANDEMIC

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

Section 1. Findings and Statement of Urgency.

- A. Pursuant to Article XI, Sections 5 and 7 of the California Constitution, Government Code Sections 36934 and 36937, and section 617 of the Charter of the City of Hayward, the City may make and enforce all regulations and ordinances using its police powers to regulate municipal affairs and may enact emergency ordinances for the immediate preservation of the public peace, health, or safety.
- B. Due to the spread of COVID-19 (coronavirus) within the State, on March 4, 2020 Governor Gavin Newsom declared a public health emergency.
- C. On March 11, 2020, the City Manager, in her capacity as Director of Emergency Services, declared a Local Emergency in the City of Hayward due to the COVID-19 pandemic, which the Hayward City Council affirmed on March 17, 2020.
- D. On March 13, 2020, the President of the United States declared a National Emergency due to the COVID-19 pandemic.
- E. On March 16, 2020, the Health Officer of Alameda County issued an order directing all individuals to shelter in their homes in an effort to slow the progression of the COVID19 pandemic (hereinafter, "Shelter-In-Place order"). The order allowed restaurants to operate only for delivery and takeout options.
- F. The Health Officer of the County of Alameda has issued revised Shelter-In-Place Orders on March 31, 2020, May 18, 2020, June 5, 2020, June 18, 2020, July 15, 2020, and August 20, 2020, extending restrictions on activities, and requiring individuals to shelter at home.
- G. Restricting restaurants to takeout and delivery offerings has placed a sudden and severe financial strain on many restaurants, particularly those that are small businesses that already operate on thin margins, adding to financial pressures in the industry that predate the COVID-19 crisis.
- H. It is in the public interest to take action to maximize restaurant revenue from the takeout and delivery orders that are currently the sole source of revenue for these small businesses in order to enable restaurants to survive this crisis and remain as sources of employment and neighborhood vitality in the City.

- I. Restricting restaurants to takeout and delivery options has resulted in restaurants' increasing reliance on third-party delivery service providers
- J. In Hayward, many consumers use third-party applications and websites to place orders with restaurants for delivery and takeout, and these third-party platforms and food delivery service providers charge restaurants fees up to 30 percent of an order amount.
- K. Restaurants have limited bargaining power to negotiate lower fees with third-party platforms, given the high market saturation of third-party platforms, and the dire financial strains small business restaurants are facing in this COVID-19 emergency.
- L. Limiting the per-order fees at 15 percent will achieve the public purpose of ensuring the continued operation of local restaurants and third-party platforms during the period of emergency; the 15 percent cap is based on the findings and experience of other California cities that have already adopted 15 percent fee ceilings as reasonable emergency regulations in collaboration with food delivery companies. This Ordinance is temporary in nature and only intended to promote stability and safe and healthy operations within the restaurant and food markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures thereby serving the public peace, health and safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus.
- M. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and public welfare, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council.

Section 2. Definitions. For purposes of this Ordinance, the following definitions apply:

- A. "Covered Establishment" means a restaurant that offers, in a single commercial transaction over the internet, such as Online Order, or over the telephone, such as a Telephone Order, whether directly or through a third-party food delivery service, the sale and same-day delivery of food to customers from one or more retail locations within the City.
- B. "Third-party Food Delivery Service" means any website, mobile application or other internet service that offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from a Covered Establishment.
- C. "Online Order" means an order placed by a customer through a platform provided by a Third-party Food Delivery Service for delivery or pickup within the City.

- D. "Telephone Order" means an order placed by a customer to a food service establishment through a telephone call or the use of the third-party food delivery service providers' platform and/or on-line phone system, or via text for delivery or pickup within the City.
- E. "Purchase price" means the menu price of an online order. Such term therefore excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an order.

### Section 3. Temporary Limit on Third Party Food Delivery Service Charges.

- A. Fee Limit. It shall be unlawful for a Third-Party Food Delivery Service to charge a Covered Establishment a fee that totals more than 15 percent of the purchase price of an Online or Telephone Order for the use of its services.

### Section 4. Enforcement

- A. A Third-Party Food Delivery Service shall not be found in violation of this Ordinance if between the Effective Date of this Ordinance and October 6, 2020, it imposes a fee per Online or Telephone Order for the use of its services that totals more than 15 percent of the purchase price of such order, provided it refunds the portion of the fee that exceeds the fee percentage set forth in this Ordinance to Covered Establishment no later than 15 days after the purchase.
- B. If a Third-Party Food Delivery Service charges a Covered Establishment fees that violates this Ordinance, the Covered Establishment shall, within seven calendar days, provide written notice to the Third-Party Food Delivery Service requesting a refund; the refund shall be paid within seven calendar days. If the Third-Party Food Delivery Service does not provide the refund requested after seven days or the Third-Party Food Delivery Service continues to charge fees in violation of this Ordinance after the initial notice, a Covered Establishment may enforce this Ordinance by means of a civil action seeking damages and injunctive relief. The prevailing party in any such action shall be entitled to an award of reasonable attorney fees.
- C. Violations of this Ordinance shall be punishable as set forth in section 623 of the Charter of the City of Hayward.

### Section 5. Guidance and rules

- A. The City Administrator, or her designee, is authorized to implement this Ordinance and issue any necessary guidance or rules consistent with this Chapter and this Code.

### Section 6. Effective Date and Expiration Date

- A. This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council and shall terminate ninety calendar (90) days after such time that the Hayward City Council terminates the declared local emergency, as affirmed by the Council on March 17, 2020.

### Section 7. Severability.

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 7. CEQA.

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



ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of September 2020, upon motion of \_\_\_\_\_ and by the following votes of members of the City Council:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

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

APPROVED AS TO FORM:

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



# CITY OF HAYWARD

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

---

**File #:** LB 20-045

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT**

Extend Commercial Evictions Moratorium: Adopt an Emergency Ordinance Amending Temporary Moratorium on Evictions to Extend the Moratorium for Commercial Evictions until January 31, 2021

**RECOMMENDATION**

That Council adopts an Emergency Ordinance (Attachment II) amending the temporary moratorium on commercial evictions in the City of Hayward for non-payment of rent caused by the Coronavirus (COVID-19) pandemic to extend the moratorium until January 31, 2021.

**SUMMARY**

On March 24, 2020, the City Council adopted a 90-day emergency moratorium on evictions of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure. On June 30, 2020, the City Council extended the moratorium on residential and commercial evictions to September 30, 2020.

On August 31, 2020, the State enacted legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021 and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates. As a result, the City of Hayward cannot extend its moratorium on residential evictions beyond September 30, 2020 or until after February 1, 2021. The State did not enact any protections or place any restrictions on commercial evictions. While the courts are currently not processing any residential or commercial evictions until after the end of the year, staff is still recommending extending the City's existing moratorium on commercial evictions until January 31, 2021 to provide additional protections for the City's local businesses.

The shelter-in-place orders are only partially lifted and high unemployment and business closure rates continue. The current moratorium on commercial evictions will conclude on September 30, 2020 unless extended by City Council. Staff recommends extending the commercial evictions moratorium until January 31, 2021 to allow time for commercial tenants' business situations to stabilize and for tenants to enter into repayment agreements with their landlords.

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

### **ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Emergency Ordinance



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT:** Extend Commercial Evictions Moratorium: Adopt an Emergency Ordinance Amending Temporary Moratorium on Evictions to Extend the Moratorium for Commercial Evictions until January 31, 2021

### **RECOMMENDATION**

That Council adopts an Emergency Ordinance (Attachment II) amending the temporary moratorium on commercial evictions in the City of Hayward for non-payment of rent caused by the Coronavirus (COVID-19) pandemic to extend the moratorium until January 31, 2021.

### **SUMMARY**

On March 24, 2020, the City Council adopted a 90-day emergency moratorium on evictions of residential tenants due to non-payment of rent caused by the COVID-19 pandemic and on no-fault evictions, which was repealed and replaced on April 7, 2020 to expand the moratorium to also prohibit eviction of commercial tenants and homeowners facing eviction after foreclosure. On June 30, 2020, the City Council extended the moratorium on residential and commercial evictions to September 30, 2020.

On August 31, 2020, the State enacted legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021 and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates. As a result, the City of Hayward cannot extend its moratorium on residential evictions beyond September 30, 2020 or until after February 1, 2021. The State did not enact any protections or place any restrictions on commercial evictions. While the courts are currently not processing any residential or commercial evictions until after the end of the year, staff is still recommending extending the City's existing moratorium on commercial evictions until January 31, 2021 to provide additional protections for the City's local businesses.

The shelter-in-place orders are only partially lifted and high unemployment and business closure rates continue. The current moratorium on commercial evictions will conclude on September 30, 2020 unless extended by City Council. Staff recommends extending the

commercial evictions moratorium until January 31, 2021 to allow time for commercial tenants' business situations to stabilize and for tenants to enter into repayment agreements with their landlords.

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

## **BACKGROUND**

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

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19. On March 11, 2020, the City Manager, in her capacity as Director of Emergency Services, proclaimed a local emergency due to the spread of COVID-19, which was affirmed by the City Council on March 17, 2020.

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

On March 16, 2020, Alameda County issued a legal order directing residents to shelter at home for three weeks, which has been amended and reissued multiple times, no longer includes an end date, and outlines a phased reopening plan for the County. The original order limited activity, travel, and business functions to only the most essential needs. The Shelter-in-Place Order has caused and will continue to cause a decrease in income for many Hayward businesses and residents, which will increase the risk of loss of jobs, displacement, and homelessness. While "essential businesses" such as pharmacies and grocery stores are exempt and certain businesses are allowed to serve customers outdoors, the business community is facing severe economic injury. Businesses small and large have reported a complete collapse of their revenue streams, reduced sales, and the need to layoff or reduce their workforce's hours. While sales have dramatically fallen, fixed costs such as rents, health care costs, outstanding loans, and taxes remain on the books.

On March 24, 2020<sup>1</sup>, the City Council adopted an emergency ordinance that 1) established a temporary moratorium on evictions in the City of Hayward for non-payment of rent caused by the COVID-19 pandemic, or for no-fault evictions unless the eviction is necessary for the health and safety of the tenant or landlord (e.g. unit is deemed uninhabitable), and 2) provided residential tenants and landlords mediation services to negotiate payment agreements. At that

meeting, the City Council also directed staff to evaluate further the potential of including prohibitions on commercial and homeowner evictions.

On April 7, 2020<sup>2</sup>, in response to the COVID-19 pandemic and corresponding state and local emergency orders, the Hayward City Council voted to expand the Temporary Moratorium on evictions to prevent displacement of both residential and commercial tenants impacted by the COVID-19 pandemic.

On June 30, 2020, the City Council adopted an Emergency Ordinance amending the temporary moratorium on residential and commercial evictions in the City for non-payment of rent or mortgage payments caused by the COVID-19 pandemic to extend the moratorium until September 30, 2020 and the repayment period an additional 90 days.

On August 31, 2020, the State enacted legislation called the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021 and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates. As a result, the City of Hayward cannot extend its moratorium on residential evictions beyond September 30, 2020 or until after February 1, 2021. The State did not enact any protections or place any restrictions on commercial evictions.

While the courts are currently not processing any residential or commercial evictions until after the end of the year, staff is still recommending extending the City's existing moratorium on commercial evictions until January 31, 2021 to provide additional protections for the City's local business community.

## **DISCUSSION**

As a result of the State of Emergency declarations and Alameda County Shelter-in-Place Order during the COVID-19 pandemic outbreak, many commercial businesses have experienced sudden income loss, leaving them vulnerable to eviction. During the State of Emergency, the public interest in preserving peace, health, and safety, and preventing further transmission of

---

<sup>1</sup> March 24, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4399195&GUID=BFD696C9-8ED0-4F9F-8B99-98912C9C0679&Options=&Search=>

<sup>2</sup> April 7, 2020 City Council Meeting Staff Report and Attachments:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4411520&GUID=D179CF31-EC55-4AA7-B3C1-430B1C8DC5E4&Options=&Search=>

COVID-19 will be served by avoiding unnecessary loss of jobs, displacement, and homelessness. Alameda County has started to lift some of the restrictions under the Shelter-in-Place Order; however, not all business have been permitted to resume operations and those that have, are subject to restrictions.

Due to the continued state of emergency and continued restrictions under the Shelter-in-Place-Order, staff recommends revising the City's eviction moratorium to extend the moratorium on commercial evictions until January 31, 2021. As discussed above, recently approved State law prohibits the City from extending its existing moratorium on residential evictions.

All other terms of the commercial eviction moratorium will remain the same. Nothing in the Ordinance would relieve commercial tenants of the liability for unpaid rent or mortgage payments.

### **STRATEGIC ROADMAP**

This agenda item supports the Strategic Priority of Grow the Economy. This item is not specifically related to a project identified in the Strategic Roadmap. Staff is bringing forth this new item because economic impacts of COVID-19 threaten to undermine the stability of the City's business community.

### **FISCAL IMPACT**

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

### **PUBLIC CONTACT**

Staff has notified several key stakeholders of the proposed eviction moratorium extension Ordinance, including the Chamber of Commerce, the Downtown Hayward Improvement District, United Merchants, and Downtown Business Association.

### **NEXT STEPS**

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

*Prepared and Recommended by:* Jennifer Ott, Deputy City Manager

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL  
ORDINANCE NO. 20-

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAYWARD EXTENDING A TEMPORARY MORATORIUM ON COMMERCIAL EVICTIONS IN THE CITY OF HAYWARD FOR NON-PAYMENT OF RENT 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, WHICH WAS INTIALLY ADOPTED IN ORDINANCE NO. 20-07 AND SUBSEQUENTLY EXTENDED IN ORDINANCE NO. 20-11, SAID EXTENSION TO EXPIRE ON JANUARY 31, 2021 UNLESS REPEALED EARLIER

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

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

The Temporary Moratorium on Commercial Evictions, adopted by the Hayward City Council as part of an emergency ordinance on April 7, 2020, and subsequently extended on June 30, 2020, is hereby further extended until January 31, 2021, unless repealed earlier.

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

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



- G. On March 16, 2020, the health officers of seven jurisdictions in the San Francisco Bay Area, including the County of Alameda, issued an Order to all residents of the respective jurisdictions to shelter in their homes in an effort to slow the progression of the COVID-19 pandemic. As of 5:00 p.m. on March 15, 2020, 15 cases of COVID-19 were known to exist in Alameda County, as well as at least 258 confirmed cases and at least three deaths in the seven Bay Area jurisdictions jointly issuing the Order, including a significant and increasing number of suspected cases of community transmission and likely further increases in transmission.
- H. On March 16, 2020, the Governor issued Executive Order N-28-20, authorizing local jurisdictions to prohibit commercial and residential evictions due to non-payment of rent or mortgage payments, where failure to pay is related to the COVID-19 pandemic. The Executive Order also requested all financial institutions holding mortgages to implement an immediate moratorium on foreclosures and related evictions when the default by the borrower was caused by the COVID-19 pandemic and directed certain state agencies to work with financial institutions to identify tools to be used to afford borrowers relief from the threat of residential foreclosures.
- I. On March 24, 2020, the Hayward City Council adopted Ordinance No. 20-06, an emergency ordinance imposing a moratorium on residential evictions where non-payment of rent is due to a substantial decrease in household income or substantial out-of-pocket medical expenses caused by the COVID-19 pandemic, or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- J. On April 7, 2020, the Hayward City Council repealed Ordinance No. 20-06, and adopted Ordinance 20-07, an emergency ordinance imposing a new temporary moratorium for non-payment of rent or mortgage payments caused by the COVID-19 pandemic, which includes prohibitions on commercial evictions, lender evictions of homeowners, and retaliation against tenants and homeowners.
- K. On June 30, 2020, the Hayward City Council adopted Ordinance 20-11, which extended the moratorium until September 30, 2020.
- L. On August 31, 2020, the State enacted the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (i.e., Assembly Bill 3088) that put into place a statewide moratorium on residential evictions until January 31, 2021, and precluded local governments from extending any existing moratoria on residential evictions beyond their already enacted expiration dates.
- M. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter-in-Place Order, many tenants and homeowners have experienced sudden income loss and further income impacts are anticipated, leaving tenants vulnerable to eviction due to failure to pay rent or mortgage payments.

- N. During the COVID-19 pandemic outbreak, as a result of the State of Emergency declarations and the Shelter-in-Place Order, bars and restaurants have been ordered to only serve food for delivery or pick-up; many other businesses have been determined to be non-essential, and thus ordered to effectively cease operations. Consequently, many businesses have experienced sudden income loss due to reduced business hours, business closure, or reduced consumer demand. Further income impacts are anticipated.
- O. The loss of income caused by the effects of COVID-19 pandemic and the public health orders have, and will, impact commercial tenants' ability to pay rent when due, leaving them vulnerable to eviction.
- P. Providing commercial tenants with short-term protection from eviction due to the inability to pay rent will help avoid further business closures and job losses.
- Q. Eviction of commercial tenants disrupts the social ties and networks that are integral to the community's welfare and the stability of communities within the City.
- R. Eviction of commercial tenants creates undue hardship for business owners through additional relocation costs, stress and anxiety, and the threat of losing residential housing due to lack of business income.
- S. The City Council finds and determines that extension of the temporary moratorium on commercial evictions is necessary to protect public health and safety, where inability to pay is due to a substantial decrease in business income (including but not limited to, a substantial decrease in business income caused by a reduction in opening hours or consumer demand), or by any local, state, or federal government response to the COVID-19 pandemic, or evictions for a no-fault reason unless the eviction is necessary for the imminent health and safety of the tenant and landlord.
- T. Based upon the above-described facts and circumstances, and for these same reasons, the City Council finds that this ordinance is necessary as an emergency measure for preserving the public peace, health and safety, and therefore it may be introduced and adopted at one and the same meeting, and shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council until January 31, 2021, unless repealed earlier.

### **SECTION 3. Definitions.**

- A. Commercial Rental Agreement. An oral, written, or implied agreement between a Landlord and a Tenant for use or occupancy of a Commercial Rental Unit.
- B. Commercial Rental Unit. Any building, structure, or part thereof, or appurtenant thereto, or any other rental property rented or offered for rent, other than for living or dwelling purposes.
- C. Covered Reason for Delayed Payment. A tenant's inability to pay rent which arises from a substantial decrease in business income (including but not limited to, a substantial decrease in business income caused by a reduction in opening hours or consumer demand) and the decrease in business income was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented.

- D. Landlord. Any owner, lessor, or sublessor of real Property who receives or is entitled to receive Rent for the use or occupancy of any Commercial Rental Unit or portion thereof in the City of Hayward, and the designated representative, agent, or successor of such owner, lessor, or sublessor.
- E. Moratorium Period. The period from the effective date of this Ordinance and continuing until January 31, 2021, unless repealed earlier
- F. No-Fault Eviction. No-fault eviction refers to any eviction for which the notice to terminate tenancy is not based on alleged fault by the tenant or any notice served pursuant to Code of Civil Procedures 1161, et seq., or other applicable law.
- G. Rent. All periodic payments and all nonmonetary consideration including, but not limited to, the fair market value of goods, labor performed or services rendered to or for the benefit of the Landlord for use or occupancy of a Commercial Rental Unit under a Commercial Rental Agreement, as the case may be.
- H. Tenant. A Tenant, subtenant, lessee, sublessee, or a person entitled under the terms of a Commercial Rental Agreement, to the use or occupancy of a Commercial Rental Unit.

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

- A. During the Moratorium Period, no Landlord shall evict a Tenant, under either of the following circumstances: (1) for nonpayment of rent if the Tenant demonstrates that inability to pay arises out of a substantial decrease in business income (including but not limited to, a substantial decrease in business income caused by a reduction in opening hours or consumer demand) and the decrease in business income was caused by the COVID-19 pandemic, or by any local, state, or federal government response to COVID-19, and is documented, or (2) for a no-fault eviction unless necessary for the imminent health and safety of tenants, neighbors, or the landlord.
- B. A Landlord who reasonably knows that a Tenant cannot pay some or all of the rent payments temporarily for the reasons set forth in paragraph A of this section shall not serve a notice informing a Tenant of the termination of their right to occupy a Commercial Rental Unit in accordance with applicable California law, including but not limited to a 3- or 30-day notice to pay or quit, or otherwise seek to evict for nonpayment of rent payments. A Landlord knows of the Tenant's inability to pay within the meaning of this Ordinance if the Tenant notifies the landlord in writing of lost income and inability to pay full rent payments and is able to provide documentation to support the claim. Requirements to notify the Landlord do not preclude the Tenant from protections under the moratorium if the Tenant was unable to notify the landlord in writing.

- C. For purposes of this section, “in writing” includes email or text communications to the Landlord, or the Landlord’s representative with whom the Tenant has previously corresponded by email or text.
- D. For the purposes of this section, documentation to support a claim of inability to pay due to the COVID-19 pandemic may include, without limitation: a statement signed under penalty of perjury that the inability to pay is due to a Covered Reason for Delayed Payment as defined herein; documents showing reduced business income; correspondence by a business owner citing COVID-19 as a basis for reduced business hours or business closure. Any financial information provided to the Landlord shall be held in confidence, and only used for evaluating the Tenant’s claim.
- E. Nothing in this Ordinance shall relieve the Tenant of liability for the unpaid rent payments, which the Landlord may seek after expiration of the moratorium, unless the parties agree otherwise. A Landlord may not charge or collect a late fee for rent that is delayed for the reasons stated in this Ordinance.

### **SECTION 5. Application**

- A. This Ordinance applies to all commercial rental units in the City of Hayward.
- B. This Ordinance applies to nonpayment eviction notices, no-fault eviction notices, unlawful detainer actions under California Code of Civil Procedure section 1161, petition for writ of possession, or any other action to recover possession of a Commercial Rental Unit, or to otherwise cause tenants to vacate a Commercial Rental Unit, based on such notices served or filed during the effective period of this Ordinance. With respect to delayed payment covered by this Ordinance, a Landlord may seek such rent after expiration of the moratorium. No Landlord may institute unlawful detainer proceedings under California Code of Civil Procedure section 1161, petition for writ of possession, or any other action to recover possession of a Commercial Rental Unit, or to otherwise cause Tenants to vacate a Commercial Rental Unit for non-payment for a period of 180 days after expiration of the moratorium, unless the Tenant has breached the terms of a rental agreement negotiated during the term of this moratorium. In any event the Landlord must meet and confer with the Tenant prior to commencement of any proceedings described in this Section.
- C. Non-compliance by a Landlord with any applicable provision of this Ordinance shall constitute an affirmative defense for a Tenant against any proceeding instituted by a Landlord described in this Section.

### **SECTION 6. Retaliation Prohibited.**

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

**SECTION 7. Enforcement**

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

The City Attorney is authorized to institute a civil action or pursue criminal prosecution to enforce any provisions of this Ordinance.

**SECTION 8. Civil Remedies.**

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

**SECTION 9. Severability.**

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

**SECTION 10. Effective Date and Expiration Date.**

This Ordinance shall become effective immediately upon its adoption by five (5) or more affirmative votes of the Hayward City Council and shall be in effect until January 31, 2021, unless repealed earlier.

**SECTION 11. California Environmental Quality Act (CEQA)**

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

CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_\_ day of September, 2020, upon motion of \_\_\_\_\_ and by the following votes of members of said City Council:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MAYOR: \_\_\_\_\_  
Barbara Halliday

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

APPROVED AS TO FORM:

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



# CITY OF HAYWARD

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

---

**File #:** LB 20-044

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT**

League of California Cities Annual Policy Resolutions: Adopt a Resolution Supporting the Singular League of California Cities Policy Resolution Being Considered at the 2020 League of California Cities Annual Business Meeting

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) supporting the singular League of California Cities policy resolution that will be considered at the 2020 League of California Cities Annual Business Meeting.

**SUMMARY**

On July 21, 2020, the Council designated Mayor Barbara Halliday to be the City's voting delegate, and Council Members Salinas and Wahab as the alternate voting delegates to the League of California Cities 2020 Annual Conference. Mayor Halliday, Council Members Salinas and Zermeño are attending the League of California Cities (League) 2020 Annual Conference, scheduled for October 7-9, 2020, which will be conducted virtually.

The League's Annual Business (General Assembly) Meeting will take place on October 9, 2020, where voting delegates from member municipalities vote on the League policy resolutions being considered.

Staff recommends that Council support the singular resolution identified by the League: a resolution calling to amend Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials that promote criminal activities.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	LCC 2020 Conference Resolutions Packet



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** League of California Cities Annual Policy Resolutions: Adopt a Resolution Supporting the Singular League of California Cities Policy Resolution Being Considered at the 2020 League of California Cities Annual Business Meeting

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) supporting the singular League of California Cities policy resolution that will be considered at the 2020 League of California Cities Annual Business Meeting.

### **SUMMARY**

On July 21, 2020, the Council designated Mayor Barbara Halliday to be the City's voting delegate, and Council Members Salinas and Wahab as the alternate voting delegates to the League of California Cities 2020 Annual Conference.<sup>1</sup> Mayor Halliday, Council Members Salinas and Zermeño are attending the League of California Cities (League) 2020 Annual Conference, scheduled for October 7-9, 2020, which will be conducted virtually.

The League's Annual Business (General Assembly) Meeting will take place on October 9, 2020, where voting delegates from member municipalities vote on the League policy resolutions being considered.

Staff recommends that Council support the singular resolution identified by the League: a resolution calling to amend Section 230 of the Communications Decency Act of 1996 to require social media companies to remove materials that promote criminal activities.

### **BACKGROUND AND DISCUSSION**

Policy development is a vital and ongoing process within the League of California Cities (League). The principal means for deciding policy on the important issues facing California cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures

---

<sup>1</sup> July 21, 2020 City of Hayward City Council Meeting Link:  
<https://hayward.legistar.com/MeetingDetail.aspx?ID=793413&GUID=5BF48901-43A7-4AA0-9181-11C18CA64A37&Options=info&Search=>



city officials the opportunity to both initiate and influence League policy decisions. Annual Conference resolutions are an additional way to develop League policy.

One League policy resolution has been introduced for consideration at the 2020 League of California Cities Annual Conference. The purpose of this report is to provide information about this resolution and to obtain direction from Council regarding the City's official position on this resolution.

A summary of the League policy resolution being considered at the annual conference is provided below along with staff's recommendation. A copy of the League resolution, including background information and the League's staff analysis, is also available in the [2020 League of California Cities Annual Conference Resolutions Packet](#).<sup>2</sup>

### **League Policy Resolution No. 1:**

**Title:** A Resolution of the General Assembly of the League of California Cities Calling for an Amendment of Section 230 of the Communications Decency Act of 1996 to Require Social Media Companies to Remove Materials Which Promote Criminal Activities.

#### **Summary:**

This Resolution states that the League of California cities should urge Congress to amend Section 230 of the Federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted. Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

This Resolution supports the League's existing policy around Public Safety:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety
- Reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.
- Use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence

**Staff Recommendation:** Support

### **FISCAL AND ECONOMIC IMPACT**

---

<sup>2</sup> League of CA Cities Annual Conference Resolutions Packet Link: [https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/2020-Resolution-Packet-\(1\).aspx](https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/2020-Resolution-Packet-(1).aspx)

There are no immediate fiscal or economic impacts to the City that are associated with this report or support of this resolution.

### **STRATEGIC ROADMAP**

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

### **PUBLIC CONTACT**

The agenda for this item was posted in compliance with the California Brown Act and does not require additional public notice.

### **NEXT STEPS**

Mayor Halliday, as the City's voting delegate, and/or Council Members Salinas and Wahab, as the City's alternates, will represent the Council's vote at the 2020 League of California Cities Annual Business (General Assembly) Meeting on October 9, 2020.

*Prepared and Recommended by:*

Maria A. Hurtado, Assistant City Manager

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION SUPPORTING THE SINGULAR LEAGUE OF CALIFORNIA CITIES  
POLICY RESOLUTION BEING CONSIDERED AT THE 2020 LEAGUE OF  
CALIFORNIA CITIES ANNUAL MEETING

WHEREAS, The League of California Cities is scheduled to conduct its annual meeting from October 7-9, 2020 virtually; and

WHEREAS, as a member in good standing with the League of California Cities, the City of Hayward is entitled to vote on policy matters that come before the League at its Annual Business (General Assembly) Meeting, scheduled to take place on October 9, 2020; and

WHEREAS, one League policy resolution will be considered at the League's 2020 Annual Conference; and

NOW, THEREFORE, BE IT RESOLVED that the Hayward City Council hereby directs the City's Voting Delegate to vote in support of the following League policy resolution at the 2020 League of California Cities Annual Conference during the League's Annual Business (General Assembly) meeting:

Resolution No. 1: A Resolution of the General Assembly of the League of California Cities Calling for an Amendment of Section 230 of the Communications Decency Act of 1996 to Require Social Media Companies to Remove Materials which Promote Criminal Activities

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



*Annual Conference  
Resolutions Packet*

*2020 Annual Conference Resolutions*



*October 7 – 9, 2020*

## INFORMATION AND PROCEDURES

**RESOLUTIONS CONTAINED IN THIS PACKET:** The League bylaws provide that resolutions shall be referred by the president to an appropriate policy committee for review and recommendation. Resolutions with committee recommendations shall then be considered by the General Resolutions Committee at the Annual Conference.

This year, one resolution has been introduced for consideration at the Annual Conference and referred to League policy committees.

**POLICY COMMITTEES:** Two policy committees will meet virtually at the Annual Conference to consider and take action on the resolution referred to them. The committees are: Governance, Transparency & Labor Relations and Public Safety. These committees will meet virtually on Tuesday, September 29, with the Governance, Transparency and Labor Relations Policy Committee meeting from 9:30 – 11:30 a.m. and the Public Safety Policy Committee meeting from 1:00 – 3:00 p.m. The sponsor of the resolution has been notified of the time and location of the meeting.

**GENERAL RESOLUTIONS COMMITTEE:** This committee will meet virtually at 1:00 p.m. on Thursday, October 8, to consider the reports of the policy committees regarding the resolutions. This committee includes one representative from each of the League's regional divisions, functional departments and standing policy committees, as well as other individuals appointed by the League president.

**GENERAL ASSEMBLY:** This meeting will be held virtually at 11:00 a.m. on Friday, October 9.

**PETITIONED RESOLUTIONS:** For those issues that develop after the normal 60-day deadline, a resolution may be introduced at the Annual Conference with a petition signed by designated voting delegates of 10 percent of all member cities (48 valid signatures required) and presented to the Voting Delegates Desk at least 24 hours prior to the time set for convening the Annual Business Meeting of the General Assembly. This year, that deadline is 12:30 p.m., Thursday, October 8.

Any questions concerning the resolutions procedures may be directed to Meg Desmond at the League office: [mdesmond@cacities.org](mailto:mdesmond@cacities.org) or (916) 658-8224

## **GUIDELINES FOR ANNUAL CONFERENCE RESOLUTIONS**

Policy development is a vital and ongoing process within the League. The principal means for deciding policy on the important issues facing cities is through the League's seven standing policy committees and the board of directors. The process allows for timely consideration of issues in a changing environment and assures city officials the opportunity to both initiate and influence policy decisions.

Annual conference resolutions constitute an additional way to develop League policy. Resolutions should adhere to the following criteria.

### **Guidelines for Annual Conference Resolutions**

1. Only issues that have a direct bearing on municipal affairs should be considered or adopted at the Annual Conference.
2. The issue is not of a purely local or regional concern.
3. The recommended policy should not simply restate existing League policy.
4. The resolution should be directed at achieving one of the following objectives:
  - (a) Focus public or media attention on an issue of major importance to cities.
  - (b) Establish a new direction for League policy by establishing general principals around which more detailed policies may be developed by policy committees and the board of directors.
  - (c) Consider important issues not adequately addressed by the policy committees and board of directors.
  - (d) Amend the League bylaws (requires 2/3 vote at General Assembly).

**KEY TO ACTIONS TAKEN ON RESOLUTIONS**

Resolutions have been grouped by policy committees to which they have been assigned.

Number	Key Word Index	Reviewing Body Action		
		1	2	3

1 - Policy Committee Recommendation to General Resolutions Committee  
 2 - General Resolutions Committee  
 3 - General Assembly

---

**GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE**

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			

**PUBLIC SAFETY POLICY COMMITTEE**

		1	2	3
1	Amendment to Section 230 of The Communications Decency Act of 1996			



**KEY TO ACTIONS TAKEN ON RESOLUTIONS (Continued)**

Resolutions have been grouped by policy committees to which they have been assigned.

**KEY TO REVIEWING BODIES**

- 1. Policy Committee
- 2. General Resolutions Committee
- 3. General Assembly

**KEY TO ACTIONS TAKEN**

- A Approve
- D Disapprove
- N No Action
- R Refer to appropriate policy committee for study

**ACTION FOOTNOTES**

- \* Subject matter covered in another resolution
- \*\* Existing League policy
- \*\*\* Local authority presently exists

- a Amend+
- Aa Approve as amended+
- Aaa Approve with additional amendment(s)+
- Ra Refer as amended to appropriate policy committee for study+
- Raa Additional amendments and refer+
- Da Amend (for clarity or brevity) and Disapprove+
- Na Amend (for clarity or brevity) and take No Action+
- W Withdrawn by Sponsor

**Procedural Note:**

The League of California Cities resolution process at the Annual Conference is guided by the League Bylaws. A helpful explanation of this process can be found on the League’s website by clicking on this link: [Resolution Process](#).

**1. A RESOLUTION OF THE GENERAL ASSEMBLY OF THE LEAGUE OF CALIFORNIA CITIES CALLING FOR AN AMENDMENT OF SECTION 230 OF THE COMMUNICATIONS DECENCY ACT OF 1996 TO REQUIRE SOCIAL MEDIA COMPANIES TO REMOVE MATERIALS WHICH PROMOTE CRIMINAL ACTIVITIES**

Source: City of Cerritos

Concurrence of five or more cities/city officials

Cities: City of Hawaiian Gardens, City of Lakewood, City of Ontario, City of Rancho Cucamonga, City of Roseville

Referred to: Governance, Transparency and Labor Relations and Public Safety Policy Committees

**WHEREAS**, local law enforcement agencies seek to protect their communities' residents, businesses, and property owners from crime; and

**WHEREAS**, increasingly, criminals use social media platforms to post notices of places, dates and times for their followers to meet to commit crimes; and

**WHEREAS**, Section 230 of the Communications Decency Act of 1996 currently provides online platforms (including social media platforms) immunity from civil liability based on third-party content and for the removal of content; and

**WHEREAS**, in the 25 years since Section 230's enactment, online platforms no longer function simply as forums for the posting of third-party content but rather use sophisticated algorithms to promote content and to connect users; and

**WHEREAS**, the United States Department of Justice, in its June 2020 report, "Section 230 — Nurturing Innovation or Fostering Unaccountability?," concluded the expansive interpretation courts have given Section 230 has left online platforms immune from a wide array of illicit activity on their services, with little transparency or accountability, noting it "makes little sense" to immunize from civil liability an online platform that purposefully facilitates or solicits third-party content or activity that violates federal criminal law; and

**WHEREAS**, current court precedent interpreting Section 230 also precludes state and local jurisdictions from enforcing criminal laws against such online platforms that, while not actually performing unlawful activities, facilitate them; and

**WHEREAS**, amendment of Section 230 is necessary to clarify that online platforms are not immune from civil liability for promoting criminal activities; and

**NOW, THEREFORE, BE IT RESOLVED** at the League General Assembly, assembled at the League Annual Conference on October 9, 2020 in Long Beach, California, that the League calls upon the U.S. Congress to amend Section 230 of the Communications Decency Act of 1996 to condition immunity from civil liability on the following:

1. Online platforms must establish and implement a reasonable program to identify and take down content which solicits criminal activity; and
2. Online platforms must provide to law enforcement information which will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity; and
3. An online platform that willfully or negligently fails in either of these duties is not immune from enforcement of state and local laws which impose criminal or civil liability for such failure.

## Background Information to Resolution

**Source:** City of Cerritos

### **Background:**

Social media platforms are now used as a primary means of communication, including by criminals who use them to advertise locations, dates, and times where the criminal acts will take place. Such communications, because they occur online, render the online platform immune from any civil liability for the costs incurred by law enforcement agencies that respond under Section 230 of the Communications Decency Act of 1996. Immunity from civil liability extends even to injunctive relief, thus preventing local governments from merely seeking an injunction against the online platform to have such a post removed.

The City of Cerritos supports the rights of free speech and assembly guaranteed under the First Amendment, but believes cities should have the ability to hold social media companies liable for their role in promoting criminal acts. Recently, the City suffered thousands of dollars in damages to respond to online threats that the Cerritos Mall would be looted. Anonymous posts on Instagram.com invited followers to “work together to loot Cerritos [M]all” only several days after the Lakewood Mall had been looted, causing thousands of dollars in damages. The posts were made under the names “cerritosmalllooting” and “cantstopusall,” among others. The City of Cerritos had no choice but to initiate response to protect the Mall and the public from this credible threat.

At the same time local governments face historic shortfalls owing to the economic effects of COVID-19, the nation’s social media platforms are seeing a record rise in profits. The broad immunity provided by Section 230 is completely untenable. Online platforms should be held responsible—and liable—for the direct harm they facilitate. Local governments are in no position to bear the costs of the crimes facilitated by these companies alone.

Congress is currently reviewing antitrust legislation and by extension, Section 230’s immunity provisions. The League urges Congress to amend Section 230 to limit the immunity provided to online platforms when they promote criminal activity to provide local governments some measurable form of relief.

## **League of California Cities Staff Analysis on Resolution No. 1**

Staff: Charles Harvey, Legislative Representative  
Bijan Mehryar, Legislative Representative  
Caroline Cirrincione, Policy Analyst  
Johnnie Piña, Policy Analyst

Committees: Governance, Transparency and Labor Relations  
Public Safety

### **Summary:**

This resolution states that the League of California Cities should urge Congress to amend Section 230 of the federal Communications Decency Act of 1996 (CDA) to limit the immunity provided to online platforms where their forums enable criminal activity to be promoted.

Ultimately, the policy objectives proposed under this resolution, if enacted, would incentivize social media companies to establish and implement a reasonable program to identify and remove content that solicits criminal activity.

### **Background:**

The City of Cerritos is sponsoring this resolution in reaction to events whereby persons, using social media platforms to coordinate locations, dates, and times for their planned criminal activity, have committed acts of looting and vandalism resulting in both actual economic harm for targeted businesses, and pecuniary loss to cities who used resources to prevent such acts from occurring when such plans are discovered.

For example, just days after the Lakewood Mall had been looted, the City of Cerritos uncovered online communications via social media that persons were planning to target the nearby Cerritos Mall. Consequently, the city felt compelled to undertake measures to protect the Cerritos Mall, costing the city thousands of dollars to guard against what officials believed to be a credible threat.

### **Staff Comments:**

#### **Overview:**

While there is certainly an argument to substantiate concerns around censorship, the use of social media as a tool for organizing violence is equally disturbing.

Throughout much of the 2020 Summer, there have been many reports of looting happening across the country during what were otherwise mostly peaceful demonstrations. Combined with the speculation of who is really behind the looting and why, the mayhem has usurped the message of peaceful protestors, causing a great deal of property damage in the process. Likewise, these criminal actions have upended the livelihood of some small business owners, many of whom were already reeling in the wake of the COVID-19 pandemic.

While social media allows people to connect in real time with others all over the world, organized illegal activity using social media is made easier by the anonymous nature of virtual interactions.

#### Nation's Reaction to the Murder of George Floyd:

Shortly after the senseless killing of George Floyd by law enforcement on May 26, 2020, civil unrest began as local protests in the Minneapolis–Saint Paul metropolitan area of Minnesota before quickly spreading nationwide to more than 2,000 cities and towns across the United States, and in approximately 60 countries in support of the Black Lives Matter movement. Protests unfolded across the country throughout the entire month of June and into July, and persisted in a handful of cities such as Portland and Seattle into the month of August.

Although the majority of protests were peaceful, some demonstrations in cities escalated into riots, looting, and street skirmishes with police. While much of the nation's focus has been on addressing police misconduct, police brutality, and systemic racism, some have used demonstrators' peaceful protests on these topics as opportunities to loot and/or vandalize businesses, almost exclusively under the guise of the "Black Lives Matter" movement. It has been uncovered that these "flash robs"<sup>1</sup> were coordinated through the use of social media. The spontaneity and speed of the attacks enabled by social media make it challenging for the police to stop these criminal events as they are occurring, let alone prevent them from commencing altogether.

As these events started occurring across the country, investigators quickly began combing through Facebook, Twitter, and Instagram seeking to identify potentially violent extremists, looters, and vandals and finding ways to charge them after — and in some cases before — they sow chaos. While this technique has alarmed civil liberties advocates, who argue the strategy could negatively impact online speech, law enforcement officials claim it aligns with investigation strategies employed in the past.

#### Section 230 and other Constitutional Concerns

At its core, Section 230(c)(1) of the CDA provides immunity from liability for providers and users of an "interactive computer service" who publish information provided by third-party users. Essentially, this protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

Protections from Section 230 have come under more recent scrutiny on issues related to hate speech and ideological biases in relation to the influence technology companies can hold on political discussions.

Setting aside Section 230, there are some potential constitutional issues one could raise, should there be an attempt to implement such a resolution into statute.

---

<sup>1</sup> The "flash robs" phenomenon—where social media is used to organize groups of teens and young adults to quickly ransack and loot various retail stores—began to occur sporadically throughout the United States over the past ten years.

In the United States, the First Amendment prohibits the government from restricting most forms of speech, which would include many proposals to force tech companies to moderate content. While “illegal” types of speech enjoy limited or no First Amendment protection, the line for delineating between “legal” and “illegal” speech is very difficult to determine. Consequently, one would expect online platforms to push back on whether there is a constitutionally feasible way for them to “identify” protected speech versus unprotected speech, or whether there is a feasible way to define “content which solicits criminal activity.” A law requiring companies to moderate content based on the political viewpoint it expresses, for example, would likely be struck down as unconstitutional.

Nonetheless, private companies can create rules to restrict speech if they so choose. Online platforms sometimes argue they have constitutionally-protected First Amendment rights in their “editorial activity,” and therefore, it violates their constitutional rights to require them to monitor (i.e., “identify and take down”) content that may be protected under the First Amendment. They may also argue, along the same lines, that the government may not condition the granting of a privilege (i.e., immunity) on doing things that amount to a violation of their first amendment rights. This is why Facebook and Twitter ban hate speech and other verifiably false information, for example, even though such speech is permitted under the First Amendment.

With respect to privacy and the Fourth Amendment, online platforms may argue that requiring them to “provide to law enforcement information that will assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity,” turns them into government actors that search users’ accounts without a warrant based on probable cause, in violation of the Fourth Amendment.

### Industry Perspective

Unsurprisingly, industry stakeholders have strong opinions for what such changes could mean for their respective business models.

For instance, a Facebook spokesperson recently noted in a Fortune article that, “By exposing companies to potential liability for everything that billions of people around the world say, this would penalize companies that choose to allow controversial speech and encourage platforms to censor anything that might offend anyone.”

The article acknowledges that in recent years, both political parties have put social media companies under increased scrutiny, but they are not unified in their stated concerns. While Republicans accuse the companies of unfairly censoring their post, Democrats complain that these companies fail to do enough to block misinformation, violent content, and hate speech.

The article concludes that there is no way companies like Facebook and Twitter could operate without Section 230, and that the removal of this section would thereby “eliminate social media as we know it.”

### Recent Federal Action on Social Media

The President recently issued an *Executive Order on Preventing Online Censorship*. In it, he notes the following:

“The growth of online platforms in recent years raises important questions about applying the ideals of the First Amendment to modern communications technology. Today, many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other online platforms. As a result, these platforms function in many ways as a 21st century equivalent of the public square.

Twitter, Facebook, Instagram, and YouTube wield immense, if not unprecedented, power to shape the interpretation of public events; to censor, delete, or disappear information; and to control what people see or do not see.”

Ultimately the President implores the U.S. Attorney General to develop a proposal for federal legislation that “would be useful to promote the policy objectives of this order.” The President is not subtle in communicating his desire to ultimately see legislation heavily slanted toward the preservation of free speech on social media, which some interpret as a maneuver to preempt Twitter and Facebook from regulating speech they otherwise deem as hateful or demonstrably false.

### Considerations for Congress

Courts have generally construed Section 230 to grant internet service providers broad immunity for hosting others’ content. Many have claimed that Section 230’s immunity provisions were critical to the development of the modern internet, and some continue to defend Section 230’s broad scope. But simultaneously, a variety of commentators and legislators have questioned whether those immunity provisions should now be narrowed, given that the internet looks much different today than it did in 1996 when Section 230 was first enacted.

One way for Congress to narrow Section 230’s liability shield would be to create additional exceptions, as it did with FOSTA and SESTA<sup>2</sup>. If a lawsuit does not fall into one of the express exceptions contained in Section 230(e)<sup>3</sup>, courts may have to engage in a highly fact-specific inquiry to determine whether Section 230 immunity applies: Section 230(c)(1) immunity will be inapplicable if the provider itself has developed or helped to develop the disputed content, while Section 230(c)(2) immunity may not apply if a service provider’s decision to restrict access to content was not made in good faith.

### Date Storage and Usage Considerations for Cities

Section 2 of the conditions the resolution applies to civil immunity requires that online platforms provide relevant information to law enforcement to assist in the identification and apprehension of persons who use the services of the platform to solicit and to engage in criminal activity. This section would most likely require the development of new procedures and protocols that govern law enforcements usage and retention of such information. Those new policies and procedures would undoubtedly raise privacy concerns depending on how wide the latitude is for law

---

<sup>2</sup> The Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) create an exception to Section 230 that means website publishers *would* be responsible if third parties are found to be posting ads for prostitution — including consensual sex work — on their platforms.

<sup>3</sup> Section 230(e) says that Section 230 will not apply to: (1) federal criminal laws; (2) intellectual property laws; (3) any state law that is “consistent with” Section 230; (4) the Electronic Communications Privacy Act of 1986; and (5) civil actions or state prosecutions where the underlying conduct violates federal law prohibiting sex trafficking.



enforcement to request such information. In those circumstances cities could end up themselves incurring new liability for the governance of data that could either violate certain privacy rules or increase their data governance costs.

**Fiscal Impact:**

Unlike the costly resources needed to support or oppose a ballot measure, a federal resolution from the League of California Cities that simply urges Congress to undertake certain action should have a negligible fiscal impact, if any monetary impact at all.

Regarding cities, if social media had no immunity for its failure to police content that solicits criminal activity, then an individual city could theoretically save thousands if not millions of dollars, depending on its size and other subjective circumstances. Collectively, cities across the country could potentially save at least hundreds of millions between redress for actual economic harm suffered and/or the cost of preventative measures taken to stop criminal activity from occurring in the first place.

Conversely, if social media platforms were to shut down, due to an inability to comply with a policy requirement to regulate speech on the internet, it is unclear on how cities might be impacted from a fiscal standpoint.

**Existing League Policy:**

Public Safety:

*Law Enforcement*

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and
- Protecting state Citizens' Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

*Violence*

The League supports the reduction of violence through strategies that address gang violence, domestic violence, and youth access to tools of violence, including but not limited to firearms, knives, etc.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

**Governance, Transparency & Labor Relations:**

*Private Sector Liability*

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League police process.

**Questions to Consider:**

Many cities obviously believe that creating civil liability for social media platforms—due to their role in providing the communication mediums for those who organize looting attacks— is key to deterring this organized criminal activity.

If such a change was actually passed by Congress, it would force social media to essentially police every conversation on stakeholders’ respective platforms, putting immense pressure on the industry to make subjective determinations about what conversations are appropriate and what are unacceptable.

At the end of the day, there are a few questions to consider in assessing this proposed resolution:

- 1) *What would this resolution’s impact be on free speech and government censorship?*
- 2) *What are the expectations for cities when they receive information from a social media platform about a potentially credible threat in their respective communities? Does a city become liable for having information from a social media platform and the threat occurs?*
- 3) *What would the costs be to develop and maintain new data governance policies, including data infrastructure, to store this information?*
- 4) *What is the role of the League in engaging in issues relating to someone’s privacy?*

**Support:**

The following letters of concurrence were received:

- City of Hawaiian Gardens
- City of Lakewood
- City of Ontario
- City of Rancho Cucamonga
- City of Roseville

# **LETTERS OF CONCURRENCE**

## **Resolution No. 1**

Amendment to Section 230 of the Communications  
Decency Act of 1996



# CITY OF HAWAIIAN GARDENS

*"Our Youth - Our Future"*

August 7, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

The public safety efforts in the City of Hawaiian Gardens would certainly benefit from such legislation. This letter serves to support the City of Cerritos in their efforts to submit of the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Ernie Hernandez  
City Manager

cc Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

Jeff Wood  
Vice Mayor

Steve Craft  
Council Member



Todd Rogers  
Mayor

Ariel Pe  
Council Member

Diane DuBois  
Council Member

August 5, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution, with the required background information, will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

This letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Todd Rogers  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)

# Lakewood



PAUL S. LEON  
MAYOR

SCOTT OCHOA  
CITY MANAGER

DEBRA DORST-PORADA  
MAYOR PRO TEM

August 6, 2020

SHEILA MAUTZ  
CITY CLERK

ALAN D. WAPNER  
JIM W. BOWMAN  
RUBEN VALENCIA  
COUNCIL MEMBERS

JAMES R. MILHISER  
TREASURER

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

This letter serves to support the City of Cerritos in their efforts to submit the above-mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

Alan D. Wapner  
Council Member  
League of California Cities Board Member

- c: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)
- Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)
- Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)
- Kathy Matsumoto, Assistant City Manager, City of Cerritos – [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



## CITY OF RANCHO CUCAMONGA

10500 Civic Center Drive | Rancho Cucamonga, CA 91730 | 909.477.2700 | [www.CityofRC.us](http://www.CityofRC.us)

August 6, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social medial platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

On behalf of the City of Rancho Cucamonga, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

L. Dennis Michael  
Mayor

cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos – [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)



City Council  
311 Vernon Street  
Roseville, California 95678

August 7, 2020

John Dunbar, President  
[jdunbar@yville.com](mailto:jdunbar@yville.com)  
League of California Cities  
1400 K Street, Suite 400  
Sacramento, CA 95814

Dear President Dunbar:

On August 3, 2020, the Cerritos City Council approved to sponsor a **Resolution of the City Council of the City of Cerritos Submitting to the League of California Cities General Assembly a Proposed Resolution Regarding Support of Legislation Related to Social Media Platform Accountability for Promotion of Criminal Acts.**

This proposed resolution with the required background information will be submitted to the League of California Cities for consideration by the General Assembly at the Annual Conference on October 9, 2020. (Attachments 1 and 2) The intent of the resolution is to address the use of social media platforms for posting information that leads followers to meet and commit crimes and to also hold these platforms and the persons who post said information civilly and criminally accountable for all costs incurred by the local jurisdictions where the crimes occurred.

On behalf of the City of Roseville, this letter serves to support the City of Cerritos in their efforts to submit the above mentioned resolution to the League of California Cities for consideration at the 2020 Annual Conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "John B. Allard II", is written over a horizontal line.

John B. Allard II,  
Mayor

Cc: Blanca Pacheco, President, LA County Division/League of California Cities - [bpacheco@downeyca.org](mailto:bpacheco@downeyca.org)  
Meg Desmond, League of California Cities - [mdesmond@cacities.org](mailto:mdesmond@cacities.org)  
Kristine Guerrero, LA County Division/League of California Cities - [kguerrero@cacities.org](mailto:kguerrero@cacities.org)  
Kathy Matsumoto, Assistant City Manager, City of Cerritos - [kmatsumoto@cerritos.us](mailto:kmatsumoto@cerritos.us)  
Jason Gonsalves, Joe A. Gonsalves and Son





# CITY OF HAYWARD

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

---

**File #:** LB 20-046

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT**

City Attorney Employment Agreement Extension: Adopt a Resolution Approving a One-Month Extension to the Employment Agreement Between the City of Hayward and the City Attorney and Authorizing the Mayor to Execute the Agreement

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) approving a one-month extension to the employment agreement between the City of Hayward and the City Attorney and authorizing the Mayor to execute the agreement.

**SUMMARY**

The City Council was unable to complete the City Attorney's annual performance review prior to the June 30, 2020 expiration of the previous employment agreement as Council needed to reprioritize its work with staff to address the unprecedented crises resulting from the COVID-19 pandemic. Therefore, on June 2, 2020, City Council adopted a resolution approving a three-month extension of the employment agreement between the City of Hayward and the City Attorney to allow for the completion of the review process. The City Attorney's performance review is scheduled to be completed at the end of October; therefore, staff recommends that the employment agreement for the City Attorney be extended through October 31, 2020.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** City Attorney Employment Agreement Extension: Adopt a Resolution Approving a One-Month Extension to the Employment Agreement Between the City of Hayward and the City Attorney and Authorizing the Mayor to Execute the Agreement

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) approving a one-month extension to the employment agreement between the City of Hayward and the City Attorney and authorizing the Mayor to execute the agreement.

### **SUMMARY**

The City Council was unable to complete the City Attorney's annual performance review prior to the June 30, 2020 expiration of the previous employment agreement as Council needed to reprioritize its work with staff to address the unprecedented crises resulting from the COVID-19 pandemic. Therefore, on June 2, 2020, City Council adopted a resolution approving a three-month extension of the employment agreement between the City of Hayward and the City Attorney to allow for the completion of the review process. The City Attorney's performance review is scheduled to be completed at the end of October, therefore, staff recommends that the employment agreement for the City Attorney be extended through October 31, 2020.

### **BACKGROUND AND DISCUSSION**

As a result of the COVID-19 pandemic and ensuing Shelter in Place Orders requiring the temporary cessation of non-essential services, City Council has worked diligently with City staff to address revenue shortfalls, to shift to remote work for a majority of employees, and address employee safety for on-site staff. Although the necessary shift in priorities has resulted in the delay of the City Attorney's performance review, as part of the initial three-month employment agreement extension between the City of Hayward of the City Attorney, the City Attorney agreed to forego the two percent (2%) cost-of-living adjustment (COLA) originally due to him July 1, 2020 to contribute to citywide cost-savings and help mitigate the financial impact of the pandemic on the City of Hayward's finances.

The City Attorney's annual performance evaluation is scheduled to conclude October 13, 2020. The next regular City Council meeting following the completion of the evaluation is

scheduled for October 27, 2020, at which point Council shall consider the proposed successor employment agreement between the City of Hayward and the City Attorney, which shall be effective November 1, 2020. Therefore, the proposed one-month employment agreement extension extends the terms of the employment agreement through October 31, 2020.

**FISCAL IMPACT**

If approved, the proposed one-month employment agreement extension would not result in an unexpected or unbudgeted fiscal impact, as the terms of the agreement are unchanged.

**STRATEGIC ROADMAP**

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

**NEXT STEPS**

If approved, staff will finalize the one-month employment agreement extension between the City of Hayward and the City Attorney for execution by the Mayor.

*Prepared by:* Kakshi Master, Human Resources Analyst II

*Recommended by:* Maria A. Hurtado, Assistant City Manager

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION APPROVING THE EXTENSION AND MODIFICATION OF THE CITY ATTORNEY'S EMPLOYMENT AGREEMENT AS AMENDED AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNCIL

WHEREAS, the employment agreement between the City of Hayward and the City Attorney, Michael Lawson, as amended June 2, 2020 will expire on September 30, 2020 unless renewed by the parties on or before September 30, 2020; and

WHEREAS, the City Council is scheduled to complete the City Attorney's performance evaluation and compensation discussions in October 2020; and

WHEREAS, City Council agrees to amend and extend the employment agreement as amended for one month through October 31, 2020.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the one-month extension of the City Attorney's employment agreement as amended to October 31, 2020 and authorizes the Mayor to execute the agreement.

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:

\_\_\_\_\_  
Michael Vigilia  
Senior Assistant City Attorney



# CITY OF HAYWARD

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

---

**File #:** LB 20-047

---

**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT**

City Clerk Employment Agreement Extension: Adopt a Resolution Approving the Extension and Modification to the Employment Agreement Between the City of Hayward and the City Clerk and Authorizing the Mayor to Execute the Agreement

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) approving the extension and modification to the employment agreement between the City of Hayward and the City Clerk and authorizes the Mayor to execute the agreement.

**SUMMARY**

The current employment agreement between the City of Hayward and the City Clerk will expire on September 30, 2020. Following a three-month extension to the employment agreement, Council has completed the City Clerk's performance and compensation review and has expressed a desire to extend the terms of the employment agreement for the City Clerk through June 30, 2021.

If approved, the employment agreement between the City of Hayward and the City Clerk will become effective October 1, 2020.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



**DATE:** September 22, 2020

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** City Clerk Employment Agreement Extension: Adopt a Resolution Approving the Extension and Modification to the Employment Agreement Between the City of Hayward and the City Clerk and Authorizing the Mayor to Execute the Agreement

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) approving the extension and modification to the employment agreement between the City of Hayward and the City Clerk and authorizes the Mayor to execute the agreement.

### **SUMMARY**

The current employment agreement between the City of Hayward and the City Clerk will expire on September 30, 2020. Following a three-month extension to the employment agreement, Council has completed the City Clerk's performance and compensation review and has expressed a desire to extend the terms of the employment agreement for the City Clerk through June 30, 2021.

If approved, the employment agreement between the City of Hayward and the City Clerk will become effective October 1, 2020.

### **BACKGROUND AND DISCUSSION**

Each year, the Council reviews the performance of the City Manager, City Attorney, and City Clerk. However, because City Council has been working with staff to address the myriad of issues related to the COVID-19 pandemic, Council was unable to complete its annual performance and compensation review for the City Clerk prior to June 30, 2020, when the agreement was originally scheduled to expire. Consequently, on June 2, 2020, Council approved a three-month extension of the City Clerk's employment agreement through September 30, 2020 to allow time to complete the performance review process and finalize an employment agreement.

As part of the employment agreement extension through September 30, 2020, the City Clerk volunteered to forego the two percent (2%) cost-of-living adjustment (COLA) originally due to her on July 1, 2020 to contribute to citywide cost-savings and help mitigate the financial impact of the pandemic on the City of Hayward's finances.

Council has completed the City Clerk's performance and compensation review and has expressed a desire to extend the terms of the employment agreement for the City Clerk through June 30, 2021.

In consideration of the current organizational practices for market-based salary adjustments, the City Council has agreed to consider a salary adjustment for the City Clerk based on a Market Study and other factors on or around January 1, 2021.

As part of the employment agreement extension, the language regarding leave cash-out options was clarified to align with leave cash-out terms for other Appointed and Executive employees. In addition, outdated language on the City Clerk's 2018 salary concessions to the City of Hayward was removed. There are no other substantive changes to the employment agreement.

#### **FISCAL IMPACT**

If approved, the extension and the modification to the employment agreement would not, at this time, result in any fiscal impact, as the terms of the agreement are unchanged.

#### **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.

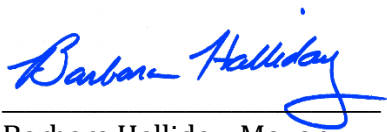
#### **NEXT STEPS**

If approved, staff will finalize the employment agreement modification and extension between the City of Hayward and the City Clerk for execution by the Mayor.

*Prepared by:* Kakshi Master, Human Resources Analyst II

*Recommended by:* Maria A. Hurtado, Assistant City Manager

Approved by:



Barbara Halliday, Mayor



HAYWARD CITY COUNCIL

RESOLUTION NO. 20-

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

RESOLUTION APPROVING THE EXTENSION AND MODIFICATION OF THE  
EMPLOYMENT AGREEMENT BETWEEN THE CITY OF HAYWARD AND CITY  
CLERK AS AMENDED AND AUTHORIZING THE MAYOR TO EXECUTE THE  
AGREEMENT

WHEREAS, the employment agreement between the City of Hayward and the City Clerk, Miriam Lens will expire on September 30, 2020 unless renewed by the parties on or before September 30, 2020; and

WHEREAS, the City Council has reviewed the City Clerk's performance and wishes to extend the employment agreement through June 30, 2021; and

WHEREAS, the City Council agrees to review and consider a salary adjustment for the City Clerk on or around the end of calendar year 2020 based on Market Study and other factors;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves the modification and extension of the City Clerk's employment agreement as amended through June 30, 2021 and authorizes the Mayor to execute the agreement.

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