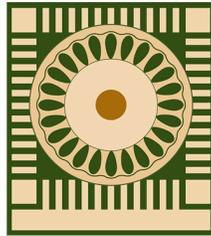


CITY OF HAYWARD

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



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Tuesday, October 17, 2017

7:00 PM

Council Chambers

City Council

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

4. [CONS 17-410](#) Approval of Final Map Tract 8302 (Olympic Station), associated with the previously approved Vesting Tentative Tract Map and proposed development of 23 detached single-family homes on a 2.5-acre site located at 645 Olympic Avenue, (APN 465-0055-012-03); Huntwood Avenue, Hayward, Inc. (Applicant/Owner)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)
[Attachment III Vicinity Map](#)
[Attachment IV Site Map](#)
[Attachment V Final Map](#)

5. [CONS 17-573](#) Filing Nuisance/Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution and List of Properties](#)

6. [CONS 17-634](#) Consideration of California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy (PACE)

Attachments: [Attachment I Staff Report](#)
[Attachment II Resolution](#)
[Attachment III CMFA JPA](#)
[Attachment IV Resolution ABAG RCSA](#)
[Attachment V Sample Addendum](#)

WORK SESSION

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

7. [WS 17-049](#) Status Updates and Provide Direction on Prioritization of FY 2018 Schedule of Activities Related to Housing Affordability and Anti-Displacement Strategies (Report from City Manager McAdoo)

Attachments: [Attachment I Staff Report](#)
[Attachment II Status Updates Chart](#)

8. [WS 17-046](#) Discussion of the Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees (Report from City Manager McAdoo)

Attachments: [Attachment I Executive Summary](#)
[Attachment II Staff Report](#)
[Attachment III Residential Nexus and Financial Feasibility](#)
[Attachment IV Stakeholders Comments Received](#)

PUBLIC HEARING

9. [PH 17-091](#) Adoption of a Resolution and Introduction of Ordinances Related to Cannabis:
1. Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code.
 2. Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward.
 3. Ordinance adding Article 14 to Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses.
 4. Ordinance amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control.
 5. Revisions in the City's 2018 Master Fee Schedule to include Commercial Cannabis Licensing and Inspection program. (Report from City Attorney Lawson and Interim Development Services Director Bristow)

Attachments: [Attachment I Staff Report](#)
[Attachment II Land Use Resolution](#)
[Attachment III Land Use Ordinance](#)
[Attachment IV Regulatory Ordinance](#)
[Attachment V Smoking Ordinance Amendments](#)
[Attachment VI Master Fee Schedule Resolution](#)
[Attachment VII Land Use Summary and Maps](#)
[Attachment VIII Draft 9/14/17 PC Minutes](#)

10. [PH 17-089](#) Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant) (Report from Interim Development Services Director Bristow)

Attachments: [Attachment I Staff Report](#)
[Attachment II Ordinance](#)
[Attachment III Resolution](#)
[Attachment IV Resolution \(Establish new fees\)](#)
[Attachment V Government Code Section 65852.2](#)

11. [PH 17-090](#) Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Financing of Airport Development Improvements by APP Properties, Inc. (Report from Public Works Director Fakhrai)

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

CITY MANAGER'S COMMENTS

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

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

ADJOURNMENT

NEXT SPECIAL MEETING, Monday, October 30, 2017

PUBLIC COMMENT RULES

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

PLEASE TAKE NOTICE

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

PLEASE TAKE FURTHER NOTICE

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

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

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

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



CITY OF HAYWARD

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

File #: MIN 17-133

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the City Council Meeting on September 26, 2017

RECOMMENDATION

That the City Council approves the minutes of the City Council meeting on September 26, 2017.

ATTACHMENTS

Attachment I Draft Minutes of September 26, 2017



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF THE CITY OF
HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 26, 2017, 7:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Lamnin. Mayor Halliday noted that while it was the longstanding practice to start the meeting with the Pledge of Allegiance, participation was optional given recent events.

ROLL CALL

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

CLOSED SESSION

City Attorney Lawson announced the City Council convened in closed session regarding two items: 1) conference with labor negotiators pursuant to Government Code 54957.6; and 2) conference with legal counsel pursuant to Government Code 54956.9 regarding Russell City Energy Company v. City of Hayward, California Court of Appeal, No. A144749; and noted there was no reportable action.

PUBLIC COMMENTS

Ms. Diane Fagalde, Hayward resident, thanked the Police Department for finding her automobile.

Ms. Joann Cola, Hayward resident, spoke about ongoing health and safety issues with the homeless encampment at A and 4th Streets.

Ms. Linda Bennett, Hayward resident, provided photographs of the homeless encampment at A and 4th Streets and the creek; and spoke about the wellbeing of residents in the neighborhood.

Mr. Monzella Curtis, Hayward resident, expressed concerned about decontrolled apartments and significant rent increases.

Ms. Jackie Zaneri, legal fellow at Centro Legal de La Raza, spoke about the lack of protection for tenants whose apartment units have been decontrolled; and asked for a moratorium on evictions or a reform of rent control law.

Mr. Ramon Rios Pareda, La Familia Counseling Services representative, recommended that prospective developers meet community stakeholders before moving forward with projects; and supported building low-income housing with services.

Ms. Marcela Ruiz, Hayward tenant, via an English-Spanish interpreter, noted that Aloha Apartments was sold and tenants were issued two-month eviction notices; and asked for rent control.

Mr. Samuel Avalos, Hayward tenant, via a Spanish-English interpreter, spoke about the sixty-day notice of termination of tenancy that Solis Gardens issued to residents of Aloha Apartments, and the emotional burden it has caused to vulnerable tenants.

Mr. Jim Drake, Hayward resident, spoke about grocery stores and disguised sales.

Mr. Ruben Medrano, Hayward tenant, spoke about the sixty-day notice that Solis Gardens issued to tenants and the uncertainty with the tenants' situation.

Consent Item No. 8 was removed for discussion and separate vote.

CONSENT

1. Adoption of a Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with CSG Consultants, Inc., for Development Review Services in the Planning Division **CONS 17-544**

Staff report submitted by Interim Development Services
Director Bristow, dated September 26, 2017, was filed.

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

Resolution 17-141, "Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with CSG Consultants, Inc., for Development Review Services in the Planning Division for an Amount Not to Exceed \$510,000"

2. Adoption of a Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with Stevenson, Porto & Pierce, Inc., for Planner Services **CONS 17-545**

Staff report submitted by Interim Development Services
Director Bristow, dated September 26, 2017, was filed.

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

Resolution 17-142, "Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Agreement with Stevenson, Porto & Pierce, Inc., for Planner Services"



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF THE CITY OF
HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 26, 2017, 7:00 p.m.**

-
3. Amendment of Professional Services Agreement with TJKM, Inc. for Neighborhood Traffic Calming Program (NTCP) **CONS 17-561**

Staff report submitted by Public Works Director Fakhrai, dated September 26, 2017, was filed.

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

Resolution 17-143, “Resolution Authorizing the City Manager to Execute an Amendment to the Agreement with TJKM Transportation Consultants Inc. for Additional Services Associated with the City of Hayward’s Neighborhood Traffic Calming Program”

4. Request for an Appropriation of \$75,000 from General Fund Reserves and Adoption of a Resolution Authorizing the City Manager to Execute a Professional Service Agreement with Moves the Needle for Lean Innovation Trainings **CONS 17-582**

Staff report submitted by Management Analyst II Stefanski, dated September 26, 2017, was filed.

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

Resolution 17-144, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Moves the Needle for Lean Innovation Training for City Executives and Staff in an Amount Not to Exceed \$174,735; and Appropriation of \$75,000 from the General Fund (Fund 100)”

5. Adoption of Ordinance Amending Chapter 2, Article 3, Section 2-3.50 of the Hayward Municipal Code to Provide for Increased Membership to the Library Commission **CONS 17-585**

Staff report submitted by City Clerk Lens, dated September 26, 2017, was filed.

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

Ordinance 17-12, "Ordinance Amending Chapter 2, Article 3, Section 2-3.50 of the Hayward Municipal Code to Increase the Number of Library Commissioners from Seven (7) to Nine (9)"

6. Approval of Changes to the Adopted FY 2018 - FY 2027 Capital Improvement Program (CIP) Budget Related to the Road Repair and Accountability Act (RRAA - SB 1 Funding) **CONS 17-588**

Staff report submitted by Director of Public Works Fakhrai, dated September 26, 2017, was filed.

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

Resolution 17-145, "Resolution Amending Resolution 17-088, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2018, Relating to New Fund 211 – RRAA (SB 1)"

7. Appointment of Ms. Zaineb Sharafali and Mr. Luis Prada to the Library Commission **APPT 17-005**

Staff report submitted by City Clerk Lens, dated September 26, 2017, was filed.

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

Resolution 17-146, "Resolution Confirming the Appointment of Zaineb Sharafali and Luis Prada to the Library Commission"

8. Adoption of Resolution Calling for and Supporting Executive and/or Legislative Action by the Trump Administration and Congress to Restore, Renew, Extend and Expand Upon the Federal Deferred Action for Childhood Arrivals (DACA) Program and Those Protections Afforded Under DACA to Immigrants Who Came to the United States as Children **CONS 17-591**

Staff report submitted by Management Analyst II Stefanski, dated September 26, 2017, was filed.

City Manager McAdoo noted that the eighth paragraph of the resolution was missing the word "action" and wanted to amend the resolution to read as follows, "...that the City of Hayward calls for and supports executive and/or legislative **action** by the President of the United States..."

Council Members read sections of the resolution into the record.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF THE CITY OF
HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 26, 2017, 7:00 p.m.**

Rev. Arlene Nehring, senior minister at Eden United Church of Christ, thanked the City Council for the support given to DACA students and the support expressed at the “Defend our Dreams” rally.

It was moved by Council Member Márquez, seconded by Council Members Zermeño and Salinas, and carried unanimously, to adopt the following with the addition of the word “action” to the eighth paragraph of the resolution to read as follows, “... that the City of Hayward calls for and supports executive and/or legislative action by the President of the United States...”:

Resolution 17-147, “A Resolution of the City Council of Hayward, California, Calling for and Supporting Executive and /or Legislative Action by the Trump Administration and Congress to Restore, Renew, Extend, and Expand Upon the Federal Deferred Action for Childhood Arrivals (DACA) Program and Those Protections Afforded Under DACA to Immigrants Who Came to the United States as Children”

WORK SESSION

9. Hayward Community Task Force Recommended Update to the 1992 Anti-Discrimination Action Plan (Report from City Manager McAdoo)

Staff report submitted by Assistant City Manager Hurtado, dated September 26, 2017, was filed.

City Manager McAdoo announced the report and acknowledged each member of the Community Task Force and additional members of the Sanctuary City Subcommittee. Members of the Community Task Force presented a summary of the recommendations for the Commitment for an Inclusive, Equitable, and Compassionate Community (CIECC). City Manager McAdoo provided a synopsis of staff’s recommendations and showed a video that was part of an award submittal to the 2017 International Hispanic Network which highlighted the work that was done with the Task Force.

Mayor Halliday opened the public comments section at 9:01 p.m.

Ms. Sally Thomas, Supervising Hayward Librarian, expressed support for the recommendations presented by the Community Task Force; and promoted the Book to Action program and the book “In the Country We Love” by Diane Guerrero.

The following speakers spoke in support of the Community Task Force recommendations and in particular three recommendations: 1) create a Community Advisory Committee to

oversee the implementation of the action plan, and social justice matters; 2) create an HPD Advisory Committee to oversee cases involving the Police Department; and 3) withdraw participation from Urban Shield.

Mr. Ramon Rios Pareda

Ms. Alicia Lawrence

Ms. Veronica Solorio, Community Task Force and The Hayward Collective member

Ms. Ysenia Sepulveda, The Hayward Collective member

Mayor Halliday closed the public comments section at 9:15 p.m.

The City Council thanked the members of the Community Task Force, members of the community, and City staff who worked on the Update to the 1992 Anti-Discrimination Action Plan.

The City Council was in general agreement with the Community Task Force's recommendations on the actions described in the Commitment (CIECC) except for withdrawing from Urban Shield and creating an HPD Advisory Committee based on the information provided by City staff.

Council Members offered additional recommendations: have the Community Task Force oversee the implementation of the action plan and have a subcommittee look into a Rent Review Board; include language in the value statement about Hayward's educational institutions and expand the collaboration on the Book to Action program to Chabot College; have the Community Task Force reconvene in six months to review a report on the value statements and provide feedback to staff before presenting it to the Council; consolidate similar action items and engage the Bay East Association of Realtors, Rental Housing Association and the Hayward Chamber of Commerce to disseminate information to newcomers; engage the business community in discussions about the action plan; consider identifying an advisory body that is not meeting as frequently and could be tasked with the implementation of the plan; consider an additional training for City officials and volunteers on colonialism and formalize teach-ins; consider HPD taking the lead in an emergency preparedness training program incorporating principles in the Commitment CIECC; consider a housing model that sets aside affordable housing units or increases in-lieu-fees; continue the Neighborhood Partnership Program and incorporate discussions about discrimination; consider further adding immigration status as a protective group; have the Community Task Force narrow its focus to five to seven objectives in each section; determine the interest of 12 to 15 Community Task Force members willing to continue to serve for three to six meetings a year; promote more community events and learn about immigrants' backgrounds to create a cohesive community; consider having the Community Task Force continue its work as an independent unit; and engage agencies and the community at large.

Mayor Halliday noted the Commitment (CIECC) would return for Council adoption at the November 28, 2017 Council meeting.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF THE CITY OF
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Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 26, 2017, 7:00 p.m.**

CITY MANAGER'S COMMENTS

City Manager McAdoo noted the Airport Open House on September 24, 2017, was a successful event where about 5,300 people participated.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

There were none.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 10:21 p.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

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

File #: MIN 17-136

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the City Council Meeting on October 3, 2017

RECOMMENDATION

That the City Council approves the minutes of the City Council meeting on October 3, 2017.

ATTACHMENTS

Attachment I Draft Minutes of October 3, 2017



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

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

ROLL CALL

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

PRESENTATION

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

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

PUBLIC COMMENTS

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

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

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

CONSENT

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

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

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

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

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

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

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

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

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

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

LEGISLATIVE BUSINESS

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

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

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

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



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

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

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

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

Council Member Zermeño seconded the motion.

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

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

PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

Council Member Zermeño seconded the motion.

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

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

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



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
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Tuesday, October 3, 2017, 7:00 p.m.**

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

Mayor Halliday allowed the project applicant to speak.

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

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

INFORMATION ITEMS

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

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

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

CITY MANAGER'S COMMENTS

There were none.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

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

ADJOURNMENT

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

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

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

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

File #: MIN 17-139

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the Special City Council Work Session Meeting on October 3, 2017

RECOMMENDATION

That the City Council approves the minutes of the City Council Work Session meeting on October 3, 2017.

ATTACHMENTS

Attachment I Draft Minutes of October 3, 2017



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Conference Room 2A
777 B Street, Hayward, CA 94541
Tuesday, October 3, 2017, 5:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 5:00 p.m., followed by the Pledge of Allegiance led by Council Member Salinas.

ROLL CALL

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

PUBLIC COMMENTS

Council Member Márquez asked staff about an update on the elements that the Council discussed on January 31, 2017, related to housing affordability strategies and resources. City Manager McAdoo noted a report would be presented to the Council at its meeting on October 17, 2017.

WORK SESSION

1. A Presentation of Updated General Fund Long-Range Financial Model (Report from Director of Finance Claussen) **WS 17-041**

Staff report submitted by Finance Director Claussen, dated October 3, 2017, was filed.

City Manager McAdoo announced the staff report and introduced Finance Director Claussen who presented members of Management Partners: Regional Vice President Andy Belknap, Special Advisor Bob Leland, and Senior Management Advisor Heain Lee.

Mr. Andy Belknap introduced the updated financial model for the City's General Fund.

Mr. Bob Leland presented the General Fund Long-Range Financial Model and revenue and expenditure assumptions built in the model; and provided a demonstration of the financial model.

Discussion ensued among Council Members, members of Management Partners, and City staff regarding the revenue and expenditure assumptions built in the financial model; recession assumptions; five-year financial data and budget forecast; information about bargaining groups in the model; the summary forecast; and the expectations for the October 14, 2017 Special City Council work session meeting.

ADJOURNMENT

Mayor Halliday adjourned the work session meeting at 6:33p.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

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

File #: CONS 17-410

DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT

Approval of Final Map Tract 8302 (Olympic Station), associated with the previously approved Vesting Tentative Tract Map and proposed development of 23 detached single-family homes on a 2.5-acre site located at 645 Olympic Avenue, (APN 465-0055-012-03); Huntwood Avenue, Hayward, Inc.
(Applicant/Owner)

RECOMMENDATION

That the City Council adopts the attached Resolution (Attachment II) approving Final Map 8302, finding it in substantial conformance with the approved Vesting Tentative Tract Map 8302 and the Conditions of Approval thereof, and authorizing the City Manager to take other administrative actions and execute a Subdivision Agreement and such other documents as are appropriate to effectuate the required improvements for the development located at 645 Olympic Avenue.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Vicinity Map
Attachment IV	Site Map
Attachment V	Final Map



DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT Approval of Final Map Tract 8302 (Harvest Park), associated with the previously approved vesting tentative tract map and proposed development of 23 single-family homes on a 2.5-acre site located at 645 Olympic Avenue (APN 465-0055-012-03); Huntwood Avenue, Hayward, Inc. (Applicant/Owner)

RECOMMENDATION

That the City Council adopts the attached Resolution (Attachment II) approving Final Map 8302, finding it in substantial conformance with the approved Vesting Tentative Tract Map 8302 and the Conditions of Approval thereof, and authorizing the City Manager to take other administrative actions and execute a Subdivision Agreement and such other documents as are appropriate to effectuate the required improvements for the development located at 645 Olympic Avenue.

BACKGROUND

Per State law, Tentative Tract and Final maps are required for all subdivisions creating five or more parcels. A Tentative Tract Map is required to ensure that any proposed development complies with the Subdivision Map Act, the California Environmental Quality Act, Planned Development guidelines, the City Subdivision Ordinance, Zoning Ordinance, Building Regulations, the Hayward General Plan and Neighborhood Plans, and the site-specific requirements of the Development Services, Public Works, Fire, and Police Departments.

After the Tentative Map and Precise Plan are approved, the developer submits the Final Subdivision Map and Improvement Plans for review and approval by the City Engineer (and subsequent recordation of the Final Map after Council review and approval) before proceeding with obtaining grading and building permits for the construction of improvements. The developer is also required to file a Tentative Map and Final Map so that the 23 single-family homes may be sold individually.

On June 14, 2016, the Hayward City Council approved the Vesting Tentative Tract Map and other discretionary approvals to subdivide the properties and construct 23 single-family homes. The Vesting Tentative Map expires on June 14, 2019.

In August 2016, the applicant submitted preliminary Improvement Plans and the Final Map to the City for review and approval.

DISCUSSION

Tract 8302 is located across four (4) parcels totaling 2.5-acres at 645 Olympic Avenue (see Attachment III- Vicinity Map). The project proposes 23 new single family homes on a site surrounded by a mixture of residential and industrial uses. The residential uses around the project site include single family residential, medium density residential, and a mobile home park across Huntwood Avenue to the west. To the south of the project site is a car dealership.

The Subdivision Improvement Plans and Final Map (Attachment V) were reviewed by the City Engineer and were found to be in substantial compliance with the Vesting Tentative Map, and in conformance with the Subdivision Map Act and Hayward's subdivision regulations. There are no significant changes to the Final Map as compared to the approved Vesting Tentative Tract Map.

The City Council's approval of the Final Map shall not become effective until and unless the developer enters into a Subdivision Agreement with the City for the construction of improvements and other obligations required per conditions of approval of the Vesting Tentative Tract Map.

On June 14, 2016, a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program was adopted to facilitate the development of Tract 8302 by the Hayward City Council via Resolution 16-099. No additional environmental review is required for approval of the project Final Map.

ECONOMIC AND FISCAL IMPACT

The Final Map approval is consistent with the approved project and the Final Map will not have a fiscal or economic impact by itself.

STRATEGIC PRIORITIES

This agenda item supports the Complete Streets and Complete Communities Strategic Initiatives. The purpose of the Complete Streets Strategic Initiative is to build streets that are safe, comfortable, and convenient for travel for everyone, regardless of age or ability, including motorists, pedestrians, bicyclists, and public transportation riders. The purpose of the Complete Communities strategy is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goals and objectives:

Complete Streets

Goal 1: Prioritize safety for all modes of travel.

Objective 2: Reduce speeding and aggressive driving behavior through 4 E's (Education, Enforcement, Empowerment, and Engineering).

Objective 3: Ensure that roadway construction and retrofit programs and projects include complete streets elements.

Goal 2: Provide Complete Streets that balance the diverse needs of users of the public right-of-way.

Objective 1: Increase walking, biking, transit usage, carpooling and other sustainable modes of transportation by designing and retrofitting streets to accommodate all modes.

Complete Communities

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

Objective 4: Create resilient and sustainable neighborhoods.

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

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

PUBLIC CONTACT

A public hearing is not required for the filing of the Final Map for Tract 8302. Public hearings were already conducted as part of the approval of Vesting Tentative Map application for Tract 8302.

NEXT STEPS

If the City Council approves the Final Map, the applicant will have the final map recorded, obtain construction permits, and commence the construction of improvements shown on the approved Improvement Plans.

Prepared by: Allen Baquilar, PE, Development Review Engineer

Recommended by: Stacey Bristow, Interim Development Services Director

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-___

Introduced by Council Member _____

RESOLUTION APPROVING FINAL MAP FOR TRACT 8302 AND AUTHORIZING
THE CITY MANAGER TO EXECUTE A SUBDIVISION AGREEMENT

WHEREAS, Vesting Tentative Tract Map No. 8302, Olympic Station, was approved by the Hayward City Council on June 14, 2016; and

WHEREAS, the Final Map for Tract 8302 has been presented to the City Council of the City of Hayward to allow development of 23 detached single-family homes, located on four (4) parcels totaling 2.5 acres, located at 645 Olympic Avenue; and

WHEREAS, the Director of Public Works reviewed the Final Map and found it to be in substantial compliance with the approved Vesting Tentative Tract Map, the Subdivision Map Act and the City of Hayward regulations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward does hereby find that the Final Map for Tract 8302 is in substantial compliance with the approved Vesting Tentative Tract Map and does hereby approve the Final Map for Tract 8302, subject to the subdivider entering into a subdivision agreement for the construction of improvements and other obligations, as required by the conditions of approval of the Vesting Tentative Tract Map for Tract 8302, and that the approval of the Final Map for Tract 8302 shall not be effective until and unless such agreement is entered into.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized for and on behalf of the City of Hayward to negotiate and execute a subdivision agreement in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

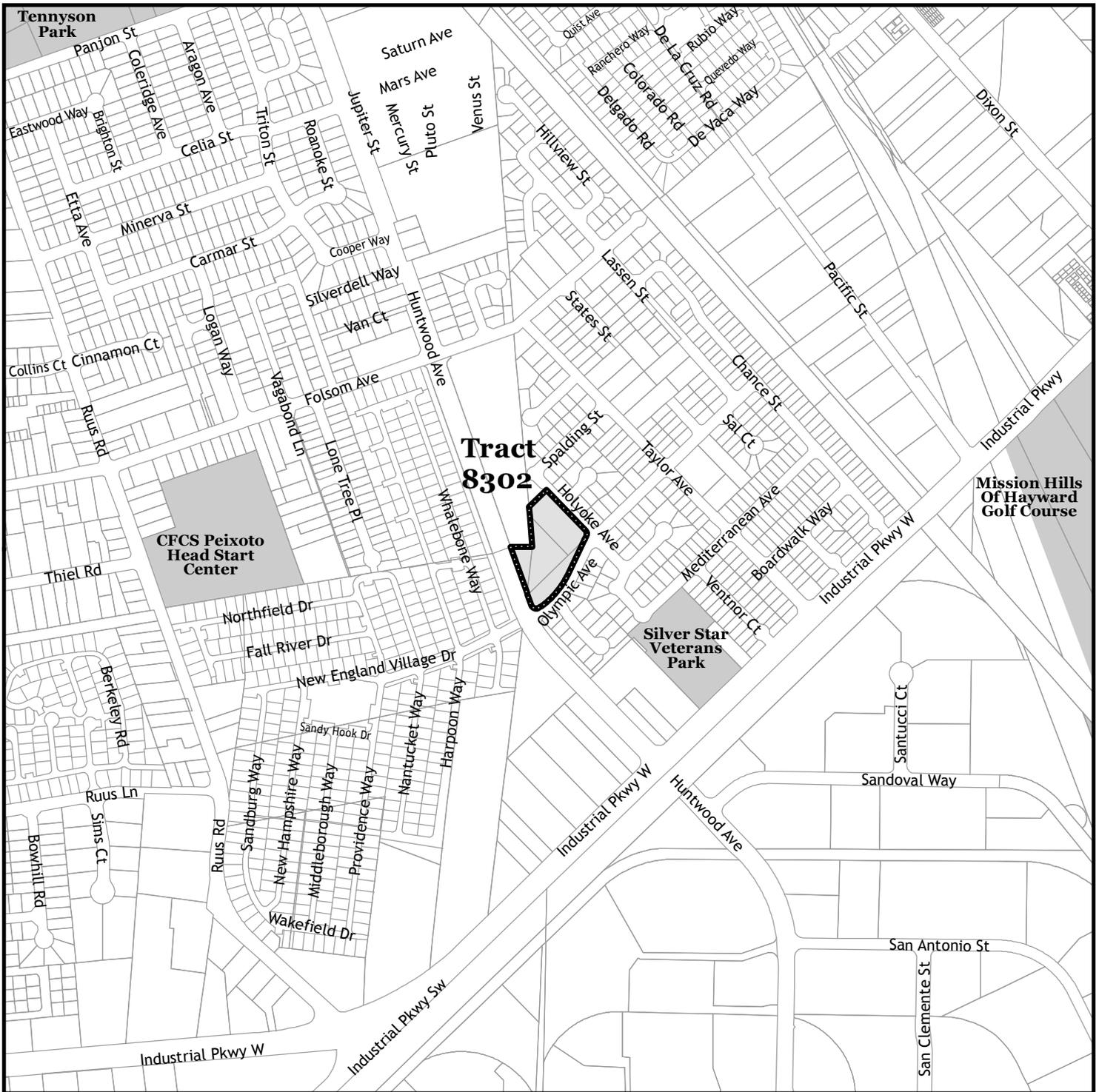
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



Final Map 8302

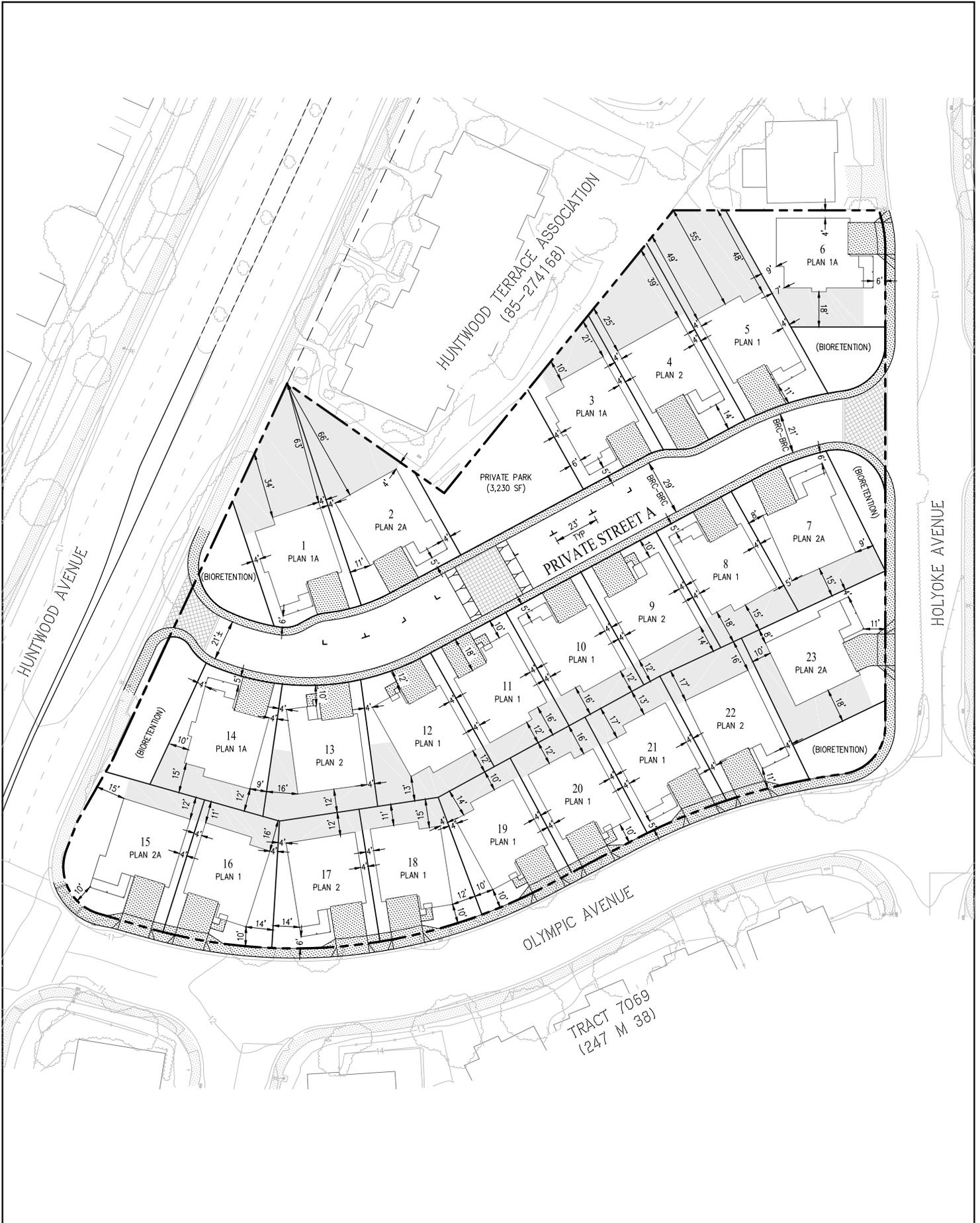
Address:
645 & 685 Olympic Ave





Site Map

Attachment IV - Tract 8302



OWNER'S STATEMENT

THE UNDERSIGNED DO HEREBY STATE THAT THEY ARE THE OWNERS OF ALL THE LAND DELINEATED AND EMBRACED WITHIN THE EXTERIOR BOUNDARY LINES UPON THE HEREIN EMBODIED FINAL MAP ENTITLED "TRACT 8302 OLYMPIC STATION", CONSISTING OF 6 SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT THEY HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD AND CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP. THAT SAID MAP PARTICULARLY SETS FORTH AND DESCRIBES ALL THE LOTS INTENDED FOR SALE BY THEIR NUMBER AND PRECISE WIDTH AND LENGTH; AND THAT SAID MAP PARTICULARLY SETS FORTH AND DESCRIBES THE PARCELS OF GROUND RESERVED FOR PUBLIC PURPOSES BY THEIR BOUNDARIES, COURSES, AND EXTENT.

SAID OWNERS HEREBY DEDICATE TO THE PUBLIC FOREVER, EASEMENTS FOR THE USE AND PURPOSE OF PUBLIC STREETS, THE PARCELS OF LAND SHOWN UPON SAID MAP AS HOLYOKE AVENUE DEDICATION AND HUNTWOOD AVENUE DEDICATION.

SAID OWNERS HEREBY DEDICATE TO THE PUBLIC FOREVER, EASEMENTS WITH THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND APPURTENANCES, UNDER, ON AND OVER LANDS SHOWN UPON SAID MAP AS PUE (PUBLIC UTILITY EASEMENT) AND THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, RECONSTRUCTING OR PREPARING SAID PUBLIC UTILITIES AND THEIR APPURTENANCES.

SAID OWNERS HEREBY DEDICATE TO THE PUBLIC FOREVER, EASEMENTS WITH THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN SANITARY SEWERS AND APPURTENANCES, UNDER, ON AND OVER LANDS SHOWN UPON SAID MAP AS "SSE" (SANITARY SEWER EASEMENT) AND THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, RECONSTRUCTING OR PREPARING SAID SANITARY SEWERS AND THEIR APPURTENANCES.

SAID OWNERS HEREBY DEDICATE TO THE PUBLIC FOREVER, EASEMENTS WITH THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN WATER LINES AND APPURTENANCES, UNDER, ON AND OVER LANDS SHOWN UPON SAID MAP AS "WLE" (WATER LINE EASEMENT) AND THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, RECONSTRUCTING OR PREPARING SAID WATER LINES AND THEIR APPURTENANCES.

SAID OWNERS HEREBY DEDICATE TO THE CITY OF HAYWARD FOREVER, EASEMENTS FOR EMERGENCY VEHICLE ACCESS ON AND OVER THE LANDS SHOWN UPON SAID MAP AS "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT), SAID EASEMENT SHALL BE MAINTAINED IN A SAFE AND USABLE CONDITION BY THE HOMEOWNERS ASSOCIATION OF THIS SUBDIVISION.

SAID OWNERS HEREBY DEDICATE TO THE CITY OF HAYWARD FOREVER, EASEMENTS FOR THE USE AND PURPOSE OF PUBLIC SIDEWALKS, ON, OVER AND ACROSS THE LANDS SHOWN UPON SAID MAP AS "SE" (SIDEWALK EASEMENT), SAID EASEMENT SHALL BE MAINTAINED IN A SAFE AND USABLE CONDITION BY THE HOMEOWNERS ASSOCIATION OF THIS SUBDIVISION.

SAID OWNERS HEREBY DEDICATE TO THE CITY OF HAYWARD FOREVER, EASEMENTS FOR PEDESTRIAN AND VEHICULAR ACCESS PURPOSES ON AND OVER THE LANDS SHOWN UPON SAID MAP AS "PAE" (PUBLIC ACCESS EASEMENT), SAID EASEMENT TO BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION OF THIS SUBDIVISION.

THE AREAS DELINEATED AS "PRIVATE STORM DRAIN EASEMENT" OR "PSDE" ARE FOR THE PURPOSES OF INSTALLATION AND MAINTENANCE OF PRIVATE STORM DRAINAGE FACILITIES AND THEIR APPURTENANCES. SAID EASEMENTS SHALL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION OF THE SUBDIVISION AND SAID EASEMENTS ARE NOT OFFERED FOR DEDICATION TO THE PUBLIC.

THE AREA DESIGNATED AS 'PARCEL C' ON SAID MAP IS FOR PRIVATE PARK PURPOSES. MAINTENANCE OF SAID PARK SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION, ALL IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS PROJECT.

THE AREAS SHOWN ON SAID MAP AS 'PARCELS A, B, D, E AND F', ARE FOR BIORETENTION AREAS. MAINTENANCE OF SAID PARCELS SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION, ALL IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS PROJECT.

THE AREA DESIGNATED AS 'PARCEL G' IS A PRIVATE STREET AND IS NOT OFFERED FOR DEDICATION. SAID STREET TO BE CONVEYED TO THE HOMEOWNERS ASSOCIATION BY SEPARATE DOCUMENT SUBSEQUENT TO THE FILING OF THIS MAP.

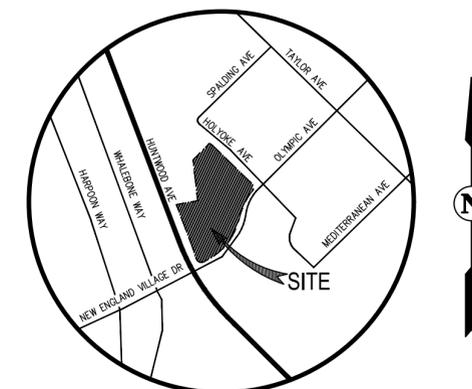
THIS MAP SHOWS ALL EASEMENTS OF RECORD.

AS OWNER: _____
 BY: _____ DATE: _____
 NAME: _____ TITLE: _____
 BY: _____ DATE: _____
 NAME: _____ TITLE: _____

TRACT 8302 OLYMPIC STATION

CONSISTING OF 6 SHEETS
 LYING ENTIRELY WITHIN THE CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA
 BEING A SUBDIVISION OF A PORTION OF THE 60.768 ACRE TRACT OF LAND DESCRIBED
 IN THE DEED RECORDED SEPTEMBER 19, 1939 IN BOOK 3777 OF OFFICIAL RECORDS AT
 PAGE 475 TOGETHER WITH A PORTION OF PARCEL A AS SHOWN ON PARCEL MAP 1719,
 FILED APRIL 26, 1977 IN BOOK 97 OF PARCEL MAPS AT PAGES 9 & 10,

ALAMEDA COUNTY RECORDS
Carlson, Barbee & Gibson, Inc.
 CIVIL ENGINEERS • SURVEYORS • PLANNERS
 SAN RAMON • SACRAMENTO
 JULY 2017



VICINITY MAP
NOT TO SCALE

OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF _____ } SS.
 COUNTY OF _____ }

ON _____, BEFORE ME, _____, A
 NOTARY PUBLIC, PERSONALLY APPEARED _____,
 WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE
 NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT
 HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT
 BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON
 BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT
 THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: _____

NAME (PRINT): _____

PRINCIPAL PLACE OF BUSINESS: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

CITY SURVEYOR'S STATEMENT

I, DAN S. SCOTT III, CITY SURVEYOR, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY SURVEYOR OF THE CITY OF HAYWARD, COUNTY OF ALAMEDA, STATE OF CALIFORNIA DO HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN EMBODIED FINAL MAP ENTITLED "TRACT 8302 OLYMPIC STATION, CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA";

I AM SATISFIED THAT THE SURVEY DATA SHOWN THEREIN IS TECHNICALLY CORRECT.

IN WITNESS WHEREOF, I HERETO SET MY HAND THIS _____ DAY OF _____, 2017.

 DAN S. SCOTT III, PLS NO 7840
 CITY SURVEYOR
 CITY OF HAYWARD, ALAMEDA COUNTY,
 STATE OF CALIFORNIA
 LICENSE EXPIRES 12/31/18

SURVEYOR'S STATEMENT

I, MARK H. WEHBER, A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, HEREBY STATE THAT THIS FINAL MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF URBAN WEST, LLC IN JULY 2016, AND IS TRUE AND COMPLETE AS SHOWN; THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITION INDICATED ON THIS FINAL MAP OR WILL BE SET IN THOSE POSITIONS INDICATED ON OR BEFORE DECEMBER 31, 2018, OR PRIOR TO THE ACCEPTANCE OF THE IMPROVEMENTS, AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. THE AREA OF THIS FINAL MAP CONTAINS 2.50 ACRES, MORE OR LESS.

I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP.

DATE _____



 MARK H. WEHBER, PLS
 L.S. NO. 7960
 LICENSE EXPIRES 3/31/18

COUNTY RECORDER'S STATEMENT

FILED FOR RECORD, THIS _____ DAY OF _____, 2017, AT _____ IN BOOK _____ OF MAPS, AT PAGE _____, AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

 STEVE MANNING
 COUNTY RECORDER IN AND FOR THE
 COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: _____
 DEPUTY COUNTY RECORDER



TRACT 8302 OLYMPIC STATION

CONSISTING OF 6 SHEETS
LYING ENTIRELY WITHIN THE CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA
BEING A SUBDIVISION OF A PORTION OF THE 60.768 ACRE TRACT OF LAND DESCRIBED
IN THE DEED RECORDED SEPTEMBER 19, 1939 IN BOOK 3777 OF OFFICIAL RECORDS AT
PAGE 475 TOGETHER WITH A PORTION OF PARCEL A AS SHOWN ON PARCEL MAP 1719,
FILED APRIL 26, 1977 IN BOOK 97 OF PARCEL MAPS AT PAGES 9 & 10,
ALAMEDA COUNTY RECORDS
Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • SACRAMENTO
JULY 2017

CITY ENGINEER'S STATEMENT

I, MORAD FAKHRAI, CITY ENGINEER OF THE CITY OF HAYWARD, DO HEREBY STATE THAT THE HEREIN EMBODIED FINAL MAP, ENTITLED "TRACT 8302 OLYMPIC STATION, CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA," CONSISTING OF 6 SHEETS, THIS STATEMENT BEING ON SHEET 2 THEREOF; HAS BEEN EXAMINED AND THAT THE SUBDIVISION, AS SHOWN UPON SAID MAP, IS SUBSTANTIALLY THE SAME AS SAID SUBDIVISION APPEARED ON THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP AND ANY APPROVED AMENDMENTS THEREOF; AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT OF THE STATE OF CALIFORNIA AND AMENDMENTS THERETO, AND ANY LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

IN WITNESS WHEREOF, I HERETO SET MY HAND THIS _____ DAY OF _____, 2017.

MORAD FAKHRAI, RCE NO. 43921
CITY ENGINEER,
CITY OF HAYWARD, ALAMEDA COUNTY,
STATE OF CALIFORNIA
REGISTRATION EXPIRES: 6/30/19

CLERK OF THE BOARD OF SUPERVISOR'S STATEMENT

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY CERTIFY, AS CHECKED BELOW THAT:

[] AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF THE SAID COUNTY AND STATE IN THE AMOUNT OF \$ _____ CONDITIONED FOR PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS _____ TAXES, WHICH ARE NOT A LIEN AGAINST SAID LAND OR ANY PART THEREOF BUT NOT YET PAYABLE AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

[] ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

IN WITNESS WHEREOF, I HERETO SET MY HAND THIS _____ DAY OF _____, 20____.

ANIKA CAMPBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF ALAMEDA, CALIFORNIA

BY: _____

CITY CLERK'S STATEMENT

I, MIRIAM LENS, CITY CLERK AND CLERK OF THE COUNCIL OF THE CITY OF HAYWARD, ALAMEDA COUNTY, STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE HEREIN EMBODIED FINAL MAP ENTITLED, "TRACT 8302" CONSISTING OF 6 SHEETS, THIS STATEMENT BEING ON SHEET 2 THEREOF, WAS PRESENTED TO SAID COUNCIL, AS PROVIDED BY LAW, AT A REGULAR MEETING HELD ON THE _____ DAY OF _____, 2017, AND THAT SAID COUNCIL DID THEREUPON, BY RESOLUTION NUMBER _____, PASSED AND ADOPTED AT SAID MEETING, APPROVED SAID MAP AND ACCEPTED ON BEHALF OF THE PUBLIC THE EASEMENTS OFFERED FOR DEDICATION FOR STREET PURPOSES THOSE PORTIONS DESIGNATED AS HOLYOKE AVENUE DEDICATION AND HUNTWOOD AVENUE DEDICATION, AND THE EASEMENTS OFFERED FOR DEDICATION AS "PUE" (PUBLIC UTILITY EASEMENT), "WLE" (WATER LINE EASEMENT), "SSE" (SANITARY SEWER EASEMENT), "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT), "PAE" (PUBLIC ACCESS EASEMENT), AND "SE" (SIDEWALK EASEMENT).

IN WITNESS WHEREOF, I HERETO SET MY HAND THIS _____ DAY OF _____, 20____.

MIRIAM LENS, CITY CLERK AND
CLERK OF THE COUNCIL OF THE CITY OF HAYWARD,
ALAMEDA COUNTY, STATE OF CALIFORNIA

SOIL / GEOTECHNICAL REPORT NOTE

A SOILS REPORT ON THIS PROPERTY HAS BEEN PREPARED BY ENGEQ, INC., ENTITLED "GEOTECHNICAL EXPLORATION", PROJECT NO. 11114.001.000 DATED NOVEMBER 2, 2015, WHICH HAS BEEN FILED WITH THE CITY OF HAYWARD.

PRELIMINARY

TRACT 8302 OLYMPIC STATION

CONSISTING OF 6 SHEETS
 LYING ENTIRELY WITHIN THE CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA
 BEING A SUBDIVISION OF A PORTION OF THE 60.768 ACRE TRACT OF LAND DESCRIBED
 IN THE DEED RECORDED SEPTEMBER 19, 1939 IN BOOK 3777 OF OFFICIAL RECORDS AT
 PAGE 475 TOGETHER WITH A PORTION OF PARCEL A AS SHOWN ON PARCEL MAP 1719,
 FILED APRIL 26, 1977 IN BOOK 97 OF PARCEL MAPS AT PAGES 9 & 10,
 ALAMEDA COUNTY RECORDS

Carlson, Barbee & Gibson, Inc.

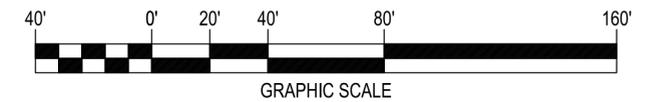
CIVIL ENGINEERS • SURVEYORS • PLANNERS

SAN RAMON • SACRAMENTO

SCALE: 1" = 40'

MAY 2017

UPDATE

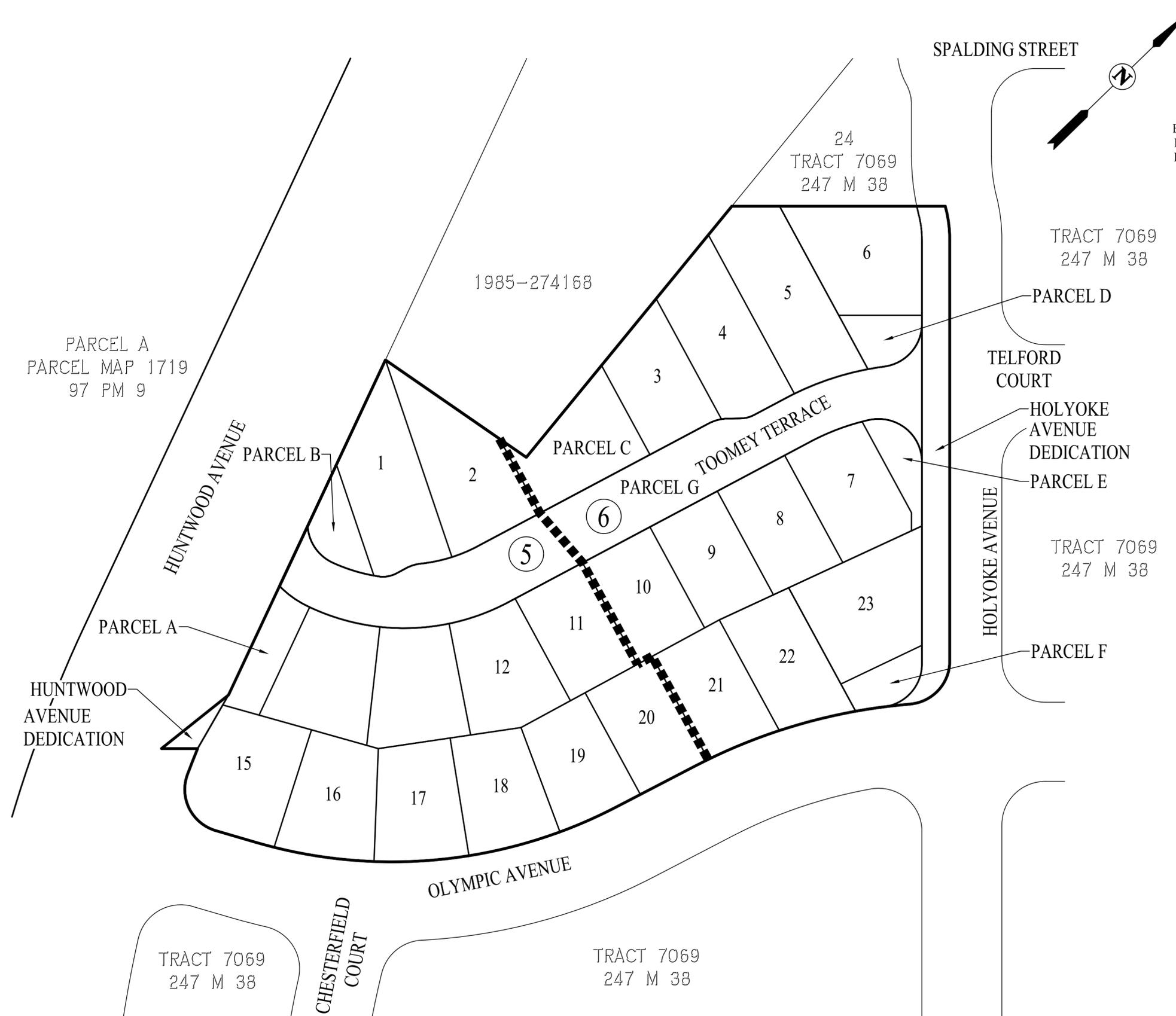


LEGEND

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
(T)	TOTAL
(R)	RADIAL BEARING
(M-M)	MONUMENT TO MONUMENT
(M-PL)	MONUMENT TO PROPERTY LINE
●	FOUND STANDARD STREET MONUMENT
⊙	SET STANDARD STREET MONUMENT
⊗	SEARCHED, NOT FOUND (SNF)
○	SET NAIL AND TAG, LS 7960, UNLESS OTHERWISE NOTED
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SE	SIDEWALK EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT
PSDE	PRIVATE STORM DRAIN EASEMENT
PAE	PUBLIC ACCESS EASEMENT
	SHEET LIMITS
⑤	SHEET NUMBER

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF OLYMPIC AVENUE, THE BEARING BEING N32°50'23"E PER 247 M 38.



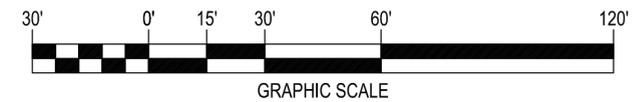
CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	54.50'	19°52'44"	18.91'
C2	25.00'	61°54'39"	27.01'
C3	97.50'	14°38'30"	24.92'
C4	97.50'	16°22'33"	27.87'
C5	97.50'	1°44'03"	2.95'
C6	16.00'	37°00'11"	10.33'
C7	24.00'	22°12'00"	9.30'
C8	89.50'	11°39'01"	18.20'
C9	89.50'	21°55'56"	34.26'
C10	89.50'	10°16'56"	16.06'
C11	126.50'	1°06'15"	2.45'
C12	704.00'	0°07'14"	1.48'
C13	708.26'	1°18'05"	16.09'
C14	323.00'	1°28'39"	8.33'

LINE TABLE		
NO	BEARING	LENGTH
L1	N44°29'46"E	20.80'
L2	N16°00'00"E	6.17'
L3	N15°46'17"W	35.79' (T)
L4	N20°37'16"W	9.17'
L5	N69°22'44"E	22.06' (M-PL)
L6	N04°59'02"W	13.45'
L7	N20°37'16"W	16.00'

TRACT 8302 OLYMPIC STATION

CONSISTING OF 6 SHEETS
 LYING ENTIRELY WITHIN THE CITY OF HAYWARD, ALAMEDA COUNTY, CALIFORNIA
 BEING A SUBDIVISION OF A PORTION OF THE 60.768 ACRE TRACT OF LAND DESCRIBED
 IN THE DEED RECORDED SEPTEMBER 19, 1939 IN BOOK 3777 OF OFFICIAL RECORDS AT
 PAGE 475 TOGETHER WITH A PORTION OF PARCEL A AS SHOWN ON PARCEL MAP 1719,
 FILED APRIL 26, 1977 IN BOOK 97 OF PARCEL MAPS AT PAGES 9 & 10,
 ALAMEDA COUNTY RECORDS

Carlson, Barbee & Gibson, Inc.
 CIVIL ENGINEERS • SURVEYORS • PLANNERS
 SAN RAMON • SACRAMENTO
 SCALE: 1" = 30' JULY 2017



LEGEND

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- LOT LINE
- EASEMENT LINE
- MONUMENT LINE
- TOTAL
- RADIAL BEARING
- MONUMENT TO MONUMENT
- MONUMENT TO PROPERTY LINE
- FOUND STANDARD STREET MONUMENT
- SEARCHED, NOT FOUND (SNF)
- SET NAIL AND TAG, LS 7960, UNLESS OTHERWISE NOTED
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- PUE PUBLIC UTILITY EASEMENT
- SE SIDEWALK EASEMENT
- SSE SANITARY SEWER EASEMENT
- WLE WATER LINE EASEMENT
- PSDE PRIVATE STORM DRAIN EASEMENT
- PAE PUBLIC ACCESS EASEMENT

BASIS OF BEARINGS:

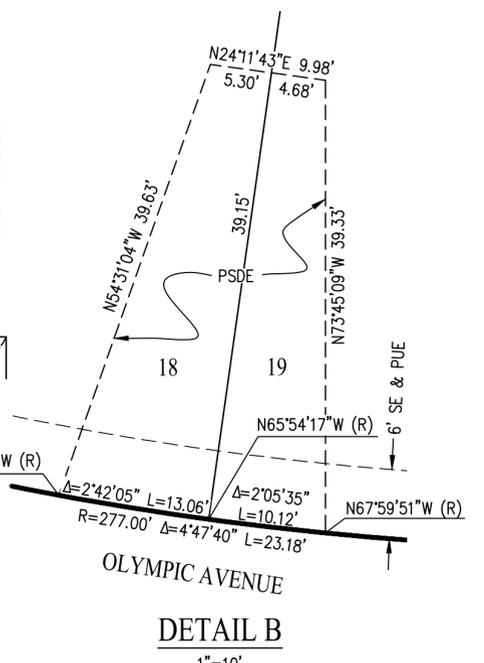
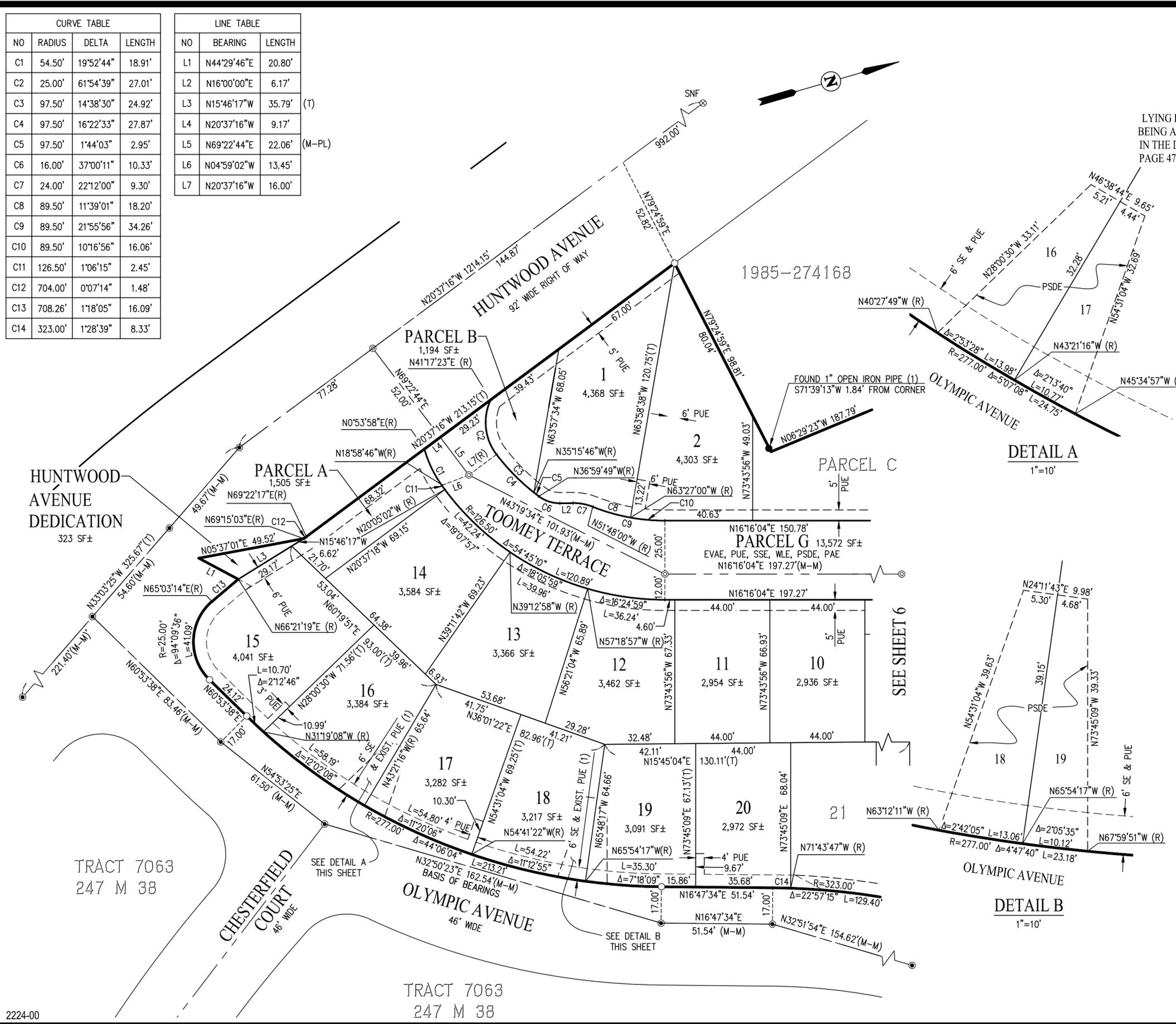
THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF OLYMPIC AVENUE, THE BEARING BEING N32°50'23"E PER 247 M 38.

NOTES:

- ALL DISTANCES AND DIMENSIONS SHOWN IN FEET AND DECIMALS THEREOF.
- DUE TO ROUNDING, INCREMENTAL DIMENSIONS MAY NOT EQUAL OVERALL DIMENSIONS.

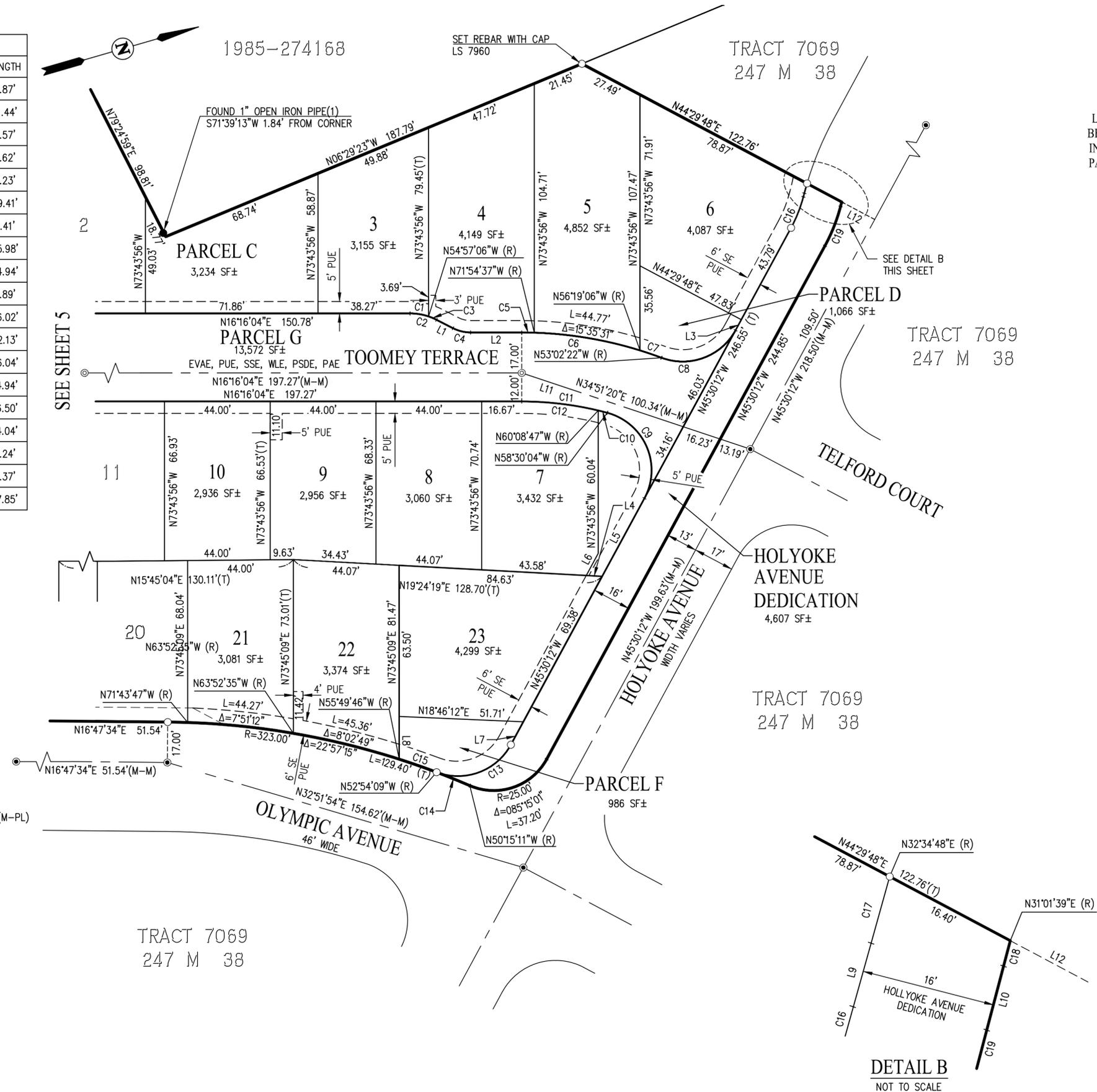
EASEMENT NOTE:

THE LOCATION OF THE FOLLOWING EASEMENTS ARE NOT DEFINED OF RECORD AND ARE NOT SHOWN HEREON:
 1. COMMUNICATION FACILITIES EASEMENT WITH RIGHT OF INGRESS AND EGRESS IN FAVOR OF THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY RECORDED JUNE 28, 1977 AS DOCUMENT 77-127476, OFFICIAL RECORDS OF ALAMEDA COUNTY.



CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	24.00'	18°46'50"	7.87'
C2	24.00'	27°18'03"	11.44'
C3	24.00'	8°31'13"	3.57'
C4	16.00'	27°18'03"	7.62'
C5	164.50'	1°49'19"	5.23'
C6	164.50'	20°41'34"	59.41'
C7	164.50'	3°16'44"	9.41'
C8	25.00'	82°27'50"	35.98'
C9	25.00'	102°59'52"	44.94'
C10	135.50'	1°38'43"	3.89'
C11	135.50'	15°13'52"	36.02'
C12	135.50'	13°35'09"	32.13'
C13	25.00'	82°36'03"	36.04'
C14	323.00'	2°38'58"	14.94'
C15	323.00'	2°55'37"	16.50'
C16	59.00'	13°38'17"	14.04'
C17	141.00'	1°43'17"	4.24'
C18	125.00'	0°10'08"	0.37'
C19	75.00'	13°38'17"	17.85'

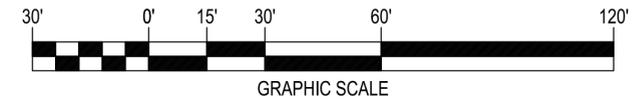
LINE TABLE		
NO	BEARING	LENGTH
L1	N43°34'07"E	7.73'
L2	N16°16'04"E	21.28'
L3	N45°30'12"W	5.04'
L4	N19°24'19"E	6.63'
L5	N45°30'12"W	37.21'
L6	N45°30'12"W	10.55'
L7	N45°30'12"W	10.94'
L8	N73°45'09"W	17.97'
L9	N59°08'29"W	1.57'
L10	N59°08'29"W	1.57'
L11	N34°51'20"E	70.92'
L12	N44°29'48"E	15.58'
L13	N73°43'56"W	3.69'



TRACT 8302 OLYMPIC STATION

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- MONUMENT LINE
- (T) TOTAL
- (R) RADIAL BEARING
- (M-M) MONUMENT TO MONUMENT
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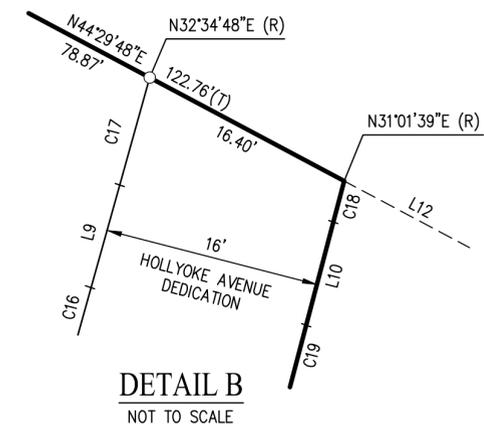
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CITY OF HAYWARD

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

File #: CONS 17-573

DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Director of Development Services

SUBJECT

Filing Nuisance/Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations

RECOMMENDATION

That Council adopts the attached resolution confirming the Report, non-abatable code violations, and penalty liens associated with the Code Enforcement Division and Community Preservation/Rental Housing Programs.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution and List of Properties for Lien



DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Director of Development Services

SUBJECT Filing Nuisance Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations

RECOMMENDATION

That Council adopts the attached resolution (Attachment II) confirming the Report, non-abatable code violations, and penalty liens associated with the Code Enforcement Division and Community Preservation/Rental Housing Programs.

SUMMARY

The filing of liens with the County Recorder's Office as a third collection tool for the Community Preservation and Rental Housing programs allows for enhanced enforcement to ensure violations are identified and compliance is achieved.

BACKGROUND

The purpose of this Nuisance Abatement/Municipal Code confirmation is to consider the proposed Report and filings of liens with the County Recorder's Office as a third collection tool for the Community Preservation and Rental Housing Programs. The Resolution will officially confirm the properties in violation of the following City ordinances and will be filed with the County.

Hayward's Community Preservation and Improvement Ordinance: Article 7, Chapter 5 of the Hayward Municipal Code (HMC), otherwise known as the Community Preservation and Improvement Ordinance, makes it unlawful for Hayward property owners to allow the condition of their property to deteriorate to the point that it becomes detrimental to the public health, safety, or general welfare of the community. This includes both inhabited properties and vacant properties, whether residential or commercial. Typical violations include debris, trash, overgrown vegetation, graffiti, signs, zoning issues, abandoned and/or inoperable vehicles, and the like.

Hayward's Residential Rental Inspection Ordinance: Article 5, Chapter 9 of the Hayward Municipal Code (HMC), otherwise known as the Residential Rental Inspection Ordinance (RRIO), creates an inspection program for residential rental units in the City. The purpose of the RRIO is to safeguard the stock of safe and sanitary rental housing by inspecting units for violations of housing and building codes. This includes all rental housing units and hotels and motels. Typical violations include housing violations such as inadequate maintenance, and unpermitted building, plumbing, electrical and mechanical work.

Hayward's Public Nuisance Ordinance: Article 1, Chapter 4 of the Hayward Municipal Code (HMC), otherwise known as the Public Nuisance Ordinance, defines a public nuisance as anything which is injurious to health, or is indecent, offensive to the senses, or an obstruction to the free use of property to interfere with the comfortable or safe enjoyment of life or property of the community.

These ordinances provide staff an alternative method of enforcement and collections for non-abatable violations of the HMC. A condition on property is considered non-abatable when City staff cannot perform the abatement and the property owner fails to comply with the City's requirement to perform abatement. Examples of non-abatable conditions include fence height(s) and/or structures that do not meet setback requirements, illegal structures, businesses operating without an approved use permit (if applicable) or failing to comply with Conditions of Approval of an approved use permit, parking violations, rental housing violations, and illegal units. Adoption of the Resolution will authorize staff to file a lien against properties in violation with the County Recorder's Office.

This additional enforcement process does not affect or change the Administrative Hearing request process, nor the Special Assessment Process. However, this Nuisance Abatement/Municipal Code Violations lien process is an additional means of enforcement when dealing with non-abatable code violations. Staff utilizes the lien and special assessment processes independently or in conjunction with other regulations to enhance compliance efforts. The lien process differs from that used for special assessments in that a violation and fee are recorded on a property's title to alert potential buyers or those with a fiduciary interest in the property, such as a lending institution, of the property violation and the need to pay a fee. The primary function of special assessments, related to action taken by Council on July 18, was to allow the City to collect past due fees via annual tax bills. Authority for this process is granted under the Community Preservation and Improvement Ordinance, Residential Rental Inspection Ordinance and Government Code Section 38773.1.

DISCUSSION

As of the date of this report, there are eleven (11) properties being submitted to Council for the filing of a Nuisance Abatement/Municipal Code Violations lien, as listed in Exhibit "A" in the attached resolution (Attachment II). The unpaid charges, which total \$66,165 plus any administrative costs of the County, will become liens on the property titles. When the properties are sold or refinanced, the liens will be paid.

Staff sends a minimum of three notices to the property owner in question and, if applicable, to the tenants. The first notice informs the recipient of the violation and the right to an Administrative Hearing to dispute the factual findings. The notices are sent by first class mail with proof of service. The final notice is also delivered by way of process server. The final notice details all related costs and/or fees and informs the affected parties of the opportunity to request an Administrative Hearing. The notice also encourages them to make the needed corrections(s) to bring their properties into compliance. To date, no Administrative Hearings have been requested to be heard by the City's hearing officer. A confirmed copy of the Nuisance Abatement/Municipal Code Violations form will be sent to the owner, tenant and lender once received from the County Recorder's Office.

ECONOMIC IMPACT

The filing of liens with the County Recorder's Office supports the community preservation/rental inspection programs in ensuring well maintained, safe and sanitary neighborhoods and properties.

PUBLIC CONTACT

Notice of City Council's confirmation of this report was published in *The Daily Review* on October 6th and October 13th, 2017. In addition, all notices include specific language giving the property owner an opportunity for a Lien Hearing to contest the fees and/or penalties and encouraging them to pay their bills to avoid having a lien placed on the title of the property.

STRATEGIC INITIATIVES

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

FISCAL IMPACT

There is no negative fiscal impact to the City of Hayward resulting from this action. There will be 100% cost recovery reimbursement through the lien process. To change ownership of a property, a lien must be satisfied. If the property is sold or the owner refinances, the City will receive reimbursement. All reimbursed funds are allocated to the General Fund and support the Code Enforcement Division's on-going compliance efforts.

NEXT STEPS

A copy of the lien List will be forwarded to the Alameda County Assessor's Office. Upon receipt, the Assessor's Office will attach the City of Hayward's fees past due and violations as a lien against each parcel. That lien will then appear on the property title until the fees have been paid and violation(s) are abated.

Prepared by: Eusebio Espitia, Code Enforcement Manager

Recommended by: Stacey Bristow, Interim Director of Development Services

Approved by:

A handwritten signature in black ink, appearing to read 'K McAadoo', is positioned above a horizontal line.

Kelly McAadoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member

RESOLUTION CONFIRMING THE REPORT AND NON - ABATABLE CODE VIOLATIONS AND PENALTIES LIENS LIST ASSOCIATED WITH THE CODE ENFORCEMENT DIVISION AND COMMUNITY PRESERVATION/RENTAL HOUSING PROGRAMS.

WHEREAS, in connection with the Code Enforcement Division, Community Preservation/Rental Housing Programs, the Code Enforcement Manager has rendered an itemized report (“the Report”, attached as Exhibit “A”) in writing to the City Council showing the Community Preservation/Residential Rental Inspections and Zoning Ordinance non-abatable code violations and related fines, fees, penalties and lien costs for certain properties in the City of Hayward described in the Report; and

WHEREAS, the hour of 7:00 p.m. on Tuesday, October 17, 2017, in the Council Chambers, City Hall, 777 B Street, Hayward, California, was fixed as the time and place for the City Council to confirm the Report, as published and noticed in the manner required by Section 5-7.110 of the Municipal Code; and

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward confirms, except as may be amended by Council, the Report of the Code Enforcement Manager of the City of Hayward Code Enforcement Division, Community Preservation/Rental Housing Programs on costs and non-abatable ordinance violations associated with the properties described in the Report.

BE IT FURTHER RESOLVED that payments of all fines, fees, penalties and lien costs confirmed hereby may be received by the City of Hayward Finance Director within ten days from the date of this resolution and thereafter such official shall transmit the unpaid charges to the County Recorder’s Office for a Nuisance Abatement lien on said property(s) listed in Report.

IN COUNCIL, HAYWARD, CALIFORNIA October 17, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit "A"

	Address/Lien Amount		Zoning/Violation
1.	780 Folsom Ave. CE15-3610	\$7,347	Single Family Residential (RS) Unpermitted construction.
2.	194 Harder Rd. CE16-1592	\$6,418	Neighborhood Commercial Zone (CN) Use Permit Violation.
3.	27661 Havana Ave. CE15-1487	\$6,429	Single Family Residential (RS) Unpermitted construction.
4.	31801 Hayman St. CE15-1726	\$6,429	Industrial Zone (I) Unpermitted construction.
5.	1274 Highland Blvd. CE17-1592	\$4,489	Residential Single Family Zone (RS) Unpermitted construction.
6.	1069 Industrial Pkwy. CE12-1798	\$4,281	Industrial Zone (I) Unpermitted outside storage of materials.
7.	27155 Saint Francis Ave. CE17-0371	\$9,384	Residential Single Family Zone (RS) Unpermitted construction.
8.	32379 Seneca St. CE17-0629	\$4,489	Residential Single Family Zone (RS) Unpermitted construction.
9.	29263 Sims Ct. CE14-2233	\$6,189	Industrial Zone (I) Unpermitted outside storage of materials, accumulation/overgrowth of vegetation/weeds.
10.	24534 Sybil Ave. CE16-0106	\$6,221	Urban General Zone (MB-T4-1) Unpermitted construction.
11.	24582 Thomas Ave. CE14-2233	\$4,489	Residential Single Family Zone (RS) Unpermitted construction.

SUMMARY CHART

1.	780 Folsom Ave.	\$7,347
2.	194 Harder Rd.	\$6,418
3.	27661 Havana Ave.	\$6,429
4.	31801 Hayman St.	\$6,429
5.	1274 Highland Blvd.	\$4,489
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9.	29263 Sims Ct.	\$6,189
10.	24534 Sybil Ave.	\$6,221
11.	24582 Thomas Ave.	\$4,489
	TOTAL	\$66,165



CITY OF HAYWARD

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

File #: CONS 17-634

DATE: October 17, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT

Consideration of CMFA Open PACE

RECOMMENDATION

That the City Council adopts resolutions authorizing the City Manager to 1) execute an agreement to join CMFA Open PACE, and 2) sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Draft Resolution to Join CMFA Open PACE
Attachment III	CMFA JPA Agreement
Attachment IV	Draft Resolution to Execute Addendums to ABAG RCSA
Attachment V	Sample Addendum to RCSA



DATE: October 17, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: Consideration of CMFA Open PACE

RECOMMENDATION

That Council adopts resolutions authorizing the City Manager to 1) execute an agreement to join CMFA Open PACE, and 2) sign ABAG member addendums to the PACE Regional Collaborative Services Agreement.

SUMMARY

Property Assessed Clean Energy (PACE) programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The City Council has previously authorized eight PACE programs to operate in Hayward (www.hayward-ca.gov/PACE). There have been over 300 PACE projects completed in Hayward thus far.

This report presents an additional PACE program for Council's consideration. California Municipal Finance Authority (CMFA) Open PACE sponsors one residential PACE program and three commercial PACE programs. After reviewing the terms of each program, staff is recommending that Council authorize CMFA Open PACE to operate in Hayward.

In addition, this report presents the Association of Bay Area Governments (ABAG) Regional Collaborative Services Agreement (RCSA), which ABAG created to improve transparency and reporting standards for residential PACE Programs. Staff is recommending that Council authorize the City Manager to sign member addendums to the RCSA with each of the residential PACE programs operating in Hayward.

BACKGROUND

Property Assessed Clean Energy (PACE) programs allow property owners to finance energy and water efficiency improvements and pay off the debt through annual installments on their property tax bill. The intent is to provide an additional means of financing to make environmentally sustainable property improvements and seismic upgrades more accessible to property owners. The potential benefits of PACE financing over other financing options include 100% financing for eligible improvements, a longer repayment period of up to twenty

years, and the potential reliability of pre-approved contractors. Traditional home improvement loans or second mortgages require some down payment and do not certify specific contractors; however, they may have lower interest rates than PACE financing.

The City Council has previously authorized eight PACE programs to operate in Hayward. Five of the programs serve both commercial and residential customers, two serve exclusively commercial, and one serves exclusively residential. Links to each of the programs and past staff reports are available on the [City's PACE website](#).

Up to this point, Council has taken the approach of creating an open PACE market in Hayward to maximize the amount of financing and offerings available to Hayward property owners. In other words, Council has approved all PACE programs that request to operate in Hayward once staff has reviewed them to ensure there are no program-specific concerns. Many other Bay Area jurisdictions have taken the same approach, including Fremont, Oakland, San Leandro, and Berkeley.

PACE in the News

There have been anecdotal cases reported by local news outlets of PACE contractors misrepresenting financing terms to customers. In these cases, the related PACE program has removed the contractor from its list of certified contractors and has refused to finance the proposed work. In some cases, the PACE program has assisted the homeowners with claims against the contractor. Staff has no knowledge of reports with verifiable data of systematic contractor misrepresentations or a growth in customer dissatisfaction with PACE. However, staff is aware that these scenarios are possible and is monitoring the news.

The Kern County Board of Supervisors recently voted to disband their PACE programs after groups of realtors voiced their concerns. The heated testimony at their meetings included many voices on both sides. Each side offered anecdotal evidence of PACE benefits and potential downsides of PACE financing, but no data showing trends. There are approximately 2,500 properties with PACE assessments in Kern County.

The California State Assembly is currently considering [SB-242](#) (Skinner), which has passed in both the Senate and Assembly and is pending amendments. This bill expands on the consumer protection rules that were passed by the State in 2016, including requiring PACE program administrators to record an oral confirmation that the property owner has reviewed key terms of the contract.

In addition, the California State Senate is currently considering [AB-271](#) (Galgiani), which passed in the Assembly on May 30, 2017. This bill would authorize the county tax collector to direct the county auditor to remove delinquent PACE installments from the tax roll so they do not accrue penalties. Delinquent property taxes can accrue higher penalties than other types of delinquent payments and come with greater risks. Proponents of this bill claim that it removes the incentives for PACE lenders to profit from the penalty provision of the property tax collection system.

The US Senate is currently considering a Republican-sponsored bill titled the [Protecting Americans from Credit Exploitation \(PACE\) Act](#). This bill is being backed by the Mortgage Bankers Association and the California Association of Realtors. The bill would require PACE issuers to follow the same regulations and disclosures as banks and mortgage lenders. The PACE industry is opposing this bill, claiming it would be overly burdensome and harm the industry. The bill is being opposed by Natural Resources Defense Council and the Rocky Mountain Institute.

Council Sustainability Committee (CSC) Action

The Council Sustainability Committee reviewed these items at its [July 10, 2017 meeting](#) and recommended that Council approve the staff recommendations. In addition, Committee members commented that Hayward now has a robust PACE marketplace and they feel that Hayward is reaching a limit for additional PACE programs.

DISCUSSION

Consideration of CMFA Open PACE

One of the purposes of this report is to present an additional Open PACE program to Council for consideration. Over the past several months, California Municipal Finance Authority (CMFA) Open PACE has contacted City staff and elected officials to state their interest in operating in Hayward. CMFA Open PACE is currently operating in over eighty California jurisdictions, mostly in Southern California. In the Bay Area, Berkeley and Fremont have joined and San Francisco is currently considering joining.

CMFA Open PACE is the same model as California Statewide Communities Development Authority (CSCDA) Open PACE, which the City has already joined. Both are Joint Powers Authorities (JPAs) that select specific PACE providers to administer their PACE financing programs. The model is considered “open” because once a municipality has joined the JPA, they can be served by any PACE programs that the JPA reviews and decides to sponsor.

If Council joins CMFA Open PACE, then any future PACE programs sponsored by CMFA will also be authorized to operate in Hayward. However, if Hayward decides it does not want a specific CMFA-sponsored program to operate in Hayward, then the City can choose to opt out of that individual program at any point in the future.

CMFA Open PACE currently sponsors these four PACE Programs:

- BluePACE - commercial only
- Structured Finance - commercial only
- OnPACE Energy Solutions - commercial only
- Energy Efficient Equity (E3) - residential only

Staff has reviewed the three commercial-only programs, BluePACE, Structured Finance, and OnPACE Energy Solutions, and found that they each have very similar terms, interest rates, and consumer protection measures as existing PACE commercial programs in Hayward.

Staff spent additional time vetting Energy Efficiency Equity (E3) because it is a residential program and staff is sensitive to the fact that residential customers may be less knowledgeable than commercial customers when it comes to financing programs. Of the over 300 PACE projects in Hayward so far, approximately 95% have been residential. Staff does not have program-specific concerns about E3's program, which is similar to the other residential PACE programs in Hayward. A few areas where E3 stands out:

- E3 offers slightly lower interest rates than other PACE programs in certain instances. For example, they have a 4.99% rate for a five-year repayment term for customers with a good credit profile.
- E3 has all their contractors sign a repurchase agreement to protect homeowners from contractor fraud and program misrepresentation.
- E3 uses BBB ratings and Yelp reviews as part of their contractor screening.
- E3 requires homeowners to have the household income necessary to pay back the assessment, in addition to the industry standard equity requirements (many PACE programs do not have an income requirement).
- Like other PACE programs, E3 allows property owners to borrow up to 96.5% of the equity in their home.

Mitigating Risks Related to an Open PACE Market

As with most financing mechanisms, PACE programs can present risks to consumers. In particular, PACE increases the debts of property owners and may lead to foreclosure in the case of default. In addition, because marketing for PACE is usually led by a contractor, there is potential for contractor misrepresentation. Because the industry is fairly new, the laws regulating the industry continue to evolve. States and the Federal government are still debating which types of regulations will best protect consumers without unnecessarily hindering the growth of the PACE industry.

The State of California requires PACE programs to complete a degree of contractor screening and training. In addition, the State passed [AB 2693](#) in September 2016, which requires specific disclosure guidelines consistent with the federal Consumer Financial Protection Bureau's [Know Before You Owe](#) disclosures. In a parallel effort, the Obama administration and HUD (FHA) announced in July 2016 that the FHA would back mortgages with PACE liens for its programs for veterans and low-income property owners. HUD released [consumer protection requirements](#) that PACE assessments must meet for the property to qualify for FHA insurance (it is not yet clear if this will change under the Trump administration).

Staff has not received any concerns or complaints from Hayward community members since the launch of PACE. The State of California monitors most PACE programs, including E3, through its California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA). The Authority administers the State's Loss Reserve program, which makes first mortgage lenders whole for losses if a PACE lien is in foreclosure. To date, CAEATFA has not received any claims on the loss reserve. CAEATFA collects statewide information on PACE participation, which can be found at: <http://www.treasurer.ca.gov/caeatfa/pace/activity.asp>

ABAG Regional Collaborative Services Agreement

The Association of Bay Area Governments (ABAG) has created a Regional Collaborative Services Agreement (RCSA) for residential PACE programs to improve transparency and reporting standards.

- Designates ABAG as the liaison regarding implementation of the Agreement, meaning that ABAG will follow up with PACE providers when concerns are raised about customer protections or reporting
- Requires all residential PACE programs to have clearly visible disclosures regarding the Federal Housing Finance Authority's (FHFA) policies on residential PACE programs
- Requires all residential PACE programs to participate in the State's PACE Loss Reserve
- Requires data sharing between the PACE programs and local governments to monitor program performance locally and improve reporting
- Clarifies that RPP's are responsible for negligence in administering PACE programs

Most of the residential PACE programs operating in the Bay Area, including E3, have executed the RCSA with ABAG. As a next step, cities can sign individual member addendums to the ABAG RCSA with each residential PACE program. The purpose of these addendums is to ensure the PACE providers are aware that the City will hold the providers accountable to the terms of the RCSA. Staff is recommending that Council passes the attached resolution authorizing the City Manager to execute the member addendum agreements to the ABAG Regional Collaborative Services Agreement.

STRATEGIC INITIATIVES

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

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

Objective 4: Create resilient and sustainable neighborhoods.

This agenda item also supports the Tennyson Corridor Strategic Initiative. The purpose of the Tennyson Corridor Strategy is to develop an attractive, cohesive, thriving Tennyson Corridor through thoughtful engagement of residents, businesses, and community partnerships. This item supports the following goal and objective:

Goal 5: Increase Community Resiliency.

Objective 6: Reduce resident utility bills through efficiency

FISCAL AND ECONOMIC IMPACTS

Participation in PACE programs does not impact the General Fund or any City funds. PACE programs use private sector capital to provide property owners with funding.

The primary economic benefit of allowing an open PACE market in Hayward is that it increases the total amount of financing available to Hayward property owners for improvements. This also increases the total debts carried by property owners who choose to take part, which creates potential economic risks, especially given higher interest rates associated with PACE programs compared with conventional home equity loans. In the worst case, cost savings may not materialize as predicted and the owners could end up owing more than they can afford, which could result in increased foreclosures. However, this has not been the experience of PACE programs up to this point. On the contrary, most PACE programs claim that the default rates of their property owners are lower than nationwide averages, which is reflected by the fact that there have been zero claims on the State's loss reserve to date.

SUSTAINABILITY FEATURES

Energy: Access to PACE funding enables solar photovoltaic installations and energy efficiency upgrades – both of which reduce the community's reliance on fossil fuels.

Air: Access to PACE funding enables energy efficiency upgrades, which may reduce the use of wood-burning stoves/fireplaces and related emissions.

Water: Access to PACE funding enables water upgrades, which reduce Hayward's per capita water consumption.

Seismic: Access to PACE funding enables seismic upgrades, which will increase structures' resiliency after an earthquake.

NEXT STEPS

1. If Council adopts the attached resolution authorizing the City Manager to join CMFA Open PACE, staff will execute the necessary agreements.
2. If the Council adopts the attached resolution authorizing the City Manager to sign ABAG addendums to the RCSA, then staff will then follow up with each of the City's residential PACE programs to execute addendums.

Prepared by: Mary Thomas, Management Analyst

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING, AUTHORIZING, AND DIRECTING EXECUTION OF A JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY; CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY OF THE CITY IN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY OPEN PACE PROGRAMS; AUTHORIZING THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE CORPORATE BOUNDARIES OF THE CITY; AND AUTHORIZING RELATED ACTIONS.

WHEREAS, the California Municipal Finance Authority (the "Authority") is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California (the "Members"), formed pursuant to a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the "Agreement") for the purpose of promoting economic, cultural and community development and in order to exercise any powers common to its Members, including the issuance of bonds, notes or other evidences of indebtedness; and

WHEREAS, City of Hayward (the "City"), has determined that it is in the public interest and for the public benefit that the City become a Member of the Authority in order to facilitate the promotion of economic, cultural and community development activities in the City, including the financing of projects therefor by the Authority; and

WHEREAS, there is now before this City Council the form of the Agreement; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council, with the assistance of its staff, have reviewed said document; and

WHEREAS, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CMFA Open PACE, consisting of CMFA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the "Programs"), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time

(collectively, the “Improvements”) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code (“Chapter 29”) within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the program administrators currently active in administering Programs are Energy Efficient Equity, Inc.; BlueFlame PACE Services LLC; OnPACE Energy Solutions, LLC; and Structured Finance Associates, LLC; and the Authority will notify the City in advance of any additions or changes; and

WHEREAS, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner or owners of each lot or parcel on which an assessment is levied at the time the assessment is levied; and

WHEREAS, the City desires to allow the owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its corporate boundaries and to issue bonds to finance or refinance Improvements; and

WHEREAS, the territory within which assessments may be levied for the Programs shall include all of the territory within the City’s official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale, administration repayment or guarantee of any bonds issued in connection with the Programs;

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

Section 1. This City Council hereby finds and declares that the foregoing recitals are true and correct.

Section 2. The Agreement is hereby approved and the City Manager is hereby authorized and directed to execute said document, and the City Clerk or such clerk’s designee is hereby authorized and directed to attest thereto.

Section 3. The properties in the City will benefit from the availability of the Programs within the corporate boundaries of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 4. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale, administration, repayment or guarantee of any bonds issued in connection with the Programs.

Section 5. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The City Manager and the Director of Utilities & Environmental Services are hereby designated as the contact persons for the Authority in connection with the Programs.

Section 6. The City Manager is hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 7. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

Section 8. This Resolution shall take effect immediately upon its adoption and remain in effect until terminated by the City. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Financial Advisor of the Authority at: California Municipal Finance Authority, 2111 Palomar Airport Road, Suite 320, Carlsbad, California, 92011, Attn: Travis Cooper.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A: JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE
 CALIFORNIA MUNICIPAL FINANCE AUTHORITY

**JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY**

THIS AGREEMENT, dated as of January 1, 2004, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the “Members” and those parties initially executing this Agreement are referred to as the “Initial Members”):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the “Joint Exercise of Powers Act”), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a “public agency” as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein “Bonds”), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital or working capital projects, insurance, liability or retirement programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the “California Municipal Finance Authority” for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority’s debts, liabilities and obligations.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the “California Municipal Finance Authority” (the “Authority”), and said Authority shall be a public entity separate and apart from the Members. Its

debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

B. BOARD.

The Authority shall be administered by the Board of Directors (the “Board,” or the “Directors” and each a “Director”) of the California Foundation for Stronger Communities, a nonprofit public benefit corporation organized under the laws of the State of California (the “Foundation”), with each such Director serving in his or her individual capacity as a Director of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Directors, the appointment of Directors, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Directors shall be as provided in the Articles and Bylaws of the Foundation, or by resolution of the Board adopted in accordance with the Bylaws of the Foundation.

All references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director.

Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

The Foundation may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Authority shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Authority (the “Treasurer”) pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an “Indenture”) providing for a trustee or other fiscal agent, and except as may otherwise be

specified by resolution of the Board, the Treasurer is designated as the depository of the Authority to have custody of all money of the Authority, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Board but in no event less than \$1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Authority and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Authority.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Board such rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Authority shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations (e.g., the Members or the Foundation) to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in

connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2004.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Bonds.

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The expenses of the Board shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

Section 8. Bonds Only Limited and Special Obligations of Authority.

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds except from revenues and other funds pledged therefor. Neither the Members nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Authority shall be pledged to the payment of the

principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Director or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

Section 9. Accounts and Reports.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members which report shall describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provided regular reports covering such amounts.)

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may, provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Authority, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 14. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any Member may do so. The Members understand and agree that a portion of the funds of the Authority that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and nonprofit organizations (e.g., the Foundation) to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (a) the Authority shall provide each Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Initial Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

Section 18. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City of Hayward has caused this Agreement to be executed and attested by its duly authorized representatives as of the ____ day of _____, 2017.

Member:

CITY OF HAYWARD

By _____
Name:
Title:

ATTEST:

Clerk

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO EXECUTE MEMBER ADDENDUMS TO THE ASSOCIATION OF BAY AREA GOVERNMENTS REGIONAL COLLABORATIVE SERVICES AGREEMENT WITH RESIDENTIAL PACE PROGRAMS OPERATING IN HAYWARD.

WHEREAS, The City of Hayward has authorized residential PACE Programs to operate in Hayward, including, but not limited to, AllianceNRG, CaliforniaFIRST, HERO Program, PACE Funding, and Ygrene Funding; and

WHEREAS, the Association of Bay Area Governments has created and executed a Regional Collaborative Services Agreement (RCSA) for residential PACE Programs operating in the Bay Area to improve transparency and reporting standards; and

WHEREAS, the RCSA does not include any financial arrangements between the City of Hayward and the PACE Programs, nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of the RCSA is to set forth the mutual understandings, terms and conditions related to residential PACE Programs participating in the PACE Financing Marketplace in the City of Hayward; and

WHEREAS, individual cities are encouraged to execute member addendums to the RCSA with each residential PACE Program operating in their city.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to execute member addendums to the Regional Collaborative Services Agreement with all residential PACE Programs operating in Hayward now or in the future.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

SAMPLE MEMBER ADDENDUM TO THE
REGIONAL COLLABORATIVE SERVICES AGREEMENT
FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING MARKETPLACE

This agreement ("Agreement"), dated as of _____, 2017 ("Effective Date") is by and between the [city/county name], a [legal definition] (hereinafter "Agency"), and [insert PACE program provider name], (hereinafter "Marketplace Member"), as an entity participating in the Financing Marketplace administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model.

RECITALS

WHEREAS, the [city, county] is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, [city, county] has passed a Resolution [number] stating its support and partnership in implementing and marketing the PACE programs in [City, county]; and

WHEREAS, the [Agency] offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the [Agency] is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the [Agency] seeks to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, tools and testing equipment, contractor programs, and financing options; and

WHEREAS, the Marketplace Member will meet or exceed the collaboration requirements of the Financing Marketplace as detailed below; and

WHEREAS, the Marketplace Member is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the Marketplace Member will provide support and resources to [Agency] related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the Marketplace Member will support, align and integrate its efforts with the community-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the Marketplace Member will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the Marketplace Member will share project information and data in an accessible electronic format with the Team on a quarterly basis and upon request within ten (10) business days; and

WHEREAS, the Marketplace Member will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the Marketplace Member and the [city, county], nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to Marketplace Members participating in the PACE Financing Marketplace in the [city, county] and participating cities/towns.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1 Definitions.

- 1.1 "Eligible improvement" is a technology, product or tool officially approved by the financing provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements and electric vehicle charging infrastructure improvements that will be permanently fixed to real property, and any

additional improvements deemed eligible in the future by the California legislature.

- 1.2 "Financing Marketplace" is the [city, county] model for providing multiple financing options to property owners interested in retrofit and renewable energy improvements to their buildings.
- 1.3 "Local Contractor" is defined as the licensed contractor of record with a business address within [city, county] or an adjacent county.
- 1.4 "Marketplace Member" is an entity participating in the Financing Marketplace administering a program providing Property Assessed Clean Energy (PACE) financing within [city, county].
- 1.5 "Participating Cities /Towns" in [city, county] are potentially [_____].
- 1.6 "Participating Contractor" is any contractor who has agreed to, and abides, by the terms and conditions of the Marketplace Members' contractor standards.
- 1.7 "Property Assessed Clean Energy (PACE) Financing" is a means of financing distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.
- 1.8 "Agency" is made up of staff from the [city/county]
- 1.9 "Work" as defined throughout this Agreement is the collaborative, non-competitive, effort between the Marketplace Member and the [city/county] to deliver the financing marketplace and support the citizens of [city/county] in completing water and energy efficiency upgrades and the installation of renewable energy.

2 Scope of Work / Collaboration.

- 2.1 Marketplace Member's Specified Services. The Marketplace Member will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555 in collaboration with the Team.

- 2.2 Cooperation with [Agency]. Marketplace Member shall cooperate with [Agency] staff in the performance of all work hereunder.
- 2.3 Performance Standard. Marketplace Member shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. [Agency] has relied upon the professional ability and expertise of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by County shall not operate as a waiver or release. If [Agency] determines that any of Marketplace Member's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Marketplace Member to discuss with County to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies at law or in equity.
- 2.4 Financing Provision Requirements.
The Marketplace Member will:
- 2.4.1 Advocate for efficiency measures before generation installation (i.e., include energy efficiency information in contractor training materials and on program website).
- 2.4.2 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.
- 2.4.3 Provide summary of financing details (including assessment amount and terms, financing installments and estimated administrative expenses) to the applicant specific to the requested amount of the financing

- 2.4.4 For residential properties, require applicant acknowledgment of the Federal Housing Finance Authority position on PACE on a separate signature acknowledgement page. Residential Disclosure Signature Form must be substantially similar to Attachment 1.
- 2.4.5 For non-residential properties, require written lender affirmative acknowledgement
- 2.4.6 Advocate and promote the use of local contractors (i.e., by identifying where the contractors are based on website), as defined Section 1, Definitions, with all applications for financing, results of which will be reported under Section 2.6.2.i.
- 2.4.7 Provide training to contractors and information to property owners on available rebates (for all utility and generation types), including and not limited to city rebate programs, [relevant IOU} programs, and other such programs.
- 2.4.8 Require that all applicable building permits are obtained and finalized for all improvements
- 2.4.9 Verify that property owners are current on all property taxes for the subject property
- 2.4.10 Ensure all marketing materials and calculation methodologies conforms to all applicable tax laws. Do not provide any calculation options that represent that the full assessment payment may be tax deductible. Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.
- 2.4.11 Include disclaimer language in application materials alerting property owner that it is their responsibility to understand impact of their project on potential local reassessment provisions.
- 2.4.12 Marketplace Member shall have a consistent plan for removal of assessments at end of repayment term and/or in the event of program closure.

2.5 Financial Policies.

The Marketplace Member will:

- 2.5.1 For programs offering residential financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.

- 2.5.2 Notify the [Agency] six months in advance if funding capacity available from the Marketplace Member to prospective PACE customers in the County will fall below the amount dispersed in the previous six months of operation
- 2.5.3 Notify the [Agency] of any foreclosure action as a result of a default in the payment of a PACE assessment on property in the [city/county], where the PACE assessment was originated by the Marketplace Member.

2.6 Documents, Data, and Information Policies.

The Marketplace Member will:

- 2.6.1 Provide electronic access to the name, business name, and California State Contractors license number of participating contractors of the Marketplace Member's program; and the contractors' agreement with the Marketplace Member.
- 2.6.2 Retain completed Residential Disclosure Signature forms (hardcopy or electronic) on file for duration of assessment. Furnish to County upon request.
- 2.6.3 Provide either direct real-time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) for data sharing of the following information for each assessment:
 - a. Required data:
 - i. Assessor's Parcel Number (APN) of the property
 - ii. Dollar amount financed (the amount of the assessment)
 - iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed
 - iv. Listing of all generation improvements installed and the solar STC-DC rating in watts or kilowatts
 - v. Contractor name
 - b. If available:
 - i. Amount of rebate or incentive dollars associated with the project (not financed)
 - ii. How the customer heard about PACE financing
 - iii. Why the customer selected PACE over other financing instruments available
 - iv. Why the customer selected their final PACE Marketplace Member over the other members

The Marketplace Member will:

- 2.6.4 Provide the documents required for participation in the Marketplace Members' PACE Financing program to the County and Participating City and Town officials.
- 2.6.5 Provide support to County and Participating City and Town staff to facilitate adoption of required participation documents.

The County will:

- 2.6.6 Offer staff resources and support to Participating City and Town staff to bring forward to their councils the documents provided by the Marketplace Member required for participation in the Marketplace Member's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

- 2.7.1 Collaborate on any regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners
- 2.7.2 Represent the role of the [Agency] as the local neutral third party, not-for-profit, public service agencies supporting the public through the upgrade process, with the following message to consumers: Among the financing products in the marketplace, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects

The Marketplace Member will:

- 2.7.4 Provide assistance to the Team for: (1) coordinating and implementing the integration of the Marketplace Member into the Financing Marketplace; and (2) support of contractor training.
- 2.7.5 Provide specific training for contractors engaged with local PACE assessments using the marketplace member's financing product, materials, collateral, tools, and associated software, through training offered either directly from the marketplace member or subcontracted to the Team
- 2.7.6 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the Marketplace Members financing option into the [Agency's] websites

- 2.7.7 Provide training and resources to the Team as needed to build understanding and support for use of the financing product

The Team will:

- 2.7.8 Present the financing products of the Marketplace Members in all venues with impartiality to the public.
- 2.7.9 Present marketing collateral of all financing products with impartiality in education and outreach materials and events

2.8 Participating Contractor Standards.

Participating Contractors must agree to and abide by the terms and conditions of the contractors' standards outlined in items 2.8.1 through 2.8.11 below.

Both Parties will:

- 2.8.1 Require that contractors have the appropriate California State License Board license in good standing
- 2.8.2 Require, in accordance with California State License Board requirements, that contractors' bonding is in good standing
- 2.8.3 Require, in accordance with California State License Board requirements, that contractors have appropriate Workers' Compensation coverage
- 2.8.4 Require that contractors have a minimum of \$1M of commercial general liability insurance
- 2.8.5 NOT endorse, recommend, or refer any specific contractor other than contractors who have a proven track record of superior customer satisfaction
- 2.8.6 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor
- 2.8.7 NOT make any warranty regarding the contractor's work or products purchased from contractors provided
- 2.8.8 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products
- 2.8.9 NOT imply through discussions or calculations that the full assessment payment amount may be tax deductible but rather only the interest.

Marketplace Member will:

2.8.10 Via trainings and customer compliant system, require that contractors and its representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of the [Agency], or claim association or affiliation with the [Agency]

2.9 Interaction with Tax Collector Processes.

Marketplace Member will: Independently engage the [County] Tax Collector for administration of property tax assessments placed through its financing product.

Payment. This Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support.

3 Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

4 Termination.

4.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, [Agency] or Marketplace Member shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party of this Agreement.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the Marketplace Member fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, [Agency] may immediately terminate this Agreement by giving Marketplace Member written notice of such termination, stating the reason for termination.

4.3 Delivery of Data and Information upon Termination. In the event of termination, Marketplace Member, within 14 days following the date of termination, shall deliver to County all raw data and information in an editable electronic format as outlined in Section 2.6, Document, Data, and Information Policies.

4.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the [Agency]

Director, in consultation with [city/county] Counsel, shall have the authority to terminate this Agreement on behalf of the [Agency].

4.5 Effect of Termination. In the event of termination pursuant to this Section 5, the Marketplace Member shall:

4.5.1 Not enter into new assessment contracts as of the date of the termination. The Marketplace Member may continue to collect assessments or special taxes with the County for assessment contracts entered into prior to such date of termination.

4.5.2 Communicate to County Assessor's Office designated tax collector for remaining outstanding assessments.

5 Indemnification and Liability. Marketplace Member agrees to accept all responsibility for loss or damage to any person or entity, including [Agency], and to indemnify, hold harmless, and release [Agency], their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Marketplace Member, that arise out of, pertain to, or relate to the negligent actions or willful misconduct of Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Marketplace Member agrees to provide a complete defense for any claim or action brought against [Agency] based upon a claim relating to such Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' the negligent actions or willful misconduct of under this Agreement. Marketplace Member's obligations under this Section apply whether or not there is concurrent negligence on [Agency's] part, but to the extent required by law, excluding liability due to [Agency's] conduct. County shall have the right to select its legal counsel at Marketplace Member's expense, subject to Marketplace Member's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Marketplace Member or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6 Prosecution of Work. The execution of this Agreement shall constitute Marketplace Member's authority to proceed immediately with the performance of this Agreement.

- 7 Representations of Marketplace Member.
- 7.1 Standard of Care. [Agency] has relied upon the professional ability and training of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by [Agency] shall not operate as a waiver or release.
- 7.2 Status of Marketplace Member. The parties intend that Marketplace Member, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Marketplace Member is not to be considered an agent or employee of [Agency] and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits [Agency] provides its employees.
- 7.3 Conflict of Interest. Marketplace Member covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Marketplace Member further covenants that in the performance of this Agreement no person having any such interests shall be employed.
- 7.4 Statutory Compliance. Marketplace Member agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.
- 7.5 Nondiscrimination. Without limiting any other provision hereunder, Marketplace Member shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

TO: MARKETPLACE MEMBER: _____

Facsimile: () -

Email address (opt): _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

11 Miscellaneous Provisions.

11.1 No Waiver of Breach. The waiver by [Agency] of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

11.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

11.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

- 11.4 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 11.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in [Appropriate Jurisdiction].
- 11.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 11.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 11.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 11.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

Continued on next page:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MARKETPLACE MEMBER:

[City/County]: [Name]

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR [Agency]:

By: _____

Name: _____

Title: _____

By: _____

Date: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM FOR COUNTY:

By: _____

[City/County] Counsel

Date: _____



CITY OF HAYWARD

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

File #: WS 17-049

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Status Updates and Provide Direction on Prioritization of FY 2018 Schedule of Activities Related to Housing Affordability and Anti-Displacement Strategies

RECOMMENDATION

That Council receives a status update on the housing affordability and anti-displacement strategies and provides feedback and direction on any desired re-prioritization of current workplan.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Status Update Chart



DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT Status Updates and Provide Direction on Prioritization of FY 2018 Schedule of Activities Related to Housing Affordability and Anti-Displacement Strategies

RECOMMENDATION

That Council receives a status update on the housing affordability and anti-displacement strategies and provides feedback and direction on any desired re-prioritization of current workplan.

SUMMARY

The City Council, on January 31, 2017, convened [a work session to review housing affordability strategies and resources in Hayward and Alameda County](#)¹. Council explored four major strategy areas in depth, and directed staff to develop five specific action strategies for further Council review and potential implementation. This informational report provides a summary status update and timeline for the five strategies. Staff seeks confirmation of Council's desired prioritization of the strategies, and whether Council wishes to add, remove, or reorder items on the list.

BACKGROUND

Major Strategy Areas

As discussed during the January 31 work session, the City of Hayward's overarching affordable housing strategies and programs may be grouped into four major strategy areas:

1. Anti-Displacement. Strategies and programs to prevent displacement of current residents from their homes, especially the most vulnerable sectors of the community. This includes fair housing activities such as tenant/landlord mediation and anti-discrimination programs, and local regulations such as the rent stabilization ordinance

¹ Source link: <https://hayward.legistar.com/LegislationDetail.aspx?ID=2947412&GUID=7B833FA7-2B44-404D-86D2-031C37926B34&Options=&Search=>

previously administered by the City Attorney's office and currently administered by the Housing Affordability Division.

2. Regulation and Land Use Policies. Local regulatory or planning strategies aimed at expediting or incentivizing the construction and preservation of housing such as the density bonus regulation. In Hayward, the Development Services Department primarily administers this strategy area.
3. Housing Preservation and Rehabilitation. Programs to help preserve and upgrade the existing stock of housing to help lower income homeowners stay in their homes, such as the Brace and Bolt Program, the Housing Rehabilitation Program, and the Rental Inspection Program. The Community Services Division primarily administers this strategy area.
4. Acquisition and Construction of Affordable Housing. Programs aimed at creating new long-term deed-restricted affordable housing units, including the acquisition, new construction, preservation, and rehabilitation of both homeownership and rental housing, both permanent and transitional. The Housing Affordability Division primarily administers this strategy area.

Strategies Identified by Council for Further Review and Potential Implementation:

At the January 31, 2017 work session, Council directed staff to further research and develop the following five strategies to be brought back to Council for review, discussion and/or potential implementation.

1. Additional Study of the Residential Rent Stabilization Ordinance. Additional study of the existing Residential Rent Stabilization Ordinance with options to strengthen the ordinance related to tenant protections and/or expand existing protections to more rental units while balancing the interests of landlords.
2. Update and Revise the City's Ordinance Regulating Accessory Dwelling Units (ADU's). State law SB-1069 regarding accessory dwelling units took effect on January 1, 2017, and rendered null and void certain provisions of the City's current ordinance related to parking restrictions and water and sewer connection fee requirements for second units. While acknowledging that the State's action was an inappropriate abrogation of local control and self-determination, Council directed staff to prepare for Council's consideration a revised ordinance to bring the Municipal Code into compliance with State law while preserving local control over housing decisions to the greatest extent possible.
3. Explore Options to Create a New Housing Rehabilitation ADU Program. A new Housing Rehabilitation ADU Program could potentially incentivize and assist homeowners to undertake construction and conversion projects that create new accessory dwelling units in existing single-family homes. Council directed staff to explore program options and potential resources, such as County Measure A1 funds, to support such a program.

4. Issue NOFA/RFP for Affordable Rental Housing Development Projects. Council directed staff to develop and eventually issue a Notice of Funding Availability (NOFA) and/or a Request for Proposals (RFP) to solicit project proposals for affordable housing development that advance Council priorities and the Housing Element policies related to permanent affordable rental housing development. Council further directed that the NOFA/RFP should emphasize proposals that “...focus on rental housing affordable to lower-income households with special needs (e.g., seniors, extremely low-income households, and persons with disabilities, including developmental disabilities), especially projects that promote the City’s goals relating to transit-oriented development and jobs/housing balance” or, to the extent funding from GO Bond (aka Measure A1) funding for transitional housing is available, on projects for development of “...emergency shelters, and transitional and supportive housing programs for the homeless and those who are at risk of becoming homeless.”

5. Update and Revise the Affordable Housing Ordinance. Council directed staff to explore options for potentially revising the AHO to increase its requirements. One key policy consideration that was identified for further exploration is whether to require affordable units to be built within a development project, or pay an in-lieu fee only with Council approval, versus paying a fee without such special approval as currently allowed. The inclusionary requirement existed some years ago in a previous iteration of the ordinance, and is an effective tool to create affordable units within market-rate projects. The downside, which led to Council suspending the inclusionary requirement some years later during the Great Recession, is that it may inhibit or discourage residential development of certain projects, or reduce funds in the City’s affordable housing funds to provide opportunities for flexibility in use of funds for other affordable housing projects.

DISCUSSION

Attachment II provides a summary of the milestones completed to date to advance the five strategies listed above and some of the next steps planned over the next two months. Below is additional information recapping each of the strategies.

1. Residential Rent Stabilization Ordinance – Additional Study and Review. During the January 31 work session, Council directed staff to focus efforts on increasing education and outreach activities designed to connect tenants to existing programs such as tenant-landlord mediation services. Council also directed staff to review anti-displacement strategies and bring them back for Council consideration at a future date.

During the FY 2018 budget authorization process, Council approved the addition of two staff positions and creating a dedicated Housing Division effective July 1, 2017. The recruitment for the Housing Manager is underway and an anticipated hiring date is Dec./Jan. Lastly, the administration of the City’s rent review programs, including the rent stabilization ordinance, was transferred from the City Attorney Office to the Housing Division on October 1, 2017.

In recent months, Council has expressed renewed interest in the possibility of revisiting the ordinance itself. In response to Council direction, staff will schedule a Council work session on the topic of anti-displacement strategies including the rent stabilization ordinance in January 2018.

2. Accessory Dwelling Unit Ordinance – Update to Comply with SB 1069. Council convened a [work session on March 14, 2017](#) to review potential changes to the ADU Ordinance designed to bring the City into compliance with SB 1069. Staff subsequently undertook a study and analysis of the State laws, effective and upcoming, to determine which provisions and development standards are compatible and consistent with Council direction, community interests, concerns, applicable neighborhood plans, and the Hayward 2040 General Plan. Outreach was conducted to allow staff to obtain sufficient data and interest to draft an ADU Ordinance that is consistent with the aforementioned policies and documents, while remaining in compliance with established statutes.

The Hayward Empathy Action Response Team (HEART) has been responsible for communicating with the public, creating surveys, gathering data, and generating reports to determine stakeholder concerns and feedback that can be used to develop an ordinance for Planning Commission and City Council review. Introduction of amendments to the Ordinance is scheduled on October 17, 2017.

3. Explore Options to Create a New Housing Rehabilitation ADU Program. On July 18, 2017, Council authorized the reallocation of \$150,000 of CDBG funding over two years to expand the City's housing rehabilitation program to include targeted ADU code corrections for income-eligible senior homeowners in the Tennyson Corridor. In accordance with new state regulations and HUD approved eligibility standards, the program includes loans to eligible senior or disabled residents to convert their existing non-conforming garage conversions into code compliant accessory housing units. Council's authorization of the program to convert non-conforming ADU conversions helps the City's efforts to alleviate the shortage of affordable housing in Hayward and comply with state law.

An update on the program's progress and outcomes is tentatively scheduled for Council review in February 2018.

4. Issue NOFA/RFP for Affordable Rental Housing Development Projects. Council directed staff to issue a Notice of Funding Availability (NOFA) and/or a Request for Proposals (RFP) to solicit Measure A1 project proposals for affordable housing developments that advance Council priorities and the Housing Element policies related to permanent affordable rental housing development. Council further directed that the NOFA/RFP emphasize proposals that "...focus on rental housing affordable to lower-income households with special needs (e.g., seniors, extremely low-income households, and persons with disabilities, including developmental disabilities), especially projects that promote the City's goals relating to transit-oriented

development and jobs/housing balance” and, to the extent funding from Measure A1 funding for transitional housing is available, on projects for development of “...emergency shelters, and transitional and supportive housing programs for the homeless and those who are at risk of becoming homeless.”

Staff is coordinating with the County of Alameda, which administers Measure A1 funding, to help develop the Measure A1 program implementation criteria. Issuance of the first round of bonds by the County for affordable rental housing development is anticipated in March 2018. Staff has scheduled a Council review of prospective Measure A1 affordable rental housing projects in Hayward on November 28, 2017.

5. Update and Revise the Affordable Housing Ordinance (AHO). Council directed staff to explore options for revising the AHO to potentially increase its requirements, and directed staff to commission a Nexus Study to inform potential amendments to the AHO. Staff engaged the services of professional firm Keyser Marston Associates in July 2017, and worked closely with multiple community stakeholders to develop the Study. A review of the study and preliminary recommendations for revising the AHO is scheduled for Council work session on October 17, 2017 and follows this agenda item.

OTHER HOUSING-RELATED COUNCIL ITEMS CURRENTLY SCHEDULED:

Table 1 below lists additional housing related items planned for Council discussion through the end of this calendar year.

Table 1. Tentative timeline of upcoming housing-related Council agenda items*

DATE	ITEM
11/7/17	Resyndication of Tennyson Gardens and Acquisition and Rehab of Faith Manor by Eden Housing
11/28/17	Adoption of Multifamily Housing Bond Policies Pursuant to 5031(c) of the California Debt Limit Allocation Committee Regulations
12/12/17	Approval of Actions and Financing for Two Habitat Homeownership Developments (Sequoia Grove (aka A & Walnut) and Harder and I-92 projects)

* All dates are tentative and subject to change at Council’s discretion.

NEXT STEPS

Staff seeks Council’s feedback on current workplan on the five strategies identified by Council, as well as the other housing related items planned through the rest of this calendar year. Staff requests that Council provide comment on any desired prioritization of the strategies mentioned in this staff report, or any others that Council desires.

Prepared by: Omar Cortez, Acting Housing Manager

Recommended by: Sean Reinhart, Director of Library and Community Services
Maria Hurtado, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager

**HOUSING-RELATED STRATEGIES
STATUS UPDATE AND NEXT STEPS
10/17/17**

STRATEGY	ACTIONS TO DATE	NEXT STEPS	TIMELINE
<p>1. Additional Study of the Residential Rent Stabilization Ordinance</p>	<ul style="list-style-type: none"> • Focus on increasing education and outreach activities designed to connect tenants to existing programs such as tenant-landlord mediation services. • Council approved two staff positions; created a dedicated Housing Division effective July 1, 2017. • 10/1/17: Administration of the City’s rent review programs including the rent stabilization ordinance was transferred from the City Attorney Office to the Housing Division. • 10/1/17: Recruitment process for Housing Manager position began with an estimated hiring date of Dec./Jan. • Research on anti-displacement strategies has begun, including considerations of revisions to the rent stabilization ordinance, in preparation for January work session. 	<ul style="list-style-type: none"> • Planned work session with Council to discuss rent stabilization ordinance 	<p>January 2018</p>
<p>2. Update and Revise the City’s Ordinance Regulating Accessory Dwelling Units (ADU’s).</p>	<ul style="list-style-type: none"> • Council convened a work session on March 14, 2017 to review potential changes to the ADU Ordinance. • Staff, in summer 2017, undertook a study and analysis of the State laws, effective and upcoming, to determine which provisions and development standards are compatible and consistent with Council direction, community interests, concerns, applicable neighborhood plans, and the Hayward 2040 General Plan. 	<ul style="list-style-type: none"> • Introduction of amendments to the Ordinance is scheduled for Council review and approval on October 17, 2017. 	<p>10/17/17</p>

STRATEGY	ACTIONS TO DATE	NEXT STEPS	TIMELINE
2. Update and Revise the City's Ordinance Regulating Accessory Dwelling Units (ADU's) (continued)	<ul style="list-style-type: none"> • Staff conducted outreach to obtain data and interest to draft an ADU Ordinance that is consistent with the Council policies and documents, while remaining in compliance with established statutes. • The Hayward Empathy Action Response Team (HEART) was responsible for communicating with the public, creating surveys, gathering data, and generating reports to determine stakeholder concerns and feedback that can be used to develop an ordinance for Planning Commission and City Council review. 		
3. Explore Options to Create a New Housing Rehabilitation ADU Program	<ul style="list-style-type: none"> • On July 18, 2017, Council authorized the reallocation of \$150,000 of CDBG funding over two years to expand the City's housing rehabilitation program to include targeted ADU code corrections for income-eligible senior homeowners in the Tennyson Corridor. • In accordance with new state regulations and HUD approved eligibility standards, staff has developed program loans to eligible senior or disabled residents to convert their existing non-conforming garage conversions into code compliant accessory housing units. • A work session on the program's progress and outcomes is tentatively scheduled for Council review in February 2018. 	<ul style="list-style-type: none"> • Work session planned to Review the Housing Rehabilitation ADU Program's Progress and Outcomes 	February 2018
4. Issue NOFA/RFP for Affordable Rental Housing Development Projects	<ul style="list-style-type: none"> • On January 31, 2017, Council directed staff to issue a Notice of Funding Availability (NOFA) and/or a Request for Proposals (RFP) to solicit Measure A1 project proposals for affordable housing developments that advance Council priorities and the Housing Element policies related to permanent affordable rental housing development. 	<ul style="list-style-type: none"> • Work Session scheduled to Review Prospective Measure A1 Affordable Rental Housing Projects in Hayward. 	11/28/17

STRATEGY	ACTIONS TO DATE	NEXT STEPS	TIMELINE
<p>4. Issue NOFA/RFP for Affordable Rental Housing Development Projects. (Continued)</p>	<ul style="list-style-type: none"> • Staff is developing that the NOFA/RFP consistent with Council’s direction to emphasize proposals that “...focus on rental housing affordable to lower-income households with special needs (e.g., seniors, extremely low-income households, and persons with disabilities, including developmental disabilities), especially projects that promote the City’s goals relating to transit-oriented development and jobs/housing balance” and, to the extent funding from Measure A1 funding for transitional housing is available, on projects for development of “...emergency shelters, and transitional and supportive housing programs for the homeless and those who are at risk of becoming homeless.” • Staff has been working in close coordination with the County of Alameda, which administers Measure A1 funding, throughout 2017 to help develop the Measure A1 program implementation criteria. Issuance of the first round of bonds by the County for affordable rental housing development is anticipated in March 2018. • Staff has scheduled a Council review of prospective Measure A1 affordable rental housing projects in Hayward on November 28, 2017. 		
<p>5. Update and Revise the Affordable Housing Ordinance (AHO).</p>	<ul style="list-style-type: none"> • On January 31, 2017, Council directed staff to explore options for revising the AHO to potentially increase its requirements, and directed staff to commission a Nexus Study to inform potential amendments to the AHO. • Staff engaged the services of professional firm Keyser Marston Associates in July 2017, and worked closely with multiple community stakeholders to develop the Study. 	<ul style="list-style-type: none"> • Review of Residential Nexus and Financial Feasibility Analysis and Affordable Housing Ordinance scheduled for Council • Public Hearing scheduled to Introduce Amendments to 	<p>10/17/17</p> <p>11/7/17</p>

STRATEGY	ACTIONS TO DATE	NEXT STEPS	TIMELINE
5. Update and Revise the Affordable Housing Ordinance (AHO). (Continued)		Affordable Housing Ordinance. • Adoption of AHO Fee Updates and Amendments to Affordable Housing Ordinance.	11/28/17



CITY OF HAYWARD

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

File #: WS 17-046

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Discussion of the Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees

RECOMMENDATION

That Council reviews and comments on this report.

ATTACHMENTS

Attachment I	Executive Summary
Attachment II	Staff Report
Attachment III	Residential Nexus and Financial Feasibility Study Findings and Recommendations
Attachment IV	Stakeholders' Written Comments Received



**ATTACHMENT I –
EXECUTIVE SUMMARY**

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT Discussion of Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees

This executive summary of the Staff Report (Attachment II) summarizes the key findings and recommendations from the Residential Nexus and Financial Feasibility Study for the City's Affordable Housing Ordinance (AHO) and associated impact fees.

During the January 31, 2017 Council work session on Housing Affordability strategies, Council directed staff to revisit the requirements of the Affordable Housing Ordinance (AHO) for potential adjustments in response to the escalation in local housing prices and rents, which have created local housing affordability challenges. Of particular interest to Council was the AHO and associated in lieu impact fees. In response to this direction, staff engaged the services of Keyser Marston Associates, Inc. (KMA) to conduct a Residential Nexus and Financial Feasibility Study to (1) evaluate the impacts of requiring on-site affordable units, (2) assess the extent to which fee increases would be financially feasible for developments to realistically bear, (3) assess options to decrease the applicable threshold from the current AHO twenty-unit threshold, (4) establish the maximum supportable fee levels applicable to residential developments, and (5) assess the potential impacts that new or higher fees could have on the feasibility of those developments.

The complete Nexus Study analysis is included as Attachment III to this report and provides recommendations for Council consideration of potential amendments to the AHO based on the Study's findings. Below is a summary of the key study findings.

Study Findings

- a) **Maximum Supportable Fees.** KMA's Nexus analysis, summarized on Table 2, indicates that the maximum supported fees (the fees that would fully mitigate the impact of new market-rate housing on the local need for affordable housing) range from \$28.90 for single-family detached units to \$44.90 for both condominium and apartment units. These are per-square-foot fees for the units' net residential areas (exclusive of parking,

corridors, and other common areas). KMA recommends adopting fees lower than the maximum supportable fees to mitigate the impact of fees on the projects' proformas.

Table 2: Maximum Supportable Residential Impact Fees, City of Hayward

	Single Family Detached	Townhome	Condominium	Apartments
Per Market Rate Unit	\$72,200	\$63,400	\$44,900	\$40,400
Per Square Foot	\$28.90	\$31.80	\$44.90	\$44.90

Source: Keyser Marston Associates, DRAFT Summary, Context Materials, and Recommendations – Affordable Housing Ordinance Update. September 2017.

- b) **Affordable Housing Requirements in Other Jurisdictions.** In 2016, KMA assembled and summarized affordable housing requirements for eighteen jurisdictions in Alameda and Santa Clara counties. KMA's survey shows that although there is a wide range in fee levels and fees are expressed differently by jurisdiction, in the case of rental projects, Hayward's fees are well below the fee levels of the other cities. With respect to the requirements for for-sale projects, the survey shows that most jurisdictions, including Hayward, allow in-lieu fee payments as an alternative to providing the units on site. However, Hayward's fees are also lower compared to those of the other surveyed jurisdictions.
- c) **Market Context.** KMA's analysis of the local market concludes that Hayward has a range of residential product types in the development pipeline. It also indicates that the rental market is showing signs of strength and that local home prices have risen significantly over the past several years as a result of the strength of the regional economy, low mortgage rates, and a limited housing inventory.
- d) **Financial Feasibility.** KMA tested the financial feasibility of the four prototypes and found that, except for the stacked flat condominium prototype that was found to be marginally feasible at the moment, all types of residential development projects in Hayward are feasible. This is illustrated by the City's new development pipeline. Additionally, KMA's test showed that an increase in affordable requirements to levels similar to those of area jurisdictions could be absorbed by relatively low market adjustments (an increase in the sales prices or rents or a downward adjustment on the value of land).

CONSIDERATIONS

The preliminary recommendations that follow reflect the following considerations:

- a) The findings of the Study (listed above and in the attached report). These findings analyzed current local market conditions, recent court cases, and recently-approved State legislation;

- b) The housing policy objectives, as specified in the City's Housing Element;
- c) The inclusionary requirements in nearby jurisdictions;
- d) Setting requirements high enough that ensure that new market rate residential projects help mitigate their impact on the local need for affordable housing; and
- e) Requirements low enough that do not discourage local residential development.

RECOMMENDATIONS

For-Sale (Homeownership) Housing Recommendations

1. Lower the applicability threshold from twenty (20) units to two (2) units.
2. Allow in-lieu-fee payment for small projects with nine or fewer units. This would avoid placing a disproportionate burden on small projects for which percentage requirements would result in less than a full affordable unit being owed.
3. Utilize a step-up calculation of fees for projects with two to nine units such as the following: $\text{Applicable PSF fee} = \text{Full PSF Fee} \times (\text{No. Units} - 1) / (\text{No. of units})$. This would avoid creating a disincentive for small multi-unit projects,
4. Require that affordable units be provided on-site within for-sale projects of ten units or more and remove the option to pay an in-lieu fee except for specific project types further described below in #6.
5. Set the onsite affordable unit percentage requirement at no more than 10%, and make the on-site affordable unit percentage requirements consistent for attached and detached units. (Currently, the on-site requirements are 10% for detached and 7.5% for attached units).
6. Adjust the requirements for specific project types as follows:
 - a. Allow a fee payment for units with a lot size of 4,000 sq. ft. and higher because providing affordable units onsite within single-family projects is often costlier on a per-affordable-unit basis, especially with larger lots and higher-priced units.
 - b. Keep the 7.5% on-site requirement and/or allow fee payments for high density condominium projects. KMA's analysis indicates that the market in Hayward for condominiums at higher densities, such as over 35 units per acre, remains unproven, however the City may want to encourage these of units in some cases.
7. Increase AHO fees in the range of \$15 to \$20 per square foot to bring Hayward's fees nearer to the level of the fees charged by other East Bay jurisdictions. KMA's analysis indicates that selecting a fee at the upper end of the range (\$20) would represent an equivalent cost to complying with the maximum on-site requirement recommended above (10%).

Rental Housing Recommendations

1. Lower the applicability threshold from twenty (20) units to two (2) units, consistent with the recommendation for ownership units.
2. Due to the signing of AB 1505 by the Governor which provides the City the ability to make on-site affordable units mandatory in rental projects, KMA recommends:
 - a. Require on-site units for projects with over 100 units to avoid getting small numbers of affordable rental units in scattered locations that could increase the administrative burden of enforcing affordability covenants. To comply with AB 1505, allow developers to propose an alternative means of compliance utilizing the 'Combination of Alternatives' section of the AHO (discussed further below).
 - b. Reduce the on-site requirement for the above projects from 7.5% to between 6% and 5% while maintaining the existing low- and very low-income level split, to decrease the compliance cost to the \$20/sq. ft.,
 - c. Alternatively, allow rents for the on-site units to be set up at 80% of Area Median Income (AMI), a level few affordable rentals serve because it is above the rent levels allowed for projects with tax credit financing.
3. Continue to allow fee payment in rental projects with 99 units or less.
4. Set the applicable fees within the \$15-\$20 per sq. ft. range as recommended for the ownership projects.

Additional Fee-Related Recommendations

- Continue to use the existing approach of charging fees on a per-square-foot basis. This approach, KMA notes, is simple to administer, and ensures that fees are kept proportionate to unit size, with small units paying less and large units paying more.
- Impose a fee structure within the ranges set forth in Table 3. KMA's recommendation package does not include any reference to the current fee "payment schedule" of the AHO that allows the developer to pay the base fee plus 10% if the developer chooses to pay the fee at issuance of certificate of occupancy.

Table 3: Recommended Fee Range Structure Options

Timing	Single-Family (Ownership)		Multifamily Rental	Alternative A	Alternative B
	Detached	Attached (Townhomes and Condos)		Both alternatives apply to all development types (for-sale single-family detached and detached homes and multifamily rental housing) with the exceptions described in this report	
	Current	Current	Current		
If Paid at B.P.*	\$ 4.61	\$ 3.87	\$ 3.63	\$ 15.00	\$ 18.15
If Paid at C.O.**	\$ 5.06	\$ 4.28	\$ 3.99	\$ 16.50	\$ 19.97

Grandfathering

KMA recommends that, as in previous ordinance amendments involving a new requirement or an increase in the obligations, the AHO includes a provision that avoids a negative impact to projects currently in the pipeline. For this reason, staff recommends including a grandfathering provision (rather than a phase-in provision) for consistency with the City’s past practices.

Should Council decide to extend a grandfathering provision, it could potentially be provided:

- Only to projects with a complete application at the time the amendments become effective.
- To all projects that have filed an application with the City’s Development Services regardless of whether the project application is deemed complete or not at the time the amendments are adopted.
- All projects that receive discretionary approvals within six or twelve months of the amendments’ adoption.

Council also has the option to include no grandfathering provision - in other words, Council may require that all projects that receive entitlements after the amendments become effective are subject to the new requirements. This could, however, create significant burdens for developers who have already spent significant time and money developing plans based on the requirements that were in place when they made their original application.

Other Recommendations and Considerations

- Retain the “Combination of Alternatives” provision for all housing projects which allows developers to comply with the AHO by providing a combination of on-site construction, off-site construction, in-lieu fees, and land dedication that at least equals the cost of providing the affordable units on-site and/or furthers affordable housing opportunities in the City. This provision would allow the City to comply with AB 1505

which requires that developers of rental housing have the option to comply with the Ordinance through a different alternative in case they cannot or decide not to provide on-site affordable units. The only alternative not applicable to developments of 100 or more units would be the payment of fees.

- Adjust the Fees annually based on the rate of increase in the Consumer Price Index (CPI) published monthly by the Bureau of Labor Statistics or on the Historical Construction Cost Index published by Engineering News Records (ENR). The current methodology proved to be too complicated while the data available for the calculation based on such methodology was too inconsistent.
- Consider transit-oriented inclusionary requirements. One of the stakeholders' comments is that the City considers that (in case Council decides not to remove the option to pay the Fees) all new residential developments within a half-mile or one mile of high frequency transit (defined as fifteen minutes or less headways) or within Downtown Hayward boundaries be required to include affordable units and not fee out, so as to ensure that these developments provide affordable housing opportunities to lower-income households within close proximity to transit and amenities.

NEXT STEPS

Below are key policy questions for Council discussion and direction:

1. Fees: Does Council wish to return to an ordinance that requires provision of on-site affordable units but allows for alternative means of compliance for all projects? Should projects only be allowed to pay in-lieu fees upon petition to the Council (except for those smaller projects identified in the report – less than 100 units for rental projects and less than 9 units for for-sale projects)?
2. Fees: Does Council wish to impose fees within the recommended range? What is Council's direction regarding desired impact fee levels?
3. Fees: Does Council concur with the recommendation that Fees be adjusted annually based on the rate of increase in the Consumer Price Index (CPI) or on the ENR Historical Construction Cost Index?
4. Grandfathering: Does Council concur with the recommendation to include a grandfathering provision to mitigate financial impacts to projects currently in the pipeline?
5. Inclusionary Requirements: What is Council's direction regarding inclusionary requirements (on-site units) in rental projects – should in-lieu fee payments be allowed for medium- and small projects with fewer than 100 units?

6. **Inclusionary Requirements:** What is Council's direction regarding inclusionary requirements in homeownership (for-sale) projects – should in-lieu fee payments be allowed for small projects of nine or fewer units?
7. **Inclusionary Requirements:** What is Council's direction regarding the possibility of imposing inclusionary requirements for projects within specifically defined geographic areas, for example projects located in proximity to transit hubs?
8. **Overall Recommendations:** Does Council generally concur with the preliminary recommendations outlined in the Recommendations section of this report?

Staff will make any necessary AHO amendments and bring back an agenda item to introduce the ordinance amendments at a regular meeting in November 2017, once Council provides direction.

Prepared by: Omar Cortez, Acting Housing Manager

Recommended by: Sean Reinhart, Director of Library and Community Services
Maria A. Hurtado, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager



DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT Discussion of Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees

RECOMMENDATION

That Council reviews and comments on this report.

SUMMARY

On January 31, 2017, Council convened [a work session to review housing affordability strategies and resources in Hayward and Alameda County](#)¹. The City's Affordable Housing Ordinance (AHO) is one of five specific action strategies Council directed staff to research at the January 31 work session. The other strategies will be coming back to Council in separate agenda items in the coming weeks and months. A separate Information Report item published in the October 17, 2017 agenda packet provides Council with a status update and timeline of the five specific action strategies discussed during the Jan. 31st work session.

This report is focused on one specific action strategy, the Affordable Housing Ordinance. It summarizes the Residential Nexus and Financial Feasibility Study (the Study) findings, provides potential options and preliminary recommendations, and seeks Council direction about desired amendments to the AHO and associated fees. The preliminary recommendations for AHO amendments are outlined in the Recommendations section of this report. The Executive Summary attached to this staff report also offers a brief summary of the key Study findings and preliminary recommendations for convenient reference.

¹ Source link: <https://hayward.legistar.com/LegislationDetail.aspx?ID=2947412&GUID=7B833FA7-2B44-404D-86D2-031C37926B34&Options=&Search=>

BACKGROUND

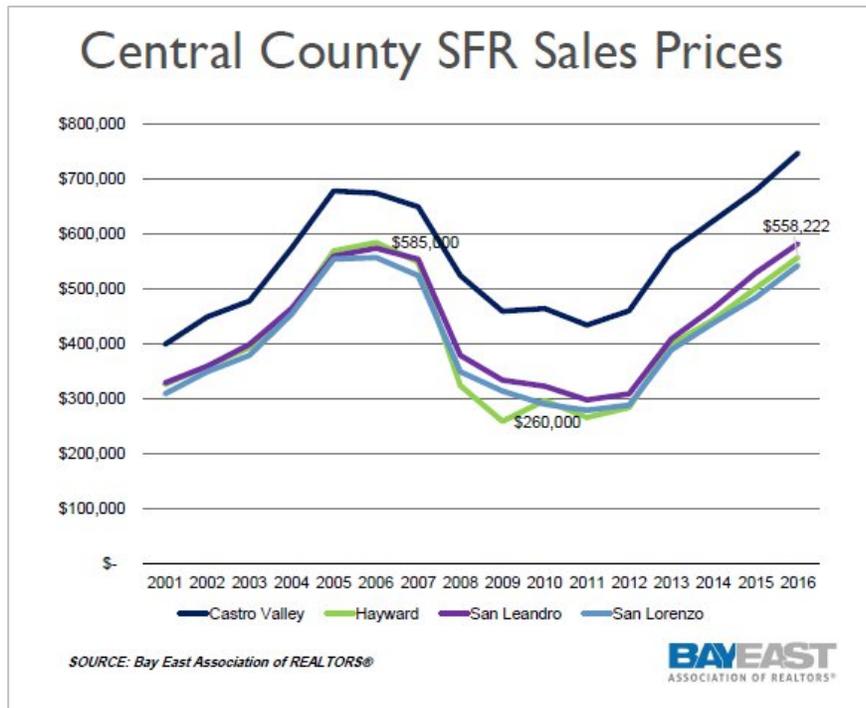
The Housing Affordability Crisis

During the last few years, particularly since the adoption of the AHO in 2015, rising home prices and rents have strengthened the housing market in Hayward and the City is now experiencing an uptick in residential development activity. The escalation in prices and rents has exacerbated local housing affordability challenges. In response, Council directed staff to re-evaluate the AHO for potential requirement increases. The AHO clarifies and facilitates the creation of deed-restricted affordable housing in the City. It does this primarily by incentivizing and/or clarifying various legal and financial requirements for developers who are interested in constructing residential developments within the City. The AHO ensures the availability of equitable, quality housing in our community for people of all income levels. Every aspect of the ordinance, and any changes to it, can have major, long-term ramifications to the local housing market, the feasibility of housing developments, the availability of funding set-asides for creating additional affordable housing, and the overall health and well-being of the residential housing market in the City.

The need to create more housing in every level and category of the housing market, from deed-restricted affordable rental units to market-rate homeownership units, continues to rise locally and regionally. The housing affordability crisis affecting communities across the Bay Area, now includes Hayward, which has historically been among the most affordable in the region. The main driver of the housing affordability crisis is the shortfall in housing supply compounded by decades of underproduction unable to keep pace with population growth. Between 1980 and 2010, California metropolitan areas like the Bay Area built on average 120,000 housing units per year, which at a glance, seems like a significant number of new housing units. However, the Legislative Analyst's Office (LAO) projects that 2.7 million more housing units should have been built during this time.

The Bay Area region is a highly desirable place to live and work, resulting in a continuous upward regional population growth; upwards of 7.2 million people as of 2010. The impact of this regional population growth combined with the shortage of housing supply has driven up demand and price. Between 2011 and 2016, single family residence sales prices in Hayward increased by 214 percent, and although prices have increased sharply, they remain among the lowest in Alameda County.

Figure 1: Central County Single Family Residence Sales Prices



It is anticipated that the Bay Area population will grow from 7.2 million to 9.5 million people between 2010 and 2040. According to the LAO, an additional 823,000 new housing units will be needed to meet this projected housing demand. Only 8% of that total was achieved by 2015.

Summary of Current AHO Requirements

The current AHO requires developers of projects with twenty (20) units or more to mitigate the impact of new residential development on the need for affordable housing and:

1. Permits developers to pay AHO Fees “by right” rather than providing units on site, at the developers’ option.
2. Stipulates that if for-sale housing developers elect to comply with the AHO by providing units on-site, they must include units affordable to moderate-income households equal to a minimum of 7.5% of the attached dwelling units and 10% of detached dwelling units.
3. Provides that the Fees be calculated on a per-square-foot basis rather than on a per-unit basis.

4. Provides that the Fees for for-sale housing shall be adjusted annually based on the percentage change (increase or decrease) in the three-year trailing median home prices in the City.
5. Allows payment of the Fees at the time the building permits are pulled at the adopted levels or at issuance of certificates of occupancy plus a 10% increase.
6. Removed the 2003 Inclusionary Housing Ordinance (IHO-2003) requirements for rental housing and in its place adopted Fees – unless, to comply with the Palmer court decision and the Costa Hawkins Act, the developer receives funding or City regulatory assistance of some type, such as a density bonus, and enters into a regulatory agreement with the City acknowledging their obligation to limit the rents.
7. Provides that if rental housing developers elect to provide units according to No. 6, above, they should include a minimum of 7.5% of the units and make them available at affordable rents to low- and very low-income households for a minimum of 55 years.
8. Provides that the Fees for rental housing be adjusted based on the change in local market rents.
9. Sets aside 10% of the Fees for administration of the AHO.
10. Allows the use of the Fees for the acquisition and rehabilitation of existing housing for affordable housing purposes.

Summary of Current AHO Fees

When Council adopted the AHO in 2015, by separate resolution the Council also established the AHO Fees. The current Fees, which became effective January 1, 2017, are shown in Table 1.

Table 1: Current AHO Fees

Type of Housing and Timing of Fees*	Detached		Attached	
	At Building Permit	At C. of O.	At Building Permit	At C. of O.
For-sale	\$ 4.61	\$ 5.06	\$ 3.87	\$ 4.26
Rental	N/A		\$ 3.63	\$ 3.99

*Per-square-foot of habitable space fees

DISCUSSION

The Nexus Study

In response to Council’s direction to revisit the requirements of the Affordable Housing Ordinance (AHO) for potential adjustments, staff initiated a process to reexamine the AHO

and as a first step, in June 2017, engaged the services of professional firm Keyser Marston Associates, Inc. (KMA) to conduct a Residential Nexus and Financial Feasibility Study (Nexus Study). KMA has extensive experience in preparing nexus analyses, and has been responsible for nexus-supported affordable housing programs in a wide range of large, medium, and small jurisdictions. The firm recently prepared residential nexus and financial feasibility analyses for ten area jurisdictions that included Union City, San Leandro and Unincorporated Alameda County.

The purpose of the Study was to establish the maximum supportable fee levels applicable to residential developments and to assess the potential impacts that new or higher fees could have on the feasibility of those developments. In response to direction provided by Council, staff also asked KMA to evaluate the impacts of requiring on-site affordable units, assess the extent to which fee increases would be financially feasible for developments to realistically bear, and assess options to decrease the applicable threshold from the current AHO twenty-unit threshold.

The Study analyzed current local market conditions, recent court cases, and recently-approved State legislation. A summary of the Study findings and recent court decisions and legislation affecting inclusionary housing are included in this section. More detailed narratives regarding both the findings and the legal framework can be found in Attachment III.

The Consultant's recommendations reflect the input gathered from Council (at related discussions), stakeholders, and the community, as well as the following considerations:

1. The findings of the Study, which analyzed current local market conditions, recent court cases, and recently-approved State legislation. Among these findings are that fees that would fully mitigate the impact of new market-rate housing on the local need for affordable housing are much higher than the current AHO fees.
2. Relevant court cases and legislation. Among these are California Building Industry Association v. City of San Jose where the Court unanimously ruled in favor of the City of San Jose on June 15, 2015 and AB1505 (the "Palmer Fix"), a bill that was part of the "Housing Package" recently signed by State Governor Jerry Brown. The former ruling (the San Jose case) affirmed the appellate court's opinion that inclusionary zoning does not impose "exactions" upon developers' property in a manner that would violate either the federal or California takings clause. AB 1505 restores the right of municipalities to apply inclusionary housing policies to rental developments, overturning the 2009 appellate court ruling on Palmer/Sixth Street Properties, L.P. v City of Los Angeles.
3. Signs of strength in the rental market and local home prices. Both have risen significantly over the past several years as a result of the strength of the regional economy, low mortgage rates, and a limited housing inventory. Additionally, KMA tested the financial feasibility of the four prototypes chosen to conduct the Study (single-family detached, townhomes, stacked condos, and multifamily rental housing)

and found that, except for the stacked flat condominium prototype, which was found to be marginally feasible at the moment, all types of residential development projects in Hayward are feasible.

4. Council's housing policy objectives, as specified in the City's Housing Element. Several of the City's Housing Element goals were taken into consideration in the formulation of the Study recommendations. These include Goal H-2. This goal stipulates that the City will "[a]ssist in the provision of housing that meet the needs of all socioeconomic segments of the community." Goal H-6 was also a key consideration. This goal states that the City will help "provide housing choices that serve the needs of 'special needs' populations, including seniors, homeless, female-headed households, large families, and persons with disabilities, including developmental disabilities."
5. Inclusionary requirements in nearby jurisdictions. A survey of affordable housing requirements for eighteen jurisdictions in Alameda and Santa Clara counties conducted by KMA summarized in Attachment III showed that Hayward's fees both for rental projects and for-sale projects are lower compared to those of the other surveyed jurisdictions. However, the survey also showed that most jurisdictions, including Hayward, allow in-lieu fee payments as an alternative to providing the units on site.
6. Striking the right balance of requirements vs. feasibility. Balancing the desire to impose affordable requirements that are aggressive enough to ensure that new market-rate residential projects help mitigate their impact on the local need for affordable housing, but not so overly aggressive that they discourage and/or hinder the feasibility of residential development projects, including affordable projects, from occurring at all.

Grandfathering options are also included in the recommendations section of the report, as well the recommendation to keep the "Combination of Alternatives" option of the AHO. This alternative allows the developers to propose additional alternatives not listed in the AHO that would mitigate the affordable housing impact of a residential development project, should Council find that the alternatives would provide a greater benefit to the City than the options already contemplated in the AHO.

Inclusionary Considerations

Council in recent discussions has expressed a desire to explore the possibility of requiring the inclusion of on-site units, and this is a viable option provided that alternate means of compliance are provided under AB 1515. However, Council may also consider using an incentivization approach by keeping the fee-by-right payment option and increasing impact fees, upon the consideration of the comments from the market-rate development community represented by Building Industry Association (BIA) of the Bay Area, which has formally expressed its opposition to the elimination of that option. For Council's reference and consideration, the following components of the City of Hayward Housing Element are relevant to the inclusionary housing policy question:

- a) The inclusion of on-site affordable units promotes integrated, inclusive, and complete communities, therefore promoting important Housing Element goals and the Complete Communities Strategy cited above. Goal H-2.3 of the Housing Element establishes that “[t]he City shall enforce the Inclusionary Housing Ordinance to ensure that a certain percentage of new residential units will be made affordable to lower- and moderate-income households” and Goal H-2.4, Integration of Affordable Housing, states that “[t]he City shall encourage a mix of affordability levels in residential projects and encourage the dispersal of such units to achieve greater integration of affordable housing throughout the community.”
- b) The inclusion of on-site affordable units in for-sale housing projects also helps the City promote goal H-2.1 of the Housing Element. This goal states that “[t]he City shall encourage the development of ownership housing and assist tenants to become homeowners to reach a 60 percent ownership-occupancy rate, within the parameters of federal and state housing laws.”
- c) Keeping the fee-by-right option in place and increasing the impact fees paid by developers would generate substantial revenue to the City’s housing program, which in turn would allow the City to leverage funding from other sources such as the recently-approved Alameda County General Obligation Bond, Measure A1, to create and construct more quality affordable housing in Hayward. The most current version of the Measure A1 rental and homeownership development policies require local jurisdictions to provide local match funding to access Measure A1 funding. AHO Fees could potentially be a source for the bond funding match. Additionally, the Housing Package recently approved by the State legislature and signed by the Governor, includes a new source of funding, SB2 (the “Recording Fee”). This bill, which is effective immediately, will generate approximately \$200 million per year. Most of these funds are envisioned to be designated for local government use. Accessing these funds, however, will almost certainly also require local match funding. The Housing Package also includes the approval of a Bond measure (to be placed on the November 6, 2018 ballot) for affordable housing and for a veteran’s home purchase program. It is very likely that these programs will also require a match from the local jurisdiction.
- d) AHO Fees could help the City meet another important housing goal, Goal H-6, that says that the City will, “provide housing choices that serve the needs of ‘special needs’ populations, including seniors, homeless, female-headed households, large families, and persons with disabilities, including developmental disabilities.” These populations are typically not served by market-rate projects as they require the layering of several sources of financing, a management agent with expertise on managing properties with these populations, and, often, supportive services. The County’s Measure A1 proposed development policies also identify target groups that include most of the City’s Housing Element-identified populations. Therefore, the fees collected through the AHO could also help the City serve these populations by building rental or homeownership affordable housing in partnership with experienced affordable housing developers.

Legal Considerations

Recent court cases, including the following, have affected the application of inclusionary policies in California:

1. Required Justification for Affordable Housing Requirements. At the time of the adoption of the AHO in 2015, the California Supreme Court was considering the issue of whether inclusionary housing ordinances are similar to impact fees and must be justified by a nexus study, or whether local governments may use their police powers to further the general welfare, by requiring the provision of needed affordable housing. To resolve this issue, on September 11, 2013, the California Supreme Court granted a petition for review in *California Building Industry Association v. City of San Jose* (Case No. S212072).

On June 15, 2015, the Court unanimously ruled in favor of the City of San Jose. The ruling affirmed the appellate court's opinion that inclusionary zoning does not impose "exactions" upon developers' property in a manner that would violate either the federal or California takings clause and is not required to be justified by a nexus study. While this was a very positive ruling for inclusionary zoning in California, it only applied to ordinances on for-sale housing developments as, since 2009, municipalities had to suspend enforcement of their inclusionary zoning ordinances for rental housing development based on the appellate court ruling in *Palmer/Sixth Street Properties v. City of Los Angeles*.

2. Rental Housing: The Palmer Decision² and Subsequent Enactment of AB 1505. Another court case considered at the time of the adoption the AHO in 2015 was the Palmer decision in which the California Court of Appeals prohibited the City of Los Angeles from enforcing its inclusionary housing requirements on rental housing development. Because of Palmer, cities could no longer impose inclusionary requirements on rental housing unless they provided monetary or other assistance and the owner agreed by contract. However, cities could mitigate the impacts of rental housing on the need for affordable housing by imposing a fee justified by a nexus study, like the one conducted by DRA at the time. For this reason, the AHO removed the IHO-2003 requirements and in its place adopted fees both for rental and homeownership housing.

On September 29, 2017, Governor Jerry Brown signed the "Housing Package" legislation, a package of fifteen bills designed to address California's housing crisis. A part of the package was AB 1505 (the "Palmer Fix"), a bill that restores the right of municipalities to apply inclusionary housing policies to rental developments effective

² *Palmer/Sixth Street Properties, L.P. v City of Los Angeles* (2009) 175 Cal. App. 4th 1396, the California Court of Appeal prohibited the City of Los Angeles from enforcing its inclusionary housing ordinance on the developer's rental housing development. The Court held that forcing Palmer to provide affordable housing units at regulated rents conflicts with the right afforded to residential landlords under Costa-Hawkins Act to establish the initial rental rate and the rate upon vacancy for a dwelling unit. The Court also held that in-lieu fees were "inextricably intertwined" with affordable housing requirements and so were also prohibited. The Costa-Hawkins Act does not apply where the owner has agreed by contract to build affordable housing in consideration for a direct financial contribution or a form of regulatory assistance specified in state density bonus law.

January 1, 2018. However, one requirement of the bill is that, if the City has an on-site requirement, it must also include “alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.”

Summary Findings

The full Nexus Study is included with this report as Attachment III. What follows is a brief summary of the key Study findings.

- a) **Maximum Supportable Fees.** KMA’s Nexus analysis, summarized on Table 2, indicates that the maximum supported fees (the fees that would fully mitigate the impact of new market-rate housing on the local need for affordable housing) range from \$28.90 for single-family detached units to \$44.90 for both condominium and apartment units. These are per-square-foot fees for the units’ net residential areas (exclusive of parking, corridors, and other common areas). KMA recommends adopting fees lower than the maximum supportable fees to mitigate the impact of fees on projects’ proformas (the financial feasibility analysis).

Table 2: Maximum Supportable Residential Impact Fees, City of Hayward

	Single Family Detached	Townhome	Condominium	Apartments
Per Market Rate Unit	\$72,200	\$63,400	\$44,900	\$40,400
Per Square Foot	\$28.90	\$31.80	\$44.90	\$44.90

Source: Keyser Marston Associates, DRAFT Summary, Context Materials, and Recommendations – Affordable Housing Ordinance Update. September 2017.

- b) **Affordable Housing Requirements in Other Jurisdictions.** In 2016, KMA assembled and summarized affordable housing requirements for eighteen jurisdictions in Alameda and Santa Clara counties. KMA’s survey shows that although there is a wide range in fee levels and fees are expressed differently by jurisdiction, in the case of rental projects, Hayward’s fees are well below the fee levels of the other cities. With respect to the requirements for for-sale projects, the survey shows that most jurisdictions, including Hayward, allow in-lieu fee payments as an alternative to providing the units on site. However, Hayward’s fees are also lower compared to those of the other surveyed jurisdictions.
- c) **Market Context.** KMA’s analysis of the local market concludes that Hayward has a range of residential product types in the development pipeline. It also indicates that the rental market is showing signs of strength and that local home prices have risen significantly over the past several years as a result of the strength of the regional economy, low mortgage rates, and a limited housing inventory.

- d) **Financial Feasibility.** KMA tested the financial feasibility of the four prototypes and found that, except for the stacked flat condominium prototype, which was found to be marginally feasible at the moment, all types of residential development projects in Hayward are feasible. This is illustrated by the City's new development pipeline. Additionally, KMA's test showed that an increase in affordable requirements to levels similar to those of area jurisdictions could be absorbed by relatively low market adjustments (an increase in the sales prices or rents or a downward adjustment on the value of land).

RECOMMENDATIONS

This section contains a summary of the draft recommendations outlined in more detail in the Nexus Study (Attachment III). The recommendations are preliminary in nature and are subject to change at Council's direction, and reflect the following considerations:

- a) The data findings of the Study, which analyzed current local market conditions, recent court cases, and recently-approved State legislation;
- b) The housing policy objectives, as specified in the City's Housing Element;
- c) The inclusionary requirements in nearby jurisdictions;
- d) Setting requirements high enough that ensure that new market rate residential projects help mitigate their impact on the local need for affordable housing; and
- e) Requirements low enough that do not discourage local residential development.

For-Sale (Homeownership) Housing Recommendations

1. Lower the applicability threshold from twenty (20) units to two (2) units.
2. Allow in-lieu fee payment for small projects with nine or fewer units. This would avoid placing a disproportionate burden on small projects for which percentage requirements would result in less than a full affordable unit being owed.
3. Utilize a step-up calculation of fees for projects with two to nine units such as the following: $\text{Applicable PSF fee} = \text{Full PSF Fee} \times (\text{No. Units} - 1) / (\text{No. of units})$. This would avoid creating a disincentive for small multi-unit projects,
4. Require that affordable units be provided on-site within for-sale projects of ten units or more and remove the option to pay an in-lieu fee except for specific project types further described below.
5. Set the onsite affordable unit percentage requirement at no more than 10%, and make the on-site affordable unit percentage requirements consistent for attached and detached units. (Currently, the on-site requirements are 10% for detached and 7.5% for attached units).
6. Adjust the requirements for specific project types as follows:

- a. Allow a fee payment for units with a lot size of 4,000 sq. ft. and higher because providing affordable units onsite within single-family projects is often costlier on a per-affordable-unit basis, especially with larger lots and higher-priced units.
 - b. Keep the 7.5% on-site requirement and/or allow fee payments for high density condominium projects. KMA's analysis indicates that the market in Hayward for condominiums at higher densities, such as over 35 units per acre, remains unproven, however the City may want to encourage these units in some cases..
7. Increase AHO fees in the range of \$15 to \$20 per square foot to bring Hayward's fees nearer to the level of the fees charged by other East Bay jurisdictions (see more below). KMA's analysis indicates that selecting a fee at the upper end of the range (\$20) would represent an equivalent cost to complying with the maximum on-site requirement recommended above (10%).

Rental Housing Recommendations

1. Lower the applicability threshold from twenty (20) units to two (2) units, consistent with the recommendation for ownership units.
2. Due to the signing of AB 1505 by the Governor which provides the City the ability to make on-site affordable units mandatory in rental projects, KMA recommends:
 - a. Require on-site units for projects with over 100 units to avoid getting small numbers of affordable rental units in scattered locations that could increase the administrative burden of enforcing affordability covenants. To comply with AB 1505, allow developers to propose an alternative means of compliance utilizing the 'Combination of Alternatives' section of the AHO (discussed further below).
 - b. Reduce the on-site requirement for the above projects from 7.5% to between 6% and 5% while maintaining the existing low- and very low-income level split, to decrease the compliance cost to the \$20/sq. ft.
 - c. Alternatively, allow rents for the on-site units to be set up at 80% of AMI, a level few affordable rentals serve because it is above the rent levels allowed for projects with tax credit financing.
3. Continue to allow fee payment in rental projects with 99 units or less.
4. Set the applicable fees within the \$15-\$20 per sq. ft. range as recommended for the ownership projects – See more below.

Additional Fee-Related Recommendations

- Continue to use the existing approach of charging fees on a per-square-foot basis. This approach, KMA notes, is simple to administer, and ensures that fees are kept proportionate to unit size, with small units paying less and large units paying more.
- Impose a fee structure within the ranges set forth in Table 3. KMA’s recommendation package does not include any reference to the current fee “payment schedule” of the AHO which allows the developer to pay the base fee plus 10% if the developer chooses to pay the fee at issuance of certificate of occupancy.

Table 3: Recommended Fee Range Structure Options

Timing	Single-Family (Ownership)		Multifamily Rental	Alternative A	Alternative B
	Detached	Attached (Townhomes and Condos)		Both alternatives apply to all development types (for-sale single-family detached and detached homes and multifamily rental housing) with the exceptions described in this report	
	Current	Current	Current		
If Paid at B.P.*	\$ 4.61	\$ 3.87	\$ 3.63	\$ 15.00	\$ 18.15
If Paid at C.O.**	\$ 5.06	\$ 4.28	\$ 3.99	\$ 16.50	\$ 19.97

Grandfathering

KMA recommends that, as in previous ordinance amendments involving a new requirement or an increase in the obligations, the AHO include a provision that avoids a negative impact to projects currently in the pipeline. For this reason, staff recommends including a grandfathering provision (rather than a phase-in provision) as this is the approach that is consistent with the City’s past practices.

Should Council decide to extend a grandfathering provision, it could potentially be provided:

- Only to projects with a complete application at the time the amendments become effective.
- To all projects that have filed an application with the City’s Development Services regardless of whether the project application is deemed complete or not at the time the amendments are adopted.
- All projects that receive discretionary approvals within six or twelve months of the amendments’ adoption.

Council also has the option to include no grandfathering provision - in other words, Council may require that all projects that receive entitlements after the amendments become effective are subject to the new requirements. This could, however, create significant burdens for developers who have already spent significant time and money developing plans based on the requirements that were in place when they made their original application.

Other Recommendations and Considerations

- Retain the “Combination of Alternatives” provision which allows developers to comply with the AHO by providing a combination of on-site construction, off-site construction, in-lieu fees, and land dedication that at least equals the cost of providing the affordable units on-site and/or furthers affordable housing opportunities in the City to a greater extent. This provision would allow the City to comply with AB 1505 which requires that developers of rental housing have the option to comply with the Ordinance through a different alternative in case they cannot or decide not to provide on-site affordable units. The only alternative not applicable to developments of 100 or more units would be the payment of fees.
- Adjust the Fees annually based on the rate of increase in the Consumer Price Index (CPI) published monthly by the Bureau of Labor Statistics or on the Historical Construction Cost Index published by Engineering News Records (ENR). The current methodology proved to be too complicated while the data available for the calculation based on such methodology was too inconsistent.
- Consider transit-oriented inclusionary requirements. One of the stakeholder’s comments is that the City consider that (in case Council decides not to remove the option to pay the Fees) all new residential developments within a half-mile or one mile of high frequency transit (defined as fifteen minutes or less headways) or within Downtown Hayward boundaries be required to include affordable units and not fee out, so as to ensure that these developments provide affordable housing opportunities to lower-income households within close proximity to transit and amenities.

ECONOMIC IMPACT

As stated in the findings of the AHO (see S. 10-17.115), by facilitating the provision of “...affordable units or fees... [the AHO] will mitigate the impacts of market-rate development on the need for affordable housing and will help ensure that part of the City’s remaining developable land is used to provide affordable housing.” By ensuring that new market-rate housing that contributes to the demand for goods and services in the City mitigates its impact on the local need for affordable housing, the Ordinance also constitutes the main tool for balancing market-rate residential growth and associated jobs in the local economy (i.e., the “jobs-housing balance”).

STRATEGIC INITIATIVES

The AHO is one of the main tools to further the Complete Communities strategic initiative. The purpose of the Complete Communities strategy is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goal and objectives:

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

Objective 1: Centralize and expand housing services.

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

Objective 4: Increase supply of affordable, safe and resilient housing in Hayward.

FISCAL IMPACT

The amendment of the AHO will not directly impact the City's General Fund as all of the City's activities related to affordable housing are funded through housing-related special revenue funds. KMA's analysis indicates that the recommended increase in affordable requirements could be absorbed by relatively low market adjustments (an increase in the sales prices or rents or a downward adjustment on the value of land). Thus, the City will continue to gain additional building permit fee revenue, transfer taxes, and property taxes from new housing development of all types as it is likely that the proposed fee increases will not constitute a deterrent to the development of market-rate housing.

To the extent that they are used to assist the development of new affordable homes and match other non-local dollars, the fees collected through the AHO will result in a positive fiscal impact for the City because, to be financially feasible, those development projects will also attract additional funding from County, State, Federal, or private funding sources.

PUBLIC CONTACT

- In July and August 2017, Keyser Marston Associates conducted multiple stakeholder interviews with City staff and members of the development community (market-rate and affordable) to collect data and feedback for the Nexus Study.
- In September 2017, the preliminary draft Nexus Study findings and recommendations were [published to the City website for public review](#)³.

³ Source link: <https://www.hayward-ca.gov/residents/housing-utilities#affordable>

- On September 20, 2017, the Community Services Commission convened a public meeting to review and discuss a preliminary draft of the Nexus Study findings and recommendations, and to provide feedback.
- On September 21, 2017, staff convened a public meeting attended by local housing advocates, affordable and market-rate developers, and other interested parties to review and discuss the preliminary Nexus Study findings and recommendations.
- In all of the above, attendees and interested parties were encouraged to provide written feedback and comments in response to the preliminary Nexus Study. All comments received are included as Attachment IV to this report.

NEXT STEPS

Key policy questions for which staff is seeking Council direction include:

1. **Fees:** Does Council wish to return to an ordinance that requires provision of on-site affordable units but allows for alternative means of compliance for all projects? Should projects only be allowed to pay in-lieu fees upon petition to the Council (except for those smaller projects identified in the report – less than 100 units for rental projects and less than 9 units for for-sale projects)?
2. **Fees:** Does Council wish to impose fees within the recommended range? What is Council's direction regarding desired impact fee levels?
3. **Fees:** Does Council concur with the recommendation that Fees be adjusted annually based on the rate of increase in the Consumer Price Index (CPI) or on the ENR Historical Construction Cost Index?
4. **Grandfathering:** Does Council concur with the recommendation to include a grandfathering provision to mitigate financial impacts to projects currently in the pipeline? What should the grandfathering criteria be?
5. **Inclusionary Requirements:** What is Council's direction regarding inclusionary requirements (on-site units) in rental projects – should in-lieu fee payments be allowed for medium- and small projects with fewer than 100 units?
6. **Inclusionary Requirements:** What is Council's direction regarding inclusionary requirements in homeownership (for-sale) projects – should in-lieu fee payments be allowed for small projects of nine or fewer units?
7. **Inclusionary Requirements:** What is Council's direction regarding the possibility of imposing inclusionary requirements for projects within specifically defined geographic areas, for example projects located in proximity to transit hubs?

8. Overall Recommendations: Does Council generally concur with the preliminary recommendations outlined in the Recommendations section of this report?

Should Council so direct, staff will develop AHO amendments that reflect Council's direction and feedback, and bring back an agenda item to introduce the amendments at a regular meeting in November 2017.

Prepared by: Omar Cortez, Acting Housing Manager

Recommended by: Sean Reinhart, Director of Library and Community Services
Maria A. Hurtado, Assistant City Manager

Approved by:



Kelly McAdoo, City Manager



KEYSER MARSTON ASSOCIATES

DRAFT

SUMMARY, CONTEXT MATERIALS AND RECOMMENDATIONS AFFORDABLE HOUSING ORDINANCE UPDATE

Prepared for:
City of Hayward

Prepared by:
Keyser Marston Associates, Inc.

September 2017

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ATTACHMENT A – RESIDENTIAL NEXUS ANALYSIS REPORT

I. INTRODUCTION

This Summary, Context Materials, and Recommendations report (“Summary Report”) has been prepared by Keyser Marston Associates, Inc. (KMA) to support consideration of updated affordable housing requirements applicable to residential development in the City of Hayward (“City”). This Summary Report provides a concise version of the affordable housing nexus, financial feasibility and other analyses prepared by KMA and provides recommendations for updates to the City’s affordable housing policies.

The Residential Nexus report is included as Attachment A to this Summary Report and provides the technical analyses and documentation to support Hayward’s affordable housing impact fees applicable to residential development.

A. Hayward’s Existing Affordable Housing Ordinance Requirements

The City of Hayward established its inclusionary program with adoption of an Inclusionary Housing Ordinance in 2003. The City’s program has been amended twice since it was initially adopted, most recently in 2015 when the Affordable Housing Ordinance (AHO) currently in effect was enacted. Following is a description of Hayward’s existing AHO requirements:

Ownership Housing Requirements

The AHO requires residential for-sale (or ownership) projects of twenty or more units to provide affordable units on-site or pay an in-lieu fee instead. Attached for-sale projects must provide 7.5% of units as affordable and detached projects must provide 10% of units as affordable to households at Moderate Income (up to 120% of Area Median Income).

The program has an in-lieu fee option which, following the 2015 update, is permitted by right. In-lieu fees are set well below the cost of providing units on-site. As a result, most projects comply through payment of fees rather than provide affordable units onsite. The current in-lieu fees are:

- Attached For-Sale Units: \$3.87 per square foot if paid at building permit or \$4.28 per square foot if paid at certificate of occupancy; and
- Detached For-Sale Units: \$4.61 per square foot if paid at building permit or \$5.06 per square foot if paid at certificate of occupancy.

Rental Housing Requirements

The AHO requires rental projects of twenty or more units to pay an impact fee of \$3.63 per square foot (or \$3.99 per square foot if paid at certificate of occupancy). Rental projects have the option to provide affordable units on-site as an alternative to payment of the impact fee. The on-site alternative is to provide 7.5% of units as affordable or 10% for detached rental projects. On-site affordable units must be split between Low and Very Low units.

B. Context for Update to Hayward's Program

Rising home prices and rents over the last several years have helped strengthen the housing market in Hayward to the point where the City is now experiencing development activity across a range of residential housing types including new single-family, townhomes, apartments and condominium units. At the same time, the escalation in prices and rents has exacerbated housing affordability challenges. Since Hayward last amended its requirements in early 2015, several other communities in the East Bay have adopted new or updated affordable housing requirements or have begun the process of considering them. These include Fremont, Union City, Oakland and Berkeley. With these recent trends as context and Hayward's requirements now at the low end of the range for cities in the inner East Bay, we understand the City wishes to consider strengthening the requirements of the AHO. The analysis and recommendations summarized in this report have been prepared to support consideration of updated affordable housing requirements applicable to residential development in Hayward.

Pending Legislation (AB 1505) – California communities have not had the ability to apply inclusionary requirements to rental projects since the 2009 *Palmer* case (*Palmer/Sixth Street Properties L.P. v. City of Los Angeles* [2009] 175 Cal. App. 4th 1396), described further in Attachment A. On Friday September 15th, the California legislature sent AB 1505 to the Governor's desk. If signed by the Governor, the bill will restore the ability to require on-site affordable units within rental projects.

C. Organization of this Report

This report is organized into the following sections:

- Section I provides an introduction;
- Section II presents a summary of KMA's findings and recommendations;
- Section III summarizes the nexus analysis;
- Section IV presents analyses and materials prepared to provide context for policy decisions, including:
 - a. Financial Feasibility Analysis – presents the analysis and findings of the real estate financial feasibility analysis covering four types of residential development in Hayward;
 - b. On-site compliance cost analysis – analysis of the forgone revenue experienced by market rate residential projects in complying with the City's inclusionary policy;
 - c. Residential affordable housing requirements in other jurisdictions – provides a summary of existing inclusionary and impact fee requirements for 18 jurisdictions in Alameda and Santa Clara counties;
- Attachment A is the full Residential Nexus Analysis report.

II. SUMMARY OF FINDINGS AND RECOMMENDATIONS

In this section, KMA provides a summary of the analysis findings and recommendations for updates to the City's Affordable Housing Ordinance. Recommendations reflect consideration of the following factors:

1. The findings of the nexus analysis. The nexus study establishes the maximum fee that may be charged to mitigate the impacts of new development on the need for affordable housing. Impact fees for rentals are limited to the maximums identified by the nexus. For-sale inclusionary requirements are generally not bound by nexus findings, but cannot be so high as to be confiscatory or to constitute a taking.
2. The City's policy objectives specified in the Housing Element.
3. The current requirements in neighboring jurisdictions.
4. Setting requirements high enough to support a meaningful contribution to affordable housing in Hayward.
5. Setting requirements low enough to not discourage development.

A. Summary of Findings

The following section provides an overview of KMA's analysis and factors that were considered in developing recommendations for updates to the City's Affordable Housing Ordinance.

1. Nexus Analysis Findings

The findings of the residential nexus analysis are summarized below. The findings per square foot refer to net residential area (exclusive of parking, corridors and other common areas).

	<i>Single Family Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Per Market Rate Unit	\$72,200	\$63,400	\$44,900	\$40,400
Per Square Foot	\$28.90	\$31.80	\$44.90	\$44.90

Source: Keyser Marston Associates, Attachment A Residential Nexus Analysis.

KMA recommends impact fees for rentals and in-lieu fees for small projects be set below the nexus findings shown above. While in-lieu fees for for-sale developments are not legally bound by nexus findings, for feasibility reasons KMA recommends they also be set below these levels.

2. Affordable Housing Requirements in Other Jurisdictions

KMA has assembled and summarized affordable housing requirements for 18 jurisdictions in Alameda and Santa Clara counties. These materials were assembled in 2016 for purposes of a

multi-jurisdiction nexus study in which Hayward participated for purposes of the non-residential scope of services only and have been partially updated. Following is a condensed version focusing on selected comparisons. A complete summary is provided in Section IV at the end of this report.

Rentals: Overview of Adopted Rental Housing Impact Fees in Alameda County

The chart below shows selected examples of cities in Alameda County that have adopted impact fees for rental development following the 2009 Palmer decision (which eliminated the ability to apply inclusionary requirements to rental projects). There is a wide range in fee levels for rental projects and fees are expressed differently by jurisdiction, with some fees levied on a per market rate unit basis and others on a per square foot basis. Hayward’s fees are well below levels in the other cities.

In Hayward, the minimum size project subject to the fee is 20 units while Oakland’s and Union City’s pending requirements will apply to projects of all sizes. Fremont’s fees apply to projects with two or more units and Berkeley’s to projects with five or more units.

Table 2 – Impact Fees in Other Jurisdictions – Rental Units		
<i>City</i>	<i>Impact Fee</i>	<i>Min. Project Size Subject to Fee</i>
Hayward	\$3.63/sq. ft.*	20 units
Fremont	\$17.50/sq.ft.	2 units
Union City	\$14 / Square Foot (Year 3 full phase-in level)**	1 unit
Berkeley	\$34,000 per unit if paid at building permit or \$37,000 per unit if paid at certificate of occupancy.	5 units
Oakland	\$12,000 to \$22,000 per unit (varies by zone)	1 unit

See Table 17 for more detail. Data is current as of the time of the survey in 2016 with partial updating in 2017.

* If paid at building permit. An additional 10% is added if the developer elects to pay at certificate of occupancy.

**Council directed staff to prepare an ordinance consistent with the requirements outlined above; however, the changes to the program reflected in this summary are not yet adopted.

Ownership Affordable Housing Requirements

For ownership projects, the most common onsite requirement is 15% with Alameda, Albany, San Leandro, and Union City all at this level. Berkeley is higher at 20%; Oakland has two options: 5% at Very Low or 10% at Low to Moderate. Fremont uses an approach that combines both an on-site requirement and an impact fee. The majority of programs allow in-lieu fee payment as an alternative to providing units on-site, Hayward included. Hayward’s current in-lieu fees are at the low end of the range of the surveyed programs. San Leandro, Albany and Alameda allow in-lieu fee payment for small projects only.

Table 3 – Ownership Unit Affordable Housing Requirements in Other Jurisdictions				
<i>City</i>	<i>Affordable Units Required (Percent)</i>	<i>Affordability Level</i>	<i>Fee In-Lieu of Providing Units</i>	<i>Fee by Right?</i>
Hayward	7.5% (attached) 10% (detached)	Moderate	\$3.87* psf (attached) \$4.61* psf (detached)	Yes
Albany	15%	½ Low and ½ Very Low	(Market Value – Affordable Price) * Units Owed	5 & 6 unit projects only
San Leandro	15%	60% Moderate, 40% Low	(Median Sale Price – Affordable Price) * Units Owed	Projects of 2 to 6 units only
Union City	15%	60% Moderate, 30% Median, 10% Low	City Council direction**: \$22 psf (Year 2 full phase-in level)	Yes**
Alameda	15%	47% Moderate, 27% Low, 27% Very Low	\$19,076 per residential unit	Projects under 10 units only
Oakland	Option A: 5% Option B: 10%	Option A: Very Low Option B: Low – Moderate	MF: \$12-\$22,000 / unit SF: \$8-\$23,000 / unit	Yes
Berkeley	20%	Low	62.5% * (Sale Price – Aff. Price) * units owed	Yes
Dublin	7.5% plus fee 12.5% w/o fee	60% Moderate, 40% Low	\$127,061 / affordable unit owed	Yes (partial)
Fremont	Attached 3.5% + fee Detached: 4.5% + fee	Moderate	With on-site units: Attached: \$18.50 psf Detached: \$17.50 psf If no on-site units: Attached: \$27 psf Detached: \$26 psf	Yes
Pleasanton	MF: 15% SF: 20%	MF: Low SF: Moderate	MF: \$2,783 /unit SF <1,500 sf: \$2,783/unit SF >1,500 sf: \$11,228/unit	Yes

MF: Multi-family; SF: Single family

See Table 17 for more detail. Data is current as of the time of the survey in 2016 with partial updating in 2017.

* If paid at building permit. An additional 10% is added if the developer elects to pay at certificate of occupancy.

**Council directed staff to prepare an ordinance consistent with the requirements identified above; however, changes to the program are not yet adopted.

3. Market Context

Hayward has a range of residential product types in the development pipeline and currently marketing including single family, townhomes, apartments and stacked condominiums. New residential development is occurring along the Mission Boulevard corridor, on opportunity sites in the Downtown and in other locations throughout the City where developers have been able to assemble sites.

Pricing has risen significantly over the past several years on the strength of the regional economy, low mortgage rates, and limited housing supply. A new prototypical single family detached home 2,500 square feet in size can now be expected to sell for \$950,000 or \$380 per

square foot. Prototypical attached townhome units are smaller but sell for more on a per square foot measure estimated at \$400 per square foot. Higher density stacked condominiums are still an emergent project type although there are now two such projects under development review (Matyas Village and Mission Seniors), one of which is a senior project.

The rental market in Hayward is showing signs of strength. There is one recently built rental project near the South Hayward BART station and four more rental projects in the development pipeline (Maple and Main, Lincoln Landing, Campways and Haymont Village). A prototypical 900-square foot apartment in a newly developed rental project is now estimated to rent for \$2,800 per month.

See Appendix A to the Residential Nexus Analysis for more detail and supporting data.

4. Financial Feasibility

KMA tested the financial feasibility of four types of residential development projects in Hayward including single family detached, townhome/attached, apartments and stacked flat condominiums. The analysis indicates that single family, townhomes and apartments are all currently feasible. The significant number of residential projects in the City's new development pipeline is also an indication of financial feasibility. The stacked flat condominium prototype is the only prototype where feasibility was found to be somewhat marginal at this time.

Even in a strong market, rising land costs tend to absorb any "surplus" projects may have in their pro formas; however, the market is able to adjust to new costs such as increased affordable housing requirements in a variety of ways. One way that markets can adjust is through downward pressure on land prices created when developers price new requirements into the economics of their projects and adjust what they can afford to pay for land. When market prices and rents are rising, this condition also helps projects absorb the cost associated with new or increased requirements.

KMA used the pro forma analysis to test three scenarios with increased affordable housing requirements representing a cost of \$10/square foot, \$15/square foot and \$20/square foot. As one example, a \$15/square foot requirement could be absorbed by increases in sale prices and rents in the range of 1.6% for the apartment prototype and 2.8% for the townhome prototype.

Table 4 – Overview of Financial Feasibility Analysis Findings				
<i>Prototype</i>	<i>Single Family Detached</i>	<i>Townhome/ Attached</i>	<i>Condominiums</i>	<i>Apartments</i>
Feasibility Conclusion with existing requirements	Feasible	Feasible	Marginally Feasible	Feasible
Supported Land Value (\$/acre)	\$1,457,000	\$1,556,000	\$1,322,500	\$2,174,000
Market Rent / Sales Price Increase Sufficient to Absorb Updated Requirements				
Representing Cost of \$10/SF	1.4%	1.5%	1.0%	0.9%
Representing Cost of \$15/SF	2.7%	2.8%	1.9%	1.6%
Representing Cost of \$20/SF	4.1%	4.0%	2.7%	2.3%
Land Value Decrease to Absorb Updated Requirements				
Representing Cost of \$10/SF	9%	16%	14%	16%
Representing Cost of \$15/SF	18%	29%	26%	28%
Representing Cost of \$20/SF	26%	41%	37%	41%

Note: adjustments would each be independently sufficient to absorb increased requirements.

See Section IV. A. for the full range of scenarios that were tested.

B. Program Recommendations

The City has had an inclusionary housing program in place since 2003 and has updated its requirements on two prior occasions. The analyses and information generated in this work program will be helpful to the City in updating the program to respond to the current strong conditions in the local housing development market coupled with deepening affordability challenges. Following are KMA recommendations, based on consideration of local market conditions, the real estate financial feasibility analysis, nexus analysis results, requirements in neighboring cities, our understanding of the City's policy objectives, and other factors.

Ownership Program Recommendations:

- a. *Requiring or Encouraging On-site Affordable Units* – We understand the City would like to encourage more projects to provide affordable units on-site rather than receive in-lieu fees. Two primary approaches for accomplishing this in for-sale projects are to:
 - Require on-site units and remove the option of paying an in-lieu fee, or
 - Increase fees to the point where the decision to provide affordable units on-site becomes financially advantageous for the developer relative to fee payment.

KMA recommends requiring affordable units be provided on-site within for-sale projects of 10 units or more and removing the option to pay an in-lieu fee except for specific project types as described in c. below. We understand inclusion of units onsite within new development projects to be a core City objective of the AHO update and eliminating the in-lieu fee option would be the surest way to achieve this outcome.

- b. *Affordable Unit Percentage* – KMA recommends making on-site affordable unit percentage requirements consistent for attached and detached units and setting the requirement at no more than 10%. The cost associated with providing onsite affordable units is similar for single family detached and attached townhomes on a per square foot basis. This 10% recommendation is estimated to equate to a developer cost in the range of \$20 to \$21 per square foot for prototypical single family and townhome units. Based on the findings of the feasibility analysis, these increased requirements could be absorbed with a relatively modest 4% further improvement in the for-sale market in Hayward. Section IV B. provides additional information if the City would like to consider adjustments to affordable unit pricing from the current 110% of AMI requirement.

While we recognize some neighboring jurisdictions have higher percentage requirements than recommended for Hayward, including several at 15%, it is useful to keep in mind the following additional background in drawing comparisons: a) Union City's 15% requirement has a fee option that costs less than providing the units onsite

and b) in San Leandro our general understanding is that there has been limited development activity to evidence feasibility of the City's mandatory 15% onsite requirement.

c. *Adjustments to Requirements for Specific Project Types* – the following describes recommendations for application of modified requirements to several specific project types:

- *Larger Lot Single Family* - The City may wish to consider allowing fee payment for certain single family projects, such as those above a lot size threshold. Providing affordable units onsite within single family projects is often costlier on a per affordable unit basis, especially those with larger lots and higher priced units. Larger lot single family units are also more likely to be built in areas less accessible to transportation, services and amenities; therefore, these projects may be less desirable locations for affordable units to be provided onsite. Allowing fee payment for larger lot single family projects would allow the City to maintain a source of local funding that may be leveraged with outside funding sources to produce a greater number of affordable units than could be provided onsite within larger lot single family home developments. While selection of a threshold is a matter of policy preference; we suggest consideration of a lot size of +/- 4,000 square feet and higher for allowing fee payment.
- *Higher Density Condos* – Condominiums at higher densities, such as over 35 units per acre, currently face feasibility challenges relative to other for-sale development types and the market for these projects in Hayward remains unproven. The cost to provide affordable units onsite in a higher density condo project is also estimated to be 20% higher on a per square foot basis than for townhomes. If the City would like to encourage this development type, we recommend lower percentage requirements of up to 7.5% consistent with KMA's recommendations for rental projects and / or allowing fee payment for these projects.

d. *In-lieu Fee Level* – Where permitted, KMA recommends consideration of an increased in-lieu fee in the range of \$15 to \$20 per square foot. A requirement at this level would bring Hayward nearer to, but still below, what other jurisdictions in the East Bay such as Union City and Fremont require. Selection of a fee at the upper end of this range would represent an equivalent cost to the maximum on-site requirements recommended above. While there are other viable alternatives for structuring fees, our suggestion is to continue the existing approach of charging fees on a per square foot basis. This is a common approach, is simple to administer, and ensures fees are kept proportionate to unit size, with small units paying less and large units paying more.

- e. *Project Size Thresholds* – The 20-unit minimum project size subject to the City’s AHO is among the highest thresholds in the East Bay. The nexus analysis allows the City to consider fees that apply to small projects and even single units. KMA recommends consideration of a threshold of 2 units for projects to become subject to fees and a threshold of 10 units for applicability of the on-site build requirement, which is the minimum project size for which a whole affordable unit would be owed with a 10% affordability requirement (this 10-unit threshold should be adjusted if a different onsite percentage is selected). Allowing in-lieu fee payment for small projects with 9 or fewer units avoids placing a disproportionate burden on small projects for which percentage requirements would result in less than a full affordable unit being owed.

A step up of fees for projects with 2 to 9 units is recommended to avoid creating a disincentive for small multi-unit projects. One potential formula-based approach to a step up is identified below. The formula is equivalent to exempting the first unit in the project based on the average-sized unit.

$\text{Applicable PSF fee} = \text{Full PSF Fee} \times (\text{No. Units} - 1) / (\text{No. of units}).$
--

Rental Program Recommendations:

Under the existing AHO, rental projects must pay an impact fee or may elect to voluntarily provide 7.5% affordable units to mitigate their impact, rather than pay the impact fee. AB 1505, which passed the State Legislature on September 15th, would restore the ability to implement inclusionary requirements for rental projects if the bill is signed into law by the Governor. Following are recommendations for updates to the AHO if AB 1505 becomes law as well as under existing law.

- a. *AB 1505 becomes law* - In the event AB 1505 is signed into law, the City will have the ability to make onsite affordable units mandatory in rental projects. This is recommended if the City has a very strong preference for units to be provided onsite over fees which could be combined with tax credits and other sources to assist all affordable projects. If the onsite requirement becomes mandatory, based on the feasibility analysis, KMA recommends considering modifications to bring the cost of complying with requirements to no more than approximately \$20 per square foot. The current 7.5% onsite option at Low and Very Low-Income is estimated to cost projects approximately \$27 per square foot to provide. Two possible options for reducing compliance costs to within the \$20 per square foot range are to a) allow rents to be set at up to 80% of AMI, a level few affordable rentals serve because it is above the rent level allowed for projects with tax credit financing, or b) reduce the percentage requirement to between 5% and 6% while maintaining the existing income level. We recommend continuing to allow fee payment in rental projects below a threshold size in the range of, say, +/- 100 units to avoid getting

small numbers of affordable rental units in scattered locations that could increase the administrative burden of enforcing affordability covenants. Administrative burden associated with scattered units is more of an issue with rental than for-sale because compliance monitoring occurs regularly, not just upon resale as with ownership units. For projects below this threshold, KMA recommends fees be set in the \$15 to \$20 per square foot range, consistent with ownership units.

- b. *Existing law* – If AB 1505 is not signed by the Governor, the City could seek to encourage voluntary provision of onsite units by implementing one of the two options for reducing the cost of compliance described above in combination with an increase to the impact fee level. Depending on how strong of an incentive for onsite units the City wishes to create, impact fees could be set from \$20 per square foot anywhere up to the maximum supported by the nexus study. For projects under a threshold size of, say, +/- 100 units, we recommend fees be limited to \$15 to \$20 per square foot to avoid incentivizing provision of small numbers of onsite affordable rental units in scattered locations which could increase the administrative burden of enforcing affordability covenants.

If the City prefers to keep fees in line with other jurisdictions and does not see on-site units as a priority in rental projects, then a lower fee in the \$10 to \$15 psf range could be a better fit. A fee in the \$10 to \$15 psf range would place Hayward's requirements in the same range as Union City's at \$14 per square foot and comparable to levels adopted by Oakland of \$12,000 per unit at full phase applicable to the southern portion of the City which is equivalent to \$13 per square foot for a 900 SF apartment.

- c. *Project Size Threshold* – Move to a lower threshold for application of requirements, such as two units, consistent with KMA recommendations for the ownership program.

Since the above recommendations represent a significant increase in the affordability obligations of new residential projects, KMA recommends a provision to avoid negatively impacting projects currently in the pipeline. Two potential approaches are a phase-in and grandfathering. With a phase in approach, requirements could be phased in incrementally. With grandfathering, the City could elect to apply requirements in place as of the time projects reach a certain stage in the process, such when an application is deemed complete. City staff have indicated the grandfathering method offers the best continuity with past City practices.

III. SUMMARY OF NEXUS ANALYSIS

This section provides a concise summary of the residential nexus analysis prepared for the City of Hayward. The analysis provides documentation necessary for adoption of updated affordable housing impact fees applicable to residential development. The analysis establishes maximum supportable impact fee levels based on the impact new residential development has on the need for affordable housing. Findings represent the results of an impact analysis only and are not recommended fee levels.

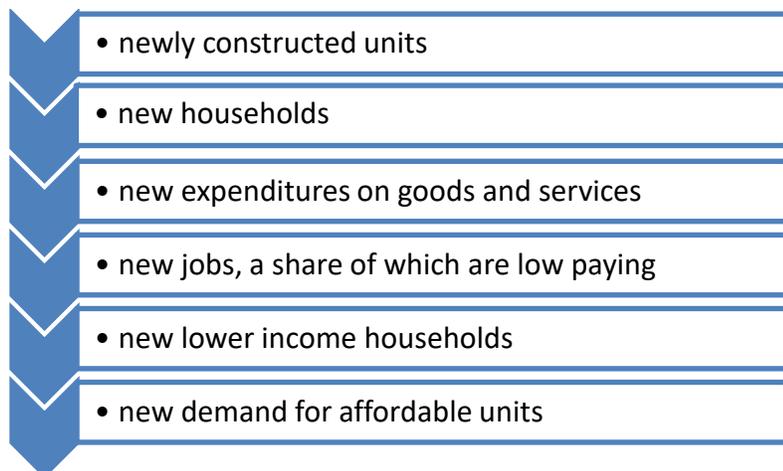
Nexus findings represent upper limits for impact fees for rental housing. However, inclusionary housing requirements on for-sale housing, including those that give the developer the option of paying an in-lieu fee, are not required to be justified by nexus studies, although they cannot be ‘confiscatory,’ based on the 2016 ruling by the California Supreme Court in the San Jose inclusionary zoning case.

Full documentation of the analyses can be found in the report titled Residential Nexus Analysis included as Attachment A.

A. Residential Nexus Analysis Summary

The residential nexus analysis establishes maximum supportable impact fee levels applicable to residential development. The underlying concept of the residential nexus analysis is that the newly constructed units represent net new households in Hayward. These households represent new income in the City that will consume goods and services, either through purchases of goods and services or “consumption” of governmental services. New consumption generates new local jobs; a portion of the new jobs are at lower compensation levels; low compensation jobs relate to lower income households that cannot afford market rate units in Hayward and therefore need affordable housing.

Nexus Analysis Concept



1. Market Rate Residential Prototypes

In collaboration with City staff, a total of four market rate residential prototypes were selected: three ownership prototypes and one rental prototype. The intent of the selected prototypes is to identify representative development prototypes likely to be developed in Hayward in the immediate to mid-term future.

A summary of the four residential prototypes is presented below. Market survey data, City planning documents and other sources were used to develop the information. Market sales prices and rent levels were estimated based on KMA's market research.

Table 5 – Prototypical Units for City of Hayward				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Avg. Unit Size	2,500 SF	2,000 SF	1,000 SF	900 SF
Avg. No. of Bedrooms	4.00	3.50	2.00	1.50
Avg. Sales Price / Rent	\$950,000	\$800,000	\$590,000	\$2,800 /mo.
Per Square Foot	\$380 /SF	\$400 /SF	\$590 /SF	\$3.11 /SF

B. Household Expenditures and Job Generation

Using the sales price or rent levels applicable to each of the four market rate residential prototypes, KMA estimates the household income of the purchasing/renting household. Household income is then translated to income available for expenditures after deducting taxes, savings and household debt, which becomes the input to the IMPLAN model. The IMPLAN model is used to estimate the employment generated by the new household spending. The IMPLAN model is an economic model widely used for the past 35 years to quantify the impacts of changes in a local economy. For ease of presentation the analysis is conducted based on an assumed project size of 100 market rate units.

A 20% downward adjustment is made to the IMPLAN employment estimates based on the expectation that a portion of jobs may be filled by existing workers who already have housing locally. The 20% adjustment is based upon job losses in declining sectors of the local economy over a historic period. "Downsized" workers from declining sectors are assumed to fill a portion of the new jobs in sectors that serve residents.

The translation from market rate sales prices and rent levels for the prototypical units to the estimated number of jobs in sectors such as retail, restaurants, health care and others providing goods and services to new residents is summarized in the table below.

Table 6 – Household Income, Expenditures, Job Generation, and Net New Worker Households				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Avg. Sales Price / Rent	\$950,000	\$800,000	\$590,000	\$2,800
Gross Household Income	\$187,000	\$162,000	\$121,000	\$117,000
Net Annual Income available	\$125,300	\$110,200	\$82,300	\$74,000
Total Jobs Generated [from IMPLAN] (100 Units)	93.0	81.8	58.2	52.3
Net New Jobs after 20% reduction for declining industries (100 units)	74.4	65.4	46.5	41.9

See Attachment A Residential Nexus Analysis for full documentation.

C. Compensation Levels of Jobs and Household Income

The output of the IMPLAN model – the numbers of jobs by industry – is then entered into the Keyser Marston Associates jobs housing nexus analysis model to quantify the compensation levels of new jobs and the income of the new worker households. The KMA model sorts the jobs by industry into jobs by occupation, based on national data, and then attaches local wage distribution data to the occupations, using recent Alameda County data from the California Employment Development Department (EDD). The KMA model also converts the number of employees to the number of employee households, recognizing that there is, on average, more than one worker per household, and thus the number of housing units in demand for new workers is reduced. For purposes of the adjustment from jobs to housing units, the average of 1.62 workers per working household in Alameda County is used.

Table 7 – Adjustment from No. of Workers to No. of Households				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Net New Jobs (100 Units)	74.4	65.4	46.5	41.9
Divide by No. of Workers per Worker Household	1.62	1.62	1.62	1.62
Net new worker households (100 Units)	45.9	40.3	28.7	25.8

The output of the model is the number of new worker households by income level (expressed in relation to the Area Median Income, or AMI) attributable to the new residential units and new households in Hayward. Four categories are addressed: Extremely Low (under 30% of AMI), Very Low (30% to 50% of AMI), Low (50% to 80% of AMI) and Moderate (80% to 120% of AMI).

Following are the numbers of worker households by income level associated with the Hayward prototype units.

Table 8 – New Worker Households per 100 Market Rate Units				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Extremely Low (0%-30% AMI)	5.1	4.5	3.2	2.9
Very Low (30%-50% AMI)	11.8	10.4	7.4	6.6
Low (50%-80% AMI)	12.2	10.8	7.6	6.8
Moderate (80%-120% AMI)	7.4	6.5	4.6	4.1
Total, Less than 120% AMI	36.6	32.2	22.8	20.5
Greater than 120% AMI	9.3	8.2	5.9	5.3
Total, New Households	45.9	40.3	28.7	25.8

See Attachment A Residential Nexus Analysis for full documentation.

Housing demand is distributed across the lower income tiers. The finding that the greatest number of households occurs in the Very Low and Low income tiers is driven by the fact that a large share of jobs most directly associated with consumer spending tend to be low-paying, such as food preparation, administrative, and retail sales occupations.

D. Nexus Supported Maximum Fee Levels

The next step in the nexus analysis takes the number of households in the lower income categories associated with the market rate units and identifies the total subsidy required to make housing affordable. This is done for each of the prototype units to establish the ‘total nexus cost,’ which is the Maximum Supported Impact Fee conclusion of the analysis. For the purposes of the analysis, KMA assumes that affordable housing fee revenues will be used to subsidize affordable rental units for households earning less than 80% of median income, and to subsidize affordable ownership units for households earning between 80% and 120% of median income. Affordability gaps are calculated for each of the income tiers; the nexus costs are calculated by multiplying the affordability gaps by the number of households in each income level.

The Maximum Supported Impact Fees are calculated at the per-unit level and the per-square-foot level and are shown in the table below.

Table 9 – Maximum Supported Residential Impact Fees, City of Hayward				
	<i>Single Family Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Per Market Rate Unit	\$72,200	\$63,400	\$44,900	\$40,400
Per Square Foot*	\$28.90	\$31.80	\$44.90	\$44.90

* Applies to net rentable / sellable area exclusive of garage space, external corridors and other common areas.

These costs express the maximum supported impact fees for the four residential prototype developments in Hayward. These findings are **not** recommended fee levels.

IV. CONTEXT MATERIALS

The purpose of this section is to provide information that may be useful to policy makers in considering potential amendments to the City's affordable housing requirements for residential development and potential adoption of a new affordable housing impact fee applicable to non-residential development. The following analyses and summary materials are included:

- **Real Estate Financial Feasibility Analysis** – Section A. presents the analysis and findings regarding the financial feasibility of new market rate residential development;
- **Inclusionary Program Compliance Costs** – Section B. analyzes the cost to a market rate residential project of complying with the City's existing inclusionary policy;
- **Residential Affordable Housing Requirements in Other Jurisdictions** – Section C. provides a summary of inclusionary and impact fee requirements in other jurisdictions;

A. Real Estate Financial Feasibility Analysis

In adopting or amending affordable housing requirements, cities typically consider a variety of public policy goals including seeking a balance between producing a meaningful amount of new affordable units and establishing requirements at a level that can be sustained by new market rate projects. This section addresses the potential impacts that new affordable housing fees could have on the feasibility of new development projects.

Before describing the feasibility analysis, it is useful to put the feasibility analysis into perspective by summarizing how it can be used and where limitations exist in its ability to inform a longer-term policy direction:

- *Prototypical Nature of Analysis* – This financial feasibility analysis, by its nature, can only provide a general assessment of development economics because it is based on prototypical projects rather than specific projects. Every project has unique characteristics that will dictate sale prices and rents supported by the market as well as development costs and developer return requirements. This feasibility analysis is intended to reflect prototypical residential projects in Hayward but it is recognized that the economics of actual projects will differ to some degree from those of the prototypes analyzed.
- *Near Term Time Horizon* – This feasibility analysis is a snapshot of real estate market conditions as of mid-year 2017. The analysis is most informative regarding near term implications updated affordable housing requirements could have for projects that have already purchased sites and are currently in the pre-development stages. Real estate development economics are fluid and are impacted by constantly changing conditions

regarding sale price and rent potential, construction costs, land costs, and costs of financing. A year or two from now, conditions will undoubtedly be different to some degree.

- *Adjustments to Land Costs over Time* – Developers purchase development sites at values that will allow for financially feasible projects. If housing requirements are updated, developers will “price in” the updated requirement when evaluating a project’s economics and negotiating the purchase price for development sites. Given that the requirements will apply to all or most projects, it is possible that downward pressure on land costs could result as developers adjust what they can afford to pay for land. This downward pressure on land prices can bring costs back into better balance with the overall economics supported by projects.

Market Context

Like most parts of the Bay Area, Hayward has experienced improving residential market conditions in recent years as exhibited by rapidly rising home prices and apartment rents and new development activity. The improvement in market conditions is attributable to robust regional job growth and the overall strength of the regional economy. It is also acknowledged that, while home prices and apartment rents have grown significantly, the strong real estate market has also had the offsetting effect of driving construction cost inflation.

Financial Feasibility Analysis

The financial feasibility analysis estimates the costs to develop new residential projects and the sale revenues or rental income that could be generated by the projects upon completion. If the revenues are sufficient to support the development costs and to generate a sufficient profit margin, the project is considered feasible. This approach to financial feasibility, known as a pro forma approach or income approach, is common practice in the real estate industry and is utilized in one form or another by all developers when analyzing new construction projects.

This analysis organizes the pro forma as a “land residual analysis”, meaning the pro forma solves for what the project can afford to pay for a development site based on the revenue projections and the non-land acquisition costs of the project. It then compares the residual land values with land costs in the current market in order to test whether developers can afford to buy land and develop projects. The following describes the assumptions utilized in the analysis and the conclusions drawn therefrom.

- The direct construction costs of development include all contractor labor and material costs to construct the project including general requirements, contractor fees, and contingencies. As shown in Table 10 below, the direct construction costs are estimated to range from \$296,300/unit for the apartment prototype to \$462,500/unit for the single

family detached prototype. These estimates have been made based on third party construction data sources, such as RS Means, and by cost estimates for similar building types elsewhere in the market. Indirect costs of development include architecture and engineering (A&E) costs, municipal fees and permits costs, taxes, insurance, overhead, and financing costs. The fees and permits cost estimates include Hayward's current affordable housing fees of \$4.61, \$3.87, and \$3.63/square foot for the single family detached prototype, attached for-sale prototypes (townhomes and condos) and rental apartment prototype respectively.

- Market rate sale prices have been estimated to range from \$590,000/unit for the stacked flat condominium prototype to \$950,000/unit for the single family detached prototype.
- Rental income for the apartment prototype has been estimated at \$2,800/month, or \$3.11/square foot/month. After a vacancy factor, operating expenses, and property taxes, the net operating income (NOI) has been estimated at \$21,730/unit/year. Using this NOI and applying a 5.2% project return, the project value/supported investment is estimated at \$418,000/unit.
- The residual land value is derived by subtracting the development costs before land acquisition from the project value/supported investment. As shown in Table 10, the residual land values range from \$26,400/unit to \$145,600/unit and from \$1.32 million to \$2.17 million/acre.

Once the residual land values have been estimated, the values can be compared to prevailing land values in the market to determine whether the prototypes are financially feasible. In other words, if the residual land values are equal to or higher than market land values, then projects are generally feasible. Conversely, if the residual land values are less than market land values, some improvement in market conditions (lower development costs or higher housing values) will likely be needed for feasibility.

Table 10 – Summary of Residual Land Value Analysis

<i>Prototype</i>	<i>Single Family Detached</i>	<i>Townhome/ Attached</i>	<i>Condominiums</i>	<i>Apartments</i>
Acreage	2.0 acres	2.0 acres	2.0 acres	2.0 acres
Total Units	20 units	40 units	100 units	120 units
Density	10.0 du/acre	20.0 du/acre	50.0 du/acre	60.0 du/acre
Average Unit Size	2,500 sq.ft.	2,000 sq.ft.	1,000 sq.ft.	900 sq.ft.
Development Costs	\$/Unit	\$/Unit	\$/Unit	\$/Unit
Land Acquisition	\$0	\$0	\$0	\$0
Directs	\$462,500	\$400,000	\$332,500	\$296,300
Indirects				
A&E	\$28,000	\$20,000	\$13,300	\$11,800
Affordable Housing Fee	\$11,600	\$7,800	\$3,900	\$3,300
Other Fees & Permits	\$52,500	\$42,000	\$35,000	\$31,500
Taxes/Insurance/Legal	\$37,500	\$37,500	\$15,000	\$6,700
Sales & Marketing	\$12,500	\$10,000	\$7,500	\$5,000
Administrative/Other	\$18,500	\$16,000	\$16,600	\$14,800
Financing	<u>\$33,800</u>	<u>\$26,400</u>	<u>\$19,900</u>	<u>\$12,400</u>
Total Costs Excluding Land	\$656,900	\$559,700	\$443,700	\$381,800
Residual Land Value	\$/Unit	\$/Unit	\$/Unit	\$/Unit
Sale Price/Monthly Rent	\$950,000	\$800,000	\$590,000	\$2,800
\$/Sq.Ft.	\$380	\$400	\$590	\$3.11
Net Supported Investment ⁽¹⁾	\$802,500	\$637,400	\$470,100	\$418,000
(Less) Costs Excluding Land	<u>(\$656,900)</u>	<u>(\$559,700)</u>	<u>(\$443,700)</u>	<u>(\$381,800)</u>
Residual Land Value/Unit	\$145,600	\$77,700	\$26,400	\$36,200
Land Value/Acre	\$1,456,000	\$1,554,000	\$1,320,000	\$2,172,000
Land Value/Land SF	\$33	\$36	\$30	\$50

⁽¹⁾ Net Supported Investment after sales commissions and profit margin with for-sale prototypes; after vacancy, operating expenses, and profit margin for apartment prototype. See Tables 13 and 14 for further detail.

Prevailing Land Values

In order to assess prevailing land values for residential development in Hayward, KMA reviewed relevant land sale comparables in Hayward (comps) from 2015 to 2017. The sale prices of these comps ranged from as low as \$32,000/unit to as high as \$120,000/unit. The wide range in per-unit values is largely attributable to the difference in unit sizes and densities among the projects. Based on the fact that some of the land sales reviewed for this analysis occurred in 2015 and 2016, the values for these comps would be expected to be somewhat higher today after accounting for land value appreciation.

Table 11 – Residential Land Sale Comparables (2015-2017), City of Hayward

	Address	Sale Date	Acres	Proposed		Sale Price	\$/Acre (rounded)	\$/Unit (rounded)
				Units	DU/Acre			
<i>Sorted by Density</i>								
1	22471-22491 Maple Ct	Jul-16	0.60	44	73.1	\$1,950,000	\$3,239,000	\$44,300
2	Mission Seniors	Mar-16	5.13	203	39.6	\$6,500,000	\$1,267,000	\$32,000
3	27794 Mission Blvd	Jun-16	0.24	9	38.2	\$400,000	\$1,699,000	\$44,400
4	21339 Oak St	Jul-16	1.66	58	35.0	\$2,050,000	\$1,238,000	\$35,300
5	25501 Mission Blvd	Jun-17	7.64	237 *	31.0	\$15,800,000	\$2,068,000	\$66,700
6	22836 Watkins St	Nov-15	0.27	6	22.5	\$500,000	\$1,878,000	\$83,300
7	24755 O'Neil Ave	Nov-15	0.80	16	20.1	\$735,000	\$922,000	\$45,900
8	396 Grove Way	Oct-15	0.44	5	11.4	\$505,000	\$1,148,000	\$101,000
9	1332 E St	Jun-17	0.21	2	9.6	\$240,000	\$1,148,000	\$120,000

Source: CoStar, RealQuest, Loopnet

*Includes 93 "guest" rooms.

Feasibility Conclusion

Based on the comparison of residual land values to recent land transactions in the market, this analysis concludes that the single family detached, townhome/attached, and apartment prototypes are generally feasible at this time, including payment of the City's current affordable housing fees. The significant number of residential projects in the City's new development pipeline is also an indication of market feasibility. The stacked flat condominium prototype is the only prototype that does not appear to support a land value in line with market transactions. However, a relatively minor adjustment to the estimated average sale price of these units (roughly 3%), would likely bring this prototype within the range of financial feasibility.

Potential Market Adjustments to Absorb Increased Requirements

To illustrate the impacts a potential increase in affordable housing requirements could have to financial feasibility, KMA used the pro forma analysis to test three alternative affordable housing requirements representing a cost of \$10/square foot, \$15/square foot, and \$20/square foot. For purposes of this test it is assumed these fee levels would replace the current fee levels of \$4.61, \$3.87, and \$3.63/square foot (i.e. they would not be additive). Note that while expressed in terms of dollars per square foot, these requirement levels can readily be converted to equivalent cost on-site inclusionary requirements using the information presented in the next section.

Since the feasibility analysis is a snapshot in time analysis based on current market conditions, it can be instructive to consider how relatively modest improvements in project economics (e.g. continued increases in sale prices and rents) can help to absorb increased fees. As one example, a \$15/square foot fee could be absorbed by increases in sale prices and rents in the range of 1.6% for the apartment prototype and 2.8% for the townhome prototype.

Table 12 – Potential Market Adjustments to Absorb Illustrative Fee / Requirement Cost Levels

	\$10/SF	\$15/SF	\$20/SF
<u>Single Family Detached Prototype</u>			
Increase in Sale Price	1.4%	2.7%	4.1%
Decrease in Direct Costs	2.9%	5.6%	8.3%
Decrease in Land Values	9.2%	17.8%	26.4%
<u>Townhome/Attached Prototype</u>			
Increase in Sale Price	1.5%	2.8%	4.0%
Decrease in Direct Costs	3.1%	5.6%	8.1%
Decrease in Land Values	15.8%	28.6%	41.5%
<u>Condominium Prototype</u>			
Increase in Sale Price	1.0%	1.9%	2.7%
Decrease in Direct Costs	1.8%	3.3%	4.9%
Decrease in Land Values ^[1]	14.1%	25.6%	37.1%
<u>Apartment Prototype</u>			
Increase in Rents	0.9%	1.6%	2.3%
Decrease in Direct Costs	1.9%	3.5%	5.0%
Decrease in Land Values	15.8%	28.2%	40.7%

Note: Each of the above adjustments would independently be sufficient to absorb the fee / requirement cost increase. Depending upon the market cycle and other factors, a combination of the above market adjustments might be expected to contribute to absorbing a new fee.

^[1] *For the condominium prototype, the decrease in land values is based on the higher land value supported by the apartment prototype, which has a similar density.*

Table 13
Feasibility Analysis: Ownership Prototypes
City of Hayward

	Single Family Detached Prototype				Townhomes/Attached Prototype				Condominiums (Stacked Flats) Prototype			
Acres	2.00 acres				2.00 acres				2.00 acres			
Units	20 units				40 units				100 units			
Density	10.0 du/acre				20.0 du/acre				50.0 du/acre			
Average Unit Size	2,500 sq.ft.				2,000 sq.ft.				1,000 sq.ft.			
Development Costs												
	\$/NSF	\$/Unit (rounded)	Total	%Directs	\$/NSF	\$/Unit (rounded)	Total	%Directs	\$/NSF	\$/Unit (rounded)	Total	%Directs
Land Acquisition	\$0	\$0	\$0	0%	\$0	\$0	\$0	0%	\$0	\$0	\$0	0%
Directs (incl. Sitework)	\$185	\$462,500	\$9,250,000	100%	\$200	\$400,000	\$16,000,000	100%	\$333	\$332,500	\$33,250,000	100%
Indirects												
A&E	\$11	\$28,000	\$560,000	6%	\$10	\$20,000	\$800,000	5%	\$13	\$13,300	\$1,330,000	4%
Affordable Housing Fee	\$5	\$11,600	\$231,000	2%	\$4	\$7,800	\$310,000	2%	\$4	\$3,900	\$387,000	1%
Other Fees & Permits	\$21	\$52,500	\$1,050,000	11%	\$21	\$42,000	\$1,680,000	11%	\$35	\$35,000	\$3,500,000	11%
Taxes/Insurance/Legal	\$15	\$37,500	\$750,000	8%	\$19	\$37,500	\$1,500,000	9%	\$15	\$15,000	\$1,500,000	5%
Sales & Marketing	\$5	\$12,500	\$250,000	3%	\$5	\$10,000	\$400,000	3%	\$8	\$7,500	\$750,000	2%
Administrative/Other	\$7	\$18,500	\$370,000	4%	\$8	\$16,000	\$640,000	4%	\$17	\$16,600	\$1,663,000	5%
Financing	\$14	\$33,800	\$676,000	7%	\$13	\$26,400	\$1,056,000	7%	\$20	\$19,900	\$1,986,000	6%
Total Costs Excluding Land	\$263	\$656,900	\$13,137,000	142%	\$280	\$559,700	\$22,386,000	140%	\$444	\$443,700	\$44,366,000	133%
Residual Land Value												
	\$/NSF	\$/Unit (rounded)	Total		\$/NSF	\$/Unit (rounded)	Total		\$/NSF	\$/Unit (rounded)	Total	
Market Rate Sales	\$380	\$950,000	\$19,000,000		\$400	\$800,000	\$32,000,000		\$590	\$590,000 ⁽¹⁾	\$59,000,000	
(Less) Closing Costs 4%	(\$15)	(\$38,000)	(\$760,000)		(\$16)	(\$32,000)	(\$1,280,000)		(\$24)	(\$23,600)	(\$2,360,000)	
(Less) Profit Margin 12% 17%	(\$44)	(\$109,500)	(\$2,189,000)		(\$65)	(\$130,600)	(\$5,222,000)		(\$96)	(\$96,300)	(\$9,629,000)	
(Less) Development Costs excl. Land	<u>(\$263)</u>	<u>(\$656,900)</u>	<u>(\$13,137,000)</u>		<u>(\$280)</u>	<u>(\$559,700)</u>	<u>(\$22,386,000)</u>		<u>(\$444)</u>	<u>(\$443,700)</u>	<u>(\$44,366,000)</u>	
Residual Land Value	\$58	\$145,700	\$2,914,000		\$39	\$77,800	\$3,112,000		\$27	\$26,500	\$2,645,000	
Residual Land Value/Acre			\$1,457,000				\$1,556,000				\$1,322,500	
Residual Land Value/Land Sq.Ft.			\$33				\$36				\$30	

⁽¹⁾ Sale price for stacked flat condominiums reflects price needed for financial feasibility, which is somewhat above current market prices.

Table 14
Feasibility Analysis: Apartment Prototype
City of Hayward

Apartment Prototype					
Acres			2.00 acres		
Units			120 units		
Density			60.0 du/acre		
Average Unit Size			900 sq.ft.		
Development Costs					
		\$/NSF	\$/Unit (rounded)	Total	%Directs
Land Acquisition		\$0	\$0	\$0	0%
Directs (incl. Sitework)		\$329	\$296,300	\$35,550,000	100%
Indirects					
A&E		\$13	\$11,800	\$1,420,000	4%
Affordable Housing Fee		\$4	\$3,300	\$392,000	1%
Other Fees & Permits		\$35	\$31,500	\$3,780,000	11%
Taxes/Insurance/Legal		\$7	\$6,700	\$800,000	2%
Sales & Marketing		\$6	\$5,000	\$600,000	2%
Administrative/Other		\$16	\$14,800	\$1,778,000	5%
Financing		<u>\$14</u>	<u>\$12,400</u>	<u>\$1,492,000</u>	<u>4%</u>
Total Costs Excluding Land		\$424	\$381,800	\$45,812,000	129%
				\$51,000,000	
Residual Land Value					
		\$/NSF/Month	\$/Unit/Month	Total	
Gross Rents		\$3.11	\$2,800	\$4,032,000	
Other Income		\$0.08	\$70	\$100,800	
(Less) Vacancy/Bad Debt	5%	(\$0)	(\$143)	(\$206,600)	
(Less) Op Ex		(\$1)	(\$500)	(\$720,000)	
(Less) Property Taxes		<u>(\$0)</u>	<u>(\$415)</u>	<u>(\$598,000)</u>	
NOI		\$2	\$1,811	\$2,608,200	
Supported Investment	5.20%		\$418,000	\$50,160,000	
(Less) Costs excluding Land			<u>(\$381,800)</u>	<u>(\$45,812,000)</u>	
Residual Land Value			\$36,200	\$4,348,000	
Residual Land Value/Acre				\$2,174,000	
Residual Land Value/Land Sq.Ft.				\$50	

B. On-Site Compliance Cost Analysis

To assist the City in understanding the cost associated with providing affordable units onsite, KMA estimated the foregone revenue to the developer when units are restricted to affordable prices or rents; this is referred to as the 'onsite compliance cost.' This information is often useful as context when considering potential onsite and fee obligations.

KMA modeled the cost associated with complying with existing AHO requirements by providing affordable units onsite (10% onsite in single family detached projects and 7.5% onsite for attached for-sale and rental projects). In addition, the cost of setting aside each 1% of units as affordable was evaluated to assist in evaluating potential modified onsite requirement levels.

Findings of the compliance cost analysis are summarized in the table below. Supporting analysis is presented on Tables 16A to 16D. As shown, each 1% of units that are made affordable results in forgone revenue to the developer of between \$2.05 and \$3.64 per square foot or between \$2,500 and \$5,200 per unit. Hayward's existing on-site requirement / option equates to a cost of \$15 to \$27 per square foot depending on the prototype, which is far costlier than payment of current in-lieu / impact fees which range from \$3.63 to \$4.61 per square foot.

Table 15 – Onsite Compliance Cost Analysis				
	<i>Single Family Detached</i>	<i>Townhomes</i>	<i>Stacked Condos</i>	<i>Apartments</i>
Affordability Level	Moderate	Moderate	Moderate	50% Low, 50% Very Low
Forgone Revenue Per Affordable Unit Provided	\$524,200	\$409,300	\$247,100	\$328,000
For Each 1% of Units Made Affordable				
Forgone Revenue Per Unit in Project	\$5,242	\$4,093	\$2,471	\$3,280
Forgone Revenue Per Square Foot in Project	\$2.10	\$2.05	\$2.47	\$3.64
Current Onsite Requirement / Option (10% detached, 7.5% attached)				
Forgone Revenue Per Unit in Project	\$52,400	\$30,700	\$18,500	\$24,600
Forgone Revenue Per Square Foot in Project	\$20.96	\$15.35	\$18.50	\$27.33

Tables 16A and 16B provide additional compliance cost findings at 100% AMI for ownership units and 80% of area median income for rental units. Each 1% of units provided at 110% of AMI is approximately equivalent in cost to providing 0.9% of units at 100% of AMI. For rentals, 1% of units split between very low and low are approximately equivalent in cost to provide as 1.36% of units at 80% of AMI.

**TABLE 16A
COST OF ONSITE COMPLIANCE AND EQUIVALENT IN-LIEU FEES: FOR-SALE UNITS
CITY OF HAYWARD, CA**

	Single Family Detached		Townhomes / Attached		Condominiums (Stacked Flats)	
Unit Size ¹	2,500 sq ft		2,000 sq ft		1,000 sq ft	
Number of Bedrooms	4		3		2	
Market Rate Prices¹	Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit
	\$380	\$950,000	\$400	\$800,000	\$590	\$590,000
Affordable Prices²	Per Unit		Per Unit		Per Unit	
Moderate@110% AMI	\$425,800		\$390,700		\$342,900	
Moderate@100% AMI	\$382,200		\$350,300		\$306,500	
Affordability Gap³	Per Unit		Per Unit		Per Unit	
Moderate@110% AMI	\$524,200		\$409,300		\$247,100	
Moderate@100% AMI	\$567,800		\$449,700		\$283,500	
Cost of Onsite Compliance	Per SF	Per Unit	Per SF	Per Unit	Per SF	Per Unit
Each 1% of Units						
Moderate@110% AMI	\$2.10	\$5,242	\$2.05	\$4,093	\$2.47	\$2,471
Moderate@100% AMI	\$2.27	\$5,678	\$2.25	\$4,497	\$2.84	\$2,835
Compliance Costs at 110% AMI						
Onsite Req.: 7.5% @ Moderate	\$15.72	\$39,300	\$15.35	\$30,700	\$18.50	\$18,500
Onsite Req.: 10% @ Moderate	\$20.96	\$52,400	\$20.45	\$40,900	\$24.70	\$24,700
Onsite Req.: 15% @ Moderate	\$31.44	\$78,600	\$30.70	\$61,400	\$37.10	\$37,100
Compliance Costs at 100% AMI						
Onsite Req.: 7.5% @ Median	\$17.04	\$42,600	\$16.85	\$33,700	\$21.30	\$21,300
Onsite Req.: 10% @ Median	\$22.72	\$56,800	\$22.50	\$45,000	\$28.40	\$28,400
Onsite Req.: 15% @ Median	\$34.08	\$85,200	\$33.75	\$67,500	\$42.50	\$42,500
On-site percentage at 100% AMI equivalent in cost to 1% @110% AMI		0.92%		0.91%		0.87%
Existing In-Lieu Fee	\$4.61	\$11,525	\$3.87	\$7,740	\$3.87	\$3,870

Shading denotes compliance costs for existing onsite percentage requirements

1. Prototype unit sizes and prices based on Residential Nexus Analysis market survey.
2. See Table 16C and 16D.
3. The difference between the market rate sales prices and the restricted affordable price.
4. Inclusionary requirement is 10% of units for detached projects and 7.5% for attached projects.

TABLE 16B
COST OF ON-SITE COMPLIANCE: RENTAL UNITS
CITY OF HAYWARD, CA

		Apartments		
1	Gross Unit Size	900 sq ft		
2	Number of Bedrooms	1.5		
3	Household Size	2.5		
Market Rate		Per Unit		
4	Rent per month	\$2,800		
5	Other Income	\$70		
6	Annual Rent	\$34,440		
7	(Less Vacancy Allowance @ 5%)	(\$1,722)		
8	Annual Operating Expenses ⁴	(\$10,980)		
9	Annual Net Operating Income (NOI)	\$21,738		
10	Unit Value @ 5.2% Return on Cost	\$418,000		
Affordable Income & Rents		Very Low	Low Income @60% AMI	Low Income @80% AMI
11	Household Income Limit ¹	\$44,350	\$49,665	\$68,375
12	Gross Rent ²	\$1,109	\$1,242	\$1,709
14	(Less Utility Allowance) ³	(\$80)	(\$80)	(\$80)
15	Net Rent	\$1,029	\$1,162	\$1,629
16	Annual Rent	\$12,345	\$13,940	\$19,553
13	(Less Vacancy Allowance @ 5%)	(\$617)	(\$697)	(\$978)
17	Annual Operating Expenses ⁴	(\$7,200)	(\$7,500)	(\$8,500)
18	Annual Net Operating Income (NOI)	\$4,528	\$5,743	\$10,075
19	Unit value @ 5.7% Return on Cost	\$79,000	\$101,000	\$177,000
20	Gap in Unit Value	\$339,000	\$317,000	\$241,000

Onsite Cost Equivalents		50% Low, 50% Very Low	Low Income @80% AMI
Cost Per Unit in Project			
21	For each 1% affordable	\$3,280	\$2,410
22	7.5% On-site Requirement	\$24,600	\$18,075
23	10% On-site Requirement	\$32,800	\$24,100
24	15% On-site Requirement	\$49,200	\$36,150
Cost Per Square Foot in Project			
26	For each 1% affordable	\$3.64	\$2.68
27	7.5% On-site Requirement	\$27.33	\$20.08
28	10% On-site Requirement	\$36.44	\$26.78
29	15% On-site Requirement	\$54.67	\$40.17

Shading denotes compliance costs for existing onsite option

Percent requirement at 80% AMI equivalent in cost to **1.36%**
 1% requirement at Very Low and Low (60% AMI)

1. California Department of Housing & Community Development, 2017. Average of two and three-person households.
2. Calculated at 30% of household income.
3. Monthly utilities include direct-billed utilities and landlord reimbursements estimated based on County Housing Authority utility allowance schedule.
4. Assumes \$6,000 in annual operating expenses plus property taxes estimated at 1.2% of value.
5. Includes a 0.5% return on cost premium as a reflection of lower rent growth potential of affordable units.

TABLE 16C
MODERATE INCOME HOME PRICES at 110% AMI
CITY OF HAYWARD

Unit Size Household Size	CONDO	TOWNHOME	DETACHED
	2-Bedroom 3-person HH	3-Bedroom 4-person HH	4-Bedroom 5-person HH
Median Income - Alameda County 2017	\$87,650	\$97,400	\$105,200
Annual Income @ 110%	\$96,415	\$107,140	\$115,720
% Available for Housing Costs	35%	35%	35%
Income Available for Housing Costs	\$33,745	\$37,499	\$40,502
(Less) Property Taxes	(\$4,459)	(\$5,083)	(\$5,538)
(Less) HOA	(\$3,600)	(\$3,000)	(\$1,800)
(Less) Utilities	(\$1,212)	(\$1,536)	(\$2,772)
(Less) Insurance	(\$343)	(\$391)	(\$426)
(Less) Mortgage Insurance	(\$2,814)	(\$3,205)	(\$3,494)
Income Available for Mortgage	\$21,318	\$24,285	\$26,473
Mortgage Amount	\$330,900	\$377,000	\$410,900
Down Payment (homebuyer cash)	\$12,000	\$13,700	\$14,900
Affordable Home Price	\$342,900	\$390,700	\$425,800
<u>Key Assumptions</u>			
- Mortgage Interest Rate	5.0%	5.0%	5.0%
- Down Payment	3.5%	3.5%	3.5%
- Property Taxes (% of sales price)	1.3%	1.3%	1.3%
- HOA (per month)	\$300	\$250	\$150
- Utilities (per month)	\$101	\$128	\$231
- Mortgage Insurance (% of loan amount)	0.85%	0.85%	0.85%

⁽¹⁾ Residential nexus analysis

⁽²⁾ Utilities estimated based on utility allowance schedule from the Housing Authority of Alameda County.

**TABLE 16D
MODERATE INCOME HOME PRICES at 100% AMI
CITY OF HAYWARD**

Unit Size Household Size	CONDO	TOWNHOME	DETACHED
	2-Bedroom 3-person HH	3-Bedroom 4-person HH	4-Bedroom 5-person HH
Median Income - Alameda County 2017	\$87,650	\$97,400	\$105,200
Annual Income @ 100%	\$87,650	\$97,400	\$105,200
% Available for Housing Costs	35%	35%	35%
Income Available for Housing Costs	\$30,678	\$34,090	\$36,820
(Less) Property Taxes	(\$3,986)	(\$4,555)	(\$4,970)
(Less) HOA	(\$3,600)	(\$3,000)	(\$1,800)
(Less) Utilities	(\$1,212)	(\$1,536)	(\$2,772)
(Less) Insurance	(\$307)	(\$350)	(\$382)
(Less) Mortgage Insurance	(\$2,515)	(\$2,874)	(\$3,136)
Income Available for Mortgage	\$19,058	\$21,774	\$23,760
Mortgage Amount	\$295,800	\$338,000	\$368,800
Down Payment (homebuyer cash)	\$10,700	\$12,300	\$13,400
Affordable Home Price	\$306,500	\$350,300	\$382,200
<u>Key Assumptions</u>			
- Mortgage Interest Rate	5.0%	5.0%	5.0%
- Down Payment	3.5%	3.5%	3.5%
- Property Taxes (% of sales price)	1.3%	1.3%	1.3%
- HOA (per month)	\$300	\$250	\$150
- Utilities (per month)	\$101	\$128	\$231
- Mortgage Insurance (% of loan amount)	0.85%	0.85%	0.85%

⁽¹⁾ Residential nexus analysis

⁽²⁾ Utilities estimated based on utility allowance schedule from the Housing Authority of Alameda County.

C. Residential Affordable Housing Requirements in Other Jurisdictions

The affordable housing requirements adopted by other jurisdictions are almost always of interest to decision making bodies. Cities inevitably want to know what their neighbors have in place for affordable housing requirements, and often want to examine other cities that are viewed as comparable on some level. The body of information on other programs not only presents what others are adopting, but also illustrates the broad range in program design and customized features available to meet local needs.

A survey of affordable housing requirements in eighteen jurisdictions was prepared for purposes of the multi-jurisdiction nexus study in which the City of Hayward participated (for purposes of the non-residential scope of services only). The comparison jurisdictions were selected by the participants in that effort. The survey was prepared in 2016 and is incorporated in this report with limited updating.

Table 17 is four-page chart which summarizes the key features of the eighteen cities in the survey. The chart was designed to focus on the major components of each city's program that would be most relevant to decision making, primarily the thresholds, the fee levels and on-site affordable unit requirements.

1. Findings from the Survey

Thresholds for On-Site Affordable Requirement

- Whether or not for-sale development projects have the choice “as of right” between paying a fee or doing on-site units is a critical feature of any program. In the eight Santa Clara jurisdictions, six require on-site units and offer no fee “buy out” without a special City Council procedure. Only San Jose and Milpitas offer the fee choice at this time. In contrast, of the ten Alameda jurisdictions, most offer fee payment “as of right.”
- Most fee options are less costly to the developer than providing on-site units. High fees are necessary if the choice between building units or paying fees is to be at all competitive. The high fee cities, such as Fremont, aim to present a real choice and achieve some on-site compliance units as well as fee revenues.
- With the loss of redevelopment and tax increment resources dedicated to housing, many cities have revised their programs to generate more fee revenues. Programs can be revised so as to alter options or incentives for projects to provide on-site units versus pay a fee based on the City's preferences.
- The loss of redevelopment has also motivated some cities to lower minimum project sizes to collect fees on very small projects, even single units. Several Santa Clara cities

in the chart have adjusted their thresholds down to three to five units for fee payment, and the recently updated Cupertino and Oakland programs go down to single units as do proposed requirements for Union City. The nexus analysis fully demonstrates the impact generated by single units, and as a result, some cities view charging very small projects and single units a matter of fairness and equity in an “everybody contributes” approach to meeting affordable housing challenges.

- Following the *Palmer* decision, impact fees have been the only avenue for requiring rental projects to mitigate their impacts on the need for affordable housing. On-site affordable units must be allowed as an alternative to fee payment if consistent with the Costa Hawkins Act and provided in exchange for a financial contribution or regulatory incentive such as a density bonus.

Fee Levels

- Impact fee levels for rentals in the cities of north and west Santa Clara County cluster in the \$15 to \$20 per square foot range for rentals, notably San Jose, Mountain View, Sunnyvale, and Cupertino. Most other cities have not yet adopted impact fees on rentals.
- Fees on for sale units, where permitted, in the Santa Clara cities reflect a range of approaches and levels. Several Silicon Valley cities charge fees as a percent of sales price, a practice not used much outside of Silicon Valley. The percent of sales prices reflects the higher impacts of higher priced units, borne out in the nexus analysis. The approach also scales fees in proportion to the revenue projects would forgo were a portion of units to be made affordable on-site.
- In the East Bay, Fremont is notable for its higher fees and obligation to provide both units and pay fees. Oakland is a new adoption that will phase in fees up to \$23,000 per market rate unit. Berkeley recently increased its fees to \$34,000 per unit or add \$3,000 more if paid at certificate of occupancy. In May, the City Council of Union City directed staff to come back with an ordinance at \$22 per square foot for ownership projects and \$14 per square foot for rentals (at full phase-in).
- East of the hills, some programs like Pleasanton, have been in place for decades but are more modest than most of the newer ones. Dublin is, in many ways, its own special case, with vigorous development activity and affordable unit requirements.

On-Site Requirements

- The Santa Clara cities (excluding Milpitas) have programs in the 10% to 20% range, with 15% most common.

- For the Santa Clara County programs, the affordability level applicable to for-sale projects is usually in the moderate income range, with pricing of on-site units ranging from 90% to 120% AMI, depending on the city. A few cities do seek some units down to Low Income.
- In Alameda cities, on-site requirements are most commonly at the 15% level. Berkeley has a 20% requirement, Oakland has both a 5% and a 10% option depending on the depth of affordability. The Fremont percentage is lower but a fee is owed in addition to on-site units.

2. Other General Comments

- Impact / in-lieu fees are presented at adopted levels. Where a multi-year phase-in has been adopted, such as the new Oakland program, the full phase in amount is shown with clarification in the bottom comment section of the chart. Fees on rentals are included only when they have been adopted as impact fees, following the *Palmer* California Supreme Court ruling which precludes on-site requirements and their in-lieu fee alternatives.
- Fees are expressed in different ways from one city to the next. Some fees are charged per square foot, some are a flat fee per market rate unit, and some are charged per affordable unit owed, which is almost always over \$100,000 in the Bay Area. To convert per unit owed to per market rate unit, one can multiply the per unit amount by the percentage requirement.
- On-Site Requirement/Option for Rentals. Many city codes continue to include on-site requirement language for rental projects because codes have not been updated since the *Palmer* ruling and requirements are not being applied. These requirements are not included in the chart.
- The income levels of the affordable units that are required are summarized in terms of both “eligibility” or “qualifying” levels and the pricing level that is used to establish the purchase price or rent level of the unit. The pricing level is the critical one insofar as the developer’s obligation is concerned. The most typical choice for pricing level is to be consistent with the affordable housing cost definitions in the California Health & Safety Code 50052.5 and 50053.
- Virtually all cities that have on-site requirements for for-sale residential projects without the choice of fee payment, do allow fee payment with special City Council approval. Therefore, the chart notes this feature only by way of a footnote. The City’s practice in granting such approvals may be more consequential than what may be written.

For more complete information on the programs, please consult the website and code language of the individual cities.

**TABLE 17
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
ALAMEDA COUNTY CITIES**

	Albany	Fremont	Hayward	San Leandro	Union City
Year Adopted / Updated	2005	Est. 2002, update 2015, full phase-in 2017	Update 2015	2004	Est. 2001, update 2006
Minimum Project Size For In-lieu/Impact Fee For Build Requirement	FS: 5 units FS: 7 units	FS/R: 2 units no build req.	FS/R: 20 units no build req.	FS: 2 units FS: 7 units	FS/R: 1 unit no build req.
Impact / In-Lieu Fee	FS: (Market Value - Affordable Price) x units owed	FS: Attached \$27.00 no units, \$18.50 w/ aff units Detached \$26.00 no units, \$17.50 w/ aff units, R: \$17.50 no map, \$27.00 w/ map	FS: Attached \$3.87/sf, Detached \$4.61/sf R: \$3.63/sf	FS: (Median Sale Price - Affordable Price) x units owed	Council Direction for Updated Ordinance (April 2017): FS: \$22/SF R: \$14/SF
Onsite Requirement/Option Percent of Total Units	FS: 15%	FS: Attached 3.5% plus \$18.50/sf Detached 4.5% plus \$17.50/sf R: 12.9%	FS: Attached 7.5%, Detached 10% R: Attached 7.5%, Detached 10%	FS: 15%	FS: 15%
Income Level for Qualification	FS: <10 units: Low 10+ units: 50% Low, 50% Very Low	FS: Moderate Income R: 19% Extremely Low, 33% Very Low, 25% Low, 24% Moderate	FS: Moderate Income R: 50% Low, 50% Very Low	FS: 60% Moderate, 40% Low	FS: 60% Moderate, 30% Median, 10% Low.
Income Level for Pricing(% AMI)	Not specified.	FS: Moderate @ 110% AMI (120% w/approval) R: Low @ 60% AMI, Very Low @ 50% AMI, Extremely Low @ 30% AMI	FS: Moderate @ 110% AMI R: Low @ 60% AMI Very Low @ 50% AMI	FS: Moderate @ 110% AMI, Low @ 70% AMI	FS: Moderate @ 110% AMI, Median not specified (80-100%) Low @ 70% AMI
Fractional Units	<0.5: pay fee, >0.5: provide unit	pay fee or provide unit	pay fee or provide unit	<0.5: round down, >0.5: round up	pay fee or provide unit
Comments		Full phase-in levels shown. Rental projects with a subdivision map pay the higher fee. FS projects req. to provide onsite units and pay fee.		Fee calculated based on current median sales price.	Reflects Council direction for updates to ordinance that have not yet been adopted. Fee applies to additions over 500 square feet.

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI =Area Median Income

MF = Multi-Family
SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 17
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
ALAMEDA COUNTY CITIES**

	Alameda (city)	Berkeley	Dublin	Oakland	Pleasanton
Year Adopted / Updated	2003	Est. 1986, rental fee 2011, update adopted 2017	Est. 1997, update 2005	2016	Est. 1978, update 2000.
Minimum Project Size	FS: 5 units	FS/R: 5 units	FS/R: 20 units	FS/R: 1 unit	FS/R: 15 units
For In-lieu/Impact Fee	FS: 10 units	no build req.	FS/R: 20 units (partial)	no build req.	no build req.
For Build Requirement	FS: \$19,076/du	FS: 62.5% x (Sale Price - Affordable Price) x units owed	FS/R: \$127,061 per aff unit owed (in addition to on-site)	FS/R: MF \$12,000-\$22,000, SF Attached \$8,000-\$20,000, SF Detached \$8,000-\$23,000	FS/R: MF \$2,783/du, SF <1,500 sq ft: \$2,783/du, >1,500 sq ft: \$11,228/du
Impact / In-Lieu Fee		R: \$34,000/du or \$37,000/du if paid at C/O			
Onsite Requirement/Option	FS: 15%	FS/R: 20%	FS/R: 7.5%, plus fee (12.5% without fee)	FS/R: Option A 5% or Option B 10%	FS/R: MF 15% SF 20%
Percent of Total Units	FS: 47% Moderate, 27% Low, 27% Very Low	FS: Low	FS: 60% Moderate, 40% Low	FS/R: Option A Very Low Option B Low and Moderate	FS: MF Low SF Moderate
Income Level for Qualification	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50%	R: Current Very Low Proposed 1/2 Very Low, 1/2 Low	R: 50% Moderate, 20% Low, 30% Very Low		
Income Level for Pricing(% AMI)		FS: Low @ 80% R: Low at 81%, Very Low at 50%.	FS: Moderate @ 110%, Low @ 70% R: Moderate @ 110%, Low @ 80%, Very Low @ 50%	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50% R: Moderate 110%, Low @ 60%, Very Low @ 50%	FS: MF 80% AMI SF 120% AMI
Fractional Units	<0.5: round down, >0.5: round up	pay fee	<0.5: round down, >0.5: round up	pay fee or provide unit	<0.5: round down, >0.5: round up
Comments				Fees vary by neighborhood. Fees phased in through 2020. Full fee levels shown. On-site: May choose Option A or B. Based on draft ordinance prepared for April 19, 2016 council meeting.	

Abbreviations: R = Rental /sf = per square foot MF = Multi-Family
du = Dwelling Unit Ac = Acre AMI =Area Median Income SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction. Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 17
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
SANTA CLARA COUNTY CITIES**

	Campbell	Los Altos	Milpitas	Santa Clara City
Year Adopted / Updated	2006	Est. 1995, update 2009	2015	Est. 1991, update 2006
Minimum Project Size				
For In-lieu/Impact Fee	FS, <6du/Ac: 10 units FS, >6 du/Ac: n/a	n/a	FS/R: 5 units	n/a
For Build Requirement	FS, <6du/Ac: n/a FS, >6du/Ac: 10 units	FS: 5 units	no build req.	FS: 10 units
Impact / In-Lieu Fee	FS: \$34.50 /sf	none	FS/R: 5% building permit value	FS: Fractional units only (Market Value - Affordable Price) x fractional unit
Onsite Requirement/Option				
Percent of Total Units	FS: 15%	FS: 10%	FS/R: 5%	FS: 10%
Income Level for Qualification	FS: Low and Moderate	FS: Moderate If <10 units, one unit at Low.	FS/R: Low and Very Low	FS: Very Low to Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110% Low @ 70%	Not Specified.	Not specified.	Not specified.
Fractional Units	<0.5: round down, >0.5: round up	provide unit	not specified	pay fee or provide unit
Comments	code does not specify allocation between Low and Moderate; staff indicates approximately 50/50 allocation has been the experience.	<4 du/Ac: no requirement. Also, requirements may be waived by City Council for projects of 9 units or less.	In-lieu/impact fee introduced as temporary measure while City prepares formal nexus study. Fee has not yet been assessed.	Policy established in the City's General Plan.

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI =Area Median Income

MF = Multi-Family
SF = Single Family

1. Santa Clara County and Saratoga do not currently have an inclusionary housing requirement.

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

**TABLE 17
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
SANTA CLARA COUNTY CITIES**

	Cupertino	Mountain View	San Jose	Sunnyvale
Year Adopted / Updated	Est. 1992, update 2015	Est. 1999, rental impact fee in 2012, update 2015	Est. 2010. Rental Fee 2014.	Update 2015
Minimum Project Size For In-lieu/Impact Fee	FS/R: 1 unit	FS: 3 units R: 5 units Mixed FS/R: 6 units	FS: 20 units R: 3 units	FS: 8 units R: 4 units
For Build Requirement	FS: 7 units	FS: 10 units	no build req.	FS: 20 units
Impact / In-Lieu Fee	FS: Detached \$15/sf, Attached \$16.50/sf, MF \$20/sf R: <35 du/Ac \$20/sf, >35 du/Ac \$25/sf	FS: 3% of sales price R: \$17/sf	FS: based on affordability gap R: \$17 /sf	FS: 7% of sales price R: \$8.50/sf (4-7 units), \$17/sf (8+ units)
Onsite Requirement/Option Percent of Total Units	FS/R: 15%	FS/R: 10%	FS: 15%	FS: 12.5% R: On-site credits (see below)
Income Level for Qualification	FS: 1/2 Median 1/2 Moderate R: 40% Low, 60% Very Low	FS: Median R: Low	FS: Moderate	FS: Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110%, Median @ 90% R: Low @ 60%, Very Low @ 50% AMI	FS: One unit: 90% AMI Multiple units: 80 - 100% AMI R: Ranges btwn 50-80% AMI	Moderate @ 110% AMI	Moderate @ 100% AMI
Fractional Units	<.5 unit owed: pay fee .5+ unit owed: round up	pay fee or provide unit	R: pay fee FS: pay fee or provide unit	pay fee or provide unit
Comments			Inclusionary zoning to be reinstated 2016. Downtown highrises exempt from impact fee for five years.	On-site rental: developer credited \$300,000/du (Very Low), \$150,000/du (Low). Projects with fewer than 20 units are eligible to pay in-lieu fee.

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI =Area Median Income

MF = Multi-Family
SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.



KEYSER MARSTON ASSOCIATES

DRAFT

ATTACHMENT A

RESIDENTIAL NEXUS ANALYSIS

Prepared for:
City of Hayward

Prepared by:
Keyser Marston Associates, Inc.

September 2017

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I. INTRODUCTION

The following report is a Residential Nexus Analysis, an analysis of the linkages between the development of new residential units and the need for additional affordable housing in the City of Hayward. The report has been prepared by Keyser Marston Associates, Inc. (KMA) pursuant to a contract with the City of Hayward.

Background, Context and Use of the Analysis

The analysis addresses market rate residential projects in Hayward and the various types of units that are subject to the City's Affordable Housing Ordinance (AHO) at this time and potentially in the future. The nexus analysis quantifies the linkages between new market rate units and the demand for affordable housing in Hayward.

The City of Hayward's inclusionary program was first established in 2003 and has been updated twice since it was originally adopted. For-sale projects of twenty or more units are required to provide affordable units on-site or pay an in-lieu fee instead. Attached for-sale projects must provide 7.5% of units as affordable while detached projects must provide 10% of units affordable to households at Moderate Income. The program has an in-lieu fee alternative which is permitted by right.

The requirement for rental projects is to pay an impact fee. Affordable units may be provided on-site as an alternative to paying the impact fee. The on-site option for rental projects is to provide 7.5% of units as affordable split between Low and Very Low-Income units¹.

Hayward's current fees are:

- *Attached For-Sale Units*: \$3.87 per square foot if paid at building permit or \$4.28 per square foot if paid at certificate of occupancy; and
- *Detached For-Sale Units*: \$4.61 per square foot if paid at building permit or \$5.06 per square foot if paid at certificate of occupancy.
- *Rentals*: \$3.63 per square foot if paid at building permit or \$3.99 per square foot if paid at certificate of occupancy.

The nexus analysis provided herein enables the City to proceed with an update of the housing impact fees applicable to residential development in the City of Hayward. The conclusions of the analysis represent maximum supportable or legally defensible impact fee levels based on the

¹ For detached rentals, which are presumably rare, the on-site percentage is 10%.

impact of new residential development on the need for affordable housing. Findings are not recommended fee levels.

It should be noted that requirements applicable to for-sale projects need not be bound by the findings of this nexus analysis in accordance with the ruling in *C.B.I.A.*, described below. For small for-sale projects that would owe less than one onsite affordable unit, it is recommended that in-lieu fees be kept within the nexus maximums given on-site compliance with inclusionary requirements may not be practical and so the fee becomes the primary compliance option. As of this writing, impact fees supported by a nexus study are the only option for implementation of affordable housing requirements for rental projects. This could change if AB 1505 is signed into law by the Governor and restores the ability to implement inclusionary requirements for rental projects.

Background on Key Legal Cases

The following provides background regarding two key legal cases pertaining to inclusionary programs which in recent years have motivated many California cities to undertake residential nexus studies. This section is intended as general background only; nothing in this report should be interpreted as providing specific legal guidance, which KMA is not qualified to provide.

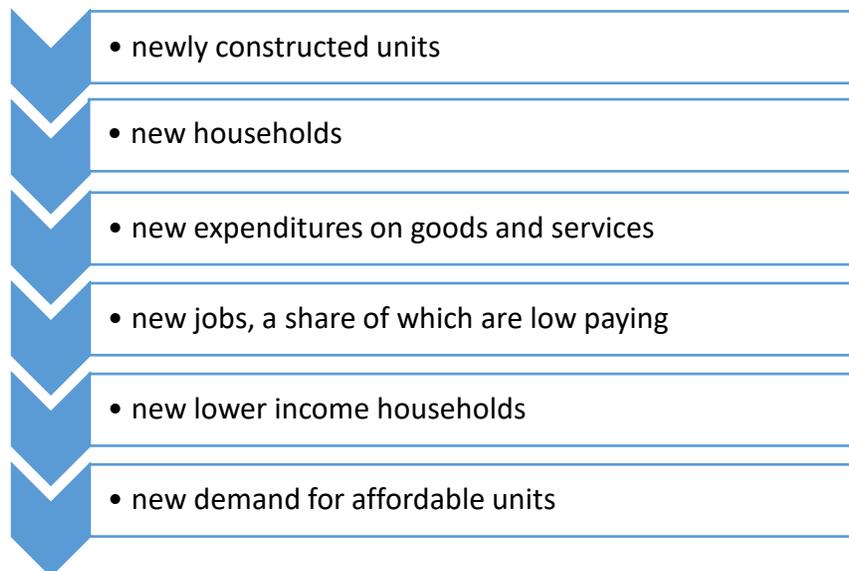
The *Palmer* case (*Palmer/Sixth Street Properties L.P. v. City of Los Angeles* [2009] 175 Cal. App. 4th 1396) was decided in 2009 and precluded California cities from requiring long term rent restrictions or inclusionary requirements on rental units. Since the *Palmer* ruling, many California cities have adopted affordable housing impact fees on rental projects supported by residential nexus studies similar to this one. On September 15th, the California legislature sent AB 1505 to the Governor's desk. If signed by the Governor, the bill will restore the ability to require on-site affordable units within rental projects.

In *C.B.I.A.*, (*California Building Industry Association v. City of San Jose*, California Supreme Court Case No. S212072, June 15, 2015), also referred to as the San Jose Case, the California Building Industry Association challenged the City of San Jose's newly adopted inclusionary program. A core contention of C.B.I.A. was that the City's inclusionary program constituted an exaction that required a nexus study to support it. The case was pending in the courts from 2010 through February 2016. Ultimately, the case was decided by the California Supreme Court in favor of the City of San Jose, finding San Jose's inclusionary program to be a valid exercise of the City's power to regulate land use and not an exaction. The U.S. Supreme Court denied C.B.I.A.'s petition to review the case. While the case was pending, there was speculation that the courts would rule in favor of C.B.I.A. and this possibility was one of the motivations for cities to prepare residential nexus studies as an additional "backup" support measure for inclusionary programs.

The Nexus Concept

A residential nexus analysis demonstrates and quantifies the impact of new market rate housing development on the demand for affordable housing. The underlying nexus concept is that the newly constructed market rate units represent net new households in Hayward. These households represent new income in Hayward that will consume goods and services, either through purchases of goods and services or 'consumption' of government services. New consumption translates to jobs; a portion of the jobs are at lower compensation levels; low compensation jobs relate to lower income households that cannot afford market rate units in Hayward and therefore need affordable housing.

Nexus Analysis Concept



Methodology and Models Used

The nexus analysis methodology starts with the sales price or rental rate of a new market rate residential unit, and moves through a series of linkages to the gross income of the household that purchased or rented the unit, the income available for expenditures on goods and services, the jobs associated with the purchases and delivery of those services, the income of the workers doing those jobs, the household income of the workers and, ultimately, the affordability level of the housing needed by the worker households. The steps of the analysis from household income available for expenditures to jobs generated were performed using the IMPLAN model, a model widely used for the past 35 years to quantify the impacts of changes in a local economy, including employment impacts from changes in personal income. From job generation by industry, KMA used its own jobs housing nexus model to quantify the income of worker households by affordability level.

To illustrate the linkages by looking at a simplified example, we can take an average household that buys a house at a certain price. From that price, we estimate the gross income of the household (from mortgage rates and lending practices) and the portion of income available for expenditures. Households will “purchase” or consume a range of goods and services, such as purchases at the supermarket or services at the bank. Purchases in the local economy in turn generate employment. The jobs generated are at different compensation levels. Some of the jobs are low paying and as a result, even when there is more than one worker in the household, there are some lower and moderate-income households who cannot afford market rate housing in Hayward.

The IMPLAN model quantifies jobs generated at establishments that serve new residents directly (e.g., supermarkets, banks or schools), jobs generated by increased demand at firms which service or supply these establishments, and jobs generated when the new employees spend their wages in the local economy and generate additional jobs. The IMPLAN model estimates the total impact combined.

Net New Underlying Assumption

An underlying assumption of the analysis is that households that purchase or rent new units represent net new households in Hayward. If purchasers or renters have relocated from elsewhere in the city, vacancies have been created that will be filled. An adjustment to new construction of units would be warranted if Hayward were experiencing demolitions or loss of existing housing inventory. However, the rate of housing unit removal is so low as to not warrant an adjustment or offset.

On an individual project basis, if existing units are removed to redevelop a site to higher density, then there could be a need for recognition of the existing households in that all new units might not represent net new households, depending on the program design and number of units removed relative to new units.

Since the analysis addresses net new households in Hayward and the impacts generated by their consumption expenditures, it quantifies net new demands for affordable units to accommodate new worker households. As such, the impact results do not address nor in any way include existing deficiencies in the supply of affordable housing.

Geographic Area of Impact

The analysis quantifies impacts occurring within Alameda County. While much of the impact will occur within Hayward, some impacts will be experienced elsewhere in the county and beyond. The IMPLAN model computes the jobs generated within the county and sorts out those that occur beyond the county boundaries. The KMA Jobs Housing Nexus Model analyzes the income structure of jobs and their worker households, without assumptions as to where the worker households live.

In summary, the KMA nexus analysis quantifies all the job impacts occurring within Alameda County and related worker households. Job impacts, like most types of impacts, occur irrespective of political boundaries. And like other types of impact analyses, such as traffic, impacts beyond city boundaries are experienced, are relevant, and are important. See the Addendum: Additional Background and Notes on Specific Assumptions at the end of this report for further discussion.

Market Rate Residential Project Types

Four prototypical residential project types were selected by the City and KMA for analysis in this nexus study. The prototypes were intended to represent the range of product types currently being built in Hayward or which are expected in the future including:

- Single Family Detached;
- Townhome;
- Condominium; and,
- Apartment.

Affordability Tiers

The nexus analysis addresses the following four income or affordability tiers:

- Extremely Low Income: households earning up to 30% Area Median Income (AMI);
- Very Low Income: households earning over 30% AMI up to 50% of AMI;
- Low Income: households earning over 50% AMI up to 80% of AMI; and,
- Moderate Income: households earning over 80% AMI up to 120% of AMI.

Report Organization

The report is organized into the following sections:

- Section A presents information regarding the prototypical new market rate residential units and the estimated household income of purchases or renters of those units.
- Section B describes the IMPLAN model, which is used in the nexus analysis to translate household income into the estimated number of jobs in retail, restaurants, healthcare, and other sectors serving new residents.
- Section C presents the linkage between employment growth associated with residential development and the need for new lower income housing units required in each of the four income categories.
- Section D quantifies the nexus or mitigation cost based on the cost of delivering affordable units to new worker households in each of the four income categories.

- An Addendum section provides a supplemental discussion of specific factors in relation to the nexus concept.
- Appendix A contains the market survey.
- Appendix B includes detailed tables on worker occupations and compensation levels, which are a key input into the analysis.

Disclaimers

This report has been prepared using the best and most recent data available at the time of the analysis. Local data and sources were used wherever possible. Major sources include the U.S. Census Bureau's American Community Survey, California Employment Development Department (EDD) and the IMPLAN model. While we believe all sources utilized are sufficiently sound and accurate for the purposes of this analysis, we cannot guarantee their accuracy. Keyser Marston Associates, Inc. assumes no liability for information from these and other sources.

II. RESIDENTIAL NEXUS ANALYSIS

A. Market Rate Units and Household Income

This section describes the prototypical market rate residential units and the income of the purchaser and renter households. Market rate prototypes are representative of new residential units currently being built in Hayward or that are likely to be built in Hayward over the next five to ten years. Household income is estimated based on the amount necessary for the mortgage or rent payments associated with the prototypical new market rate units and becomes the basis for the input to the IMPLAN model. These are the starting points of the chain of linkages that connect new market rate units to additional demand for affordable residential units.

This section presents a summary of the market rate prototypes and the estimated household income of purchasers or renters of the market rate units.

Recent Housing Market Activity and Prototypical Units

KMA worked with City staff to select four representative development prototypes envisioned to be developed in Hayward in the future based on projects proposed and recently built in the City. KMA then undertook a market survey of residential projects to estimate current sale prices and rent levels. More details on the market survey can be found in Appendix A.

At the time of the market survey in mid-July 2017, there were 12 new for-sale residential developments being marketed in Hayward. Asking prices for these units, combined with recent closed home sales in the market, formed the basis for the pricing in the nexus analysis. For market rents for new apartment developments in Hayward, KMA performed a survey of asking apartment rents in select properties in Hayward and neighboring jurisdictions.

The four residential prototypes are summarized in the table below. The main objective of the survey was to review current market sales prices or rents, per unit and per square foot, for the various residential project types in Hayward.

It is important to note that the residential prototypes analysis is intended to reflect average or typical residential projects in the local market rather than any specific project. It would be expected that the characteristics and pricing of specific projects would vary to some degree from the residential prototypes analyzed. In summary, the residential prototypes analyzed in the nexus analysis are as follows:

Hayward Residential Prototypes				
	<i>Typical Density</i>	<i>Average Unit Size</i>	<i>Average Price/Rent</i>	<i>Price/Rent \$/SF</i>
For-Sale Prototypes				
1) Single Family Detached	10 du/acre	2,500 sq. ft.	\$950,000	\$380/SF
2) Townhomes/Attached	20 du/acre	2,000 sq. ft.	\$800,000	\$400/SF
3) Condominiums (Stacked Flats)	50 du/acre	1,000 sq. ft.	\$590,000	\$590/SF
Rental Prototype				
4) Apartments	60 du/acre	900 sq. ft.	\$2,800	\$3.11/SF

Source: KMA market study; see Appendix A.

Income of Housing Unit Purchaser or Renter

After the prototypes are established, the next step in the analysis is to determine the income of the purchasing or renting households in the prototypical units.

Ownership Units

To make the determination for ownership units, terms for the purchase of residential units used in the analysis are slightly less favorable than what can be achieved at the current time since current terms are not likely to endure. The selected terms for the analysis are: a down-payment of 20% which is representative of new purchase loans originated locally.² A 30-year fixed rate loan at a 5% interest is assumed. The interest rate at 5% reflects a longer term average rate based on data for the last fifteen years from June 2002 to June 2017.³ An interest rate premium of 0.25% is added to non-conforming loans over \$636,150 (jumbo loans). Tables A-1 to A-3 at the end of this section provide the details.

All ownership product types include an estimate of homeowners' insurance, homeowner association dues, and property taxes. These are included along with the mortgage payment as part of housing expenses for purposes of determining mortgage eligibility.⁴ The analysis estimates gross household income based on the assumption that these housing costs represent, on average, approximately 35% of gross income. The assumption that housing expenses represent

² Reflects the median down payment for new purchase loans originated in zip codes corresponding to Alameda and Santa Clara Counties derived from Freddie Mac dataset for loans issued in the 1st Quarter of 2015.

³ Based on Freddie Mac Primary Mortgage Market Survey. Reflects weekly average rates for 30 year fixed rate mortgages during the period from 6/2002 through 6/2017 applicable to the West Region and rounded to the nearest whole percentage.

⁴ Housing expenses are combined with other debt payments such as credit cards and auto loans to compute a Debt To Income (DTI) ratio which is a key criteria used for determining mortgage eligibility.

35% of gross income is reflective of the local average for new purchase loans⁵ and is consistent with criteria used by lenders to determine mortgage eligibility.⁶

Apartment Units

Household income for renter households is estimated based on the assumption that housing costs, including rent and utilities, represents on average 30% of gross household income. The 30% factor was selected for consistency with the California Health and Safety Code standard for relating income to affordable rent levels.⁷ The resulting relationship is that annual household income is 3.3 times annual rent.

The estimated gross household incomes of the purchasers or renters of the prototype units are calculated in Tables A-1 through A-4 and summarized below.

Gross Household Income				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Gross Household Income	\$187,000	\$162,000	\$121,000	\$117,000

Income Available for Expenditures

The input into the IMPLAN model used in this analysis is the net income available for expenditures. To arrive at income available for expenditures, gross income must be adjusted for Federal and State income taxes, contributions to Social Security and Medicare, savings, and payments on household debt. Per KMA correspondence with the producers of the IMPLAN model (IMPLAN Group LLC), other taxes including sales tax, gas tax, and property tax are handled internally within the model as part of the analysis of expenditures. Payroll deduction for medical benefits and pre-tax medical expenditures are also handled internally within the model. Housing costs are addressed separately, as described below, and so are not deducted as part of this adjustment step. Table A-5 at the end of this section shows the calculation of income available for expenditures.

⁵ Freddie Mac data on new purchase loans originated in zip codes corresponding to Santa Clara and Alameda Counties for the 1st Quarter of 2015 indicates an average debt to income ratio of 37%; however, most households have other forms of debt such as credit cards, student loans, and auto loans that are included as part of this ratio and the ratio considering housing costs only would be lower. Application of a 35% ratio is also consistent with the California Health and Safety Code standard for relating income to housing costs for ownership units.

⁶ Fannie Mae mortgage underwriting eligibility criteria establishes a debt to income threshold of 36% above which tighter credit standards apply. A debt to income ratio of up to 45% is permitted for borrowers meeting specified credit criteria; however, most households have other forms of debt such as credit cards, student loans, and auto loans that would be considered as part of this ratio.

⁷ Health and Safety Code Section 50052.5 defines affordable rent levels based on 30% of income.

Income available for expenditures is estimated at approximately 67% to 68% of gross income, depending on the market rate prototype. The estimates are based on a review of data from the Internal Revenue Service and California Franchise Tax Board tax tables. Per the Internal Revenue Service, households earning between \$100,000 and \$200,000 per year who itemize deductions on their tax returns will pay an average of 12.2% of gross income for federal taxes. Residents of the market rate rental units are estimated to pay an average of 14.0% of gross income in federal income taxes, the average for households in the \$100,000 to \$200,000 income range not itemizing deductions on their taxes. State taxes are estimated to range from 3.7% to 4.7% of gross income, based on tax rates per the California Franchise Tax Board. The employee share of FICA payroll taxes for Social Security and Medicare is 7.65% of gross income. A ceiling of \$127,200 per employee applies to the 6.2% Social Security portion of this tax rate.

Savings and repayment of household debt represent another necessary adjustment to gross income. Savings includes various IRA and 401 K type programs as well as non-retirement household savings and investments. Debt repayment includes auto loans, credit cards, and all other non-mortgage debt. Savings and repayment of debt are estimated to represent a combined 8% of gross income based on a 20-year average derived from United States Bureau of Economic Analysis data.

The percentage of income available for expenditure for input into the IMPLAN model is prior to deducting housing costs. The reason is for consistency with the IMPLAN model, which defines housing costs as expenditures. The IMPLAN model addresses the fact that expenditures on housing do not generate employment to the degree other expenditures such as retail or restaurants do, but there is some limited maintenance and property management employment generated.

After deducting income taxes, Social Security, Medicare, savings, and repayment of debt, for purchasers of one of the new ownership prototypes, the estimated income available for expenditures is 67% - 68%. These are the factors used to adjust from gross income to the income available for expenditures for input into the IMPLAN model. As indicated above, other forms of taxation such as property tax are handled internally within the IMPLAN model.

Another adjustment made to spending is to account for standard operational vacancy in rental units of 5%, a level of vacancy considered average for rental units in a healthy market. A comparable adjustment is not applied to the ownership units as newly built ownership units are anticipated to have only a nominal level of vacancy.

Estimates of household income available for expenditures are presented below:

Income Available for Expenditures

	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Gross Household Income	\$187,000	\$162,000	\$121,000	\$117,000
Percent Income available for Expenditures	67%	68%	68%	67%
Spending Adjustment / Rental Vacancy	N/A	N/A	N/A	95%
Household Income Available for Expenditure ⁽¹⁾				
One Unit	\$125,300	\$110,200	\$82,300	\$74,000
100 Units [input to IMPLAN]	\$12,530,000	\$11,020,000	\$8,230,000	\$7,400,000

(1) Calculated as gross household income multiplied by the percent available for expenditures multiplied by the spending adjustment for rental vacancy. Result includes the share of income spent on housing as the required input to the IMPLAN model is income after taxes but before deduction of housing costs as described above.

The nexus analysis is conducted on 100-unit building modules for ease of presentation, and to avoid awkward fractions. The spending associated with 100 market rate residential units is the input into the IMPLAN model. Tables A-6 and A-7 summarize the conclusions of this section and calculate the household income for the 100-unit building modules.

**TABLE A-1
 PROTOTYPE 1: SINGLE FAMILY DETACHED
 SALES PRICE TO INCOME RATIO
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

		<u>Prototype 1</u> <u>Single Family Detached</u>	
Sales Price	\$380 /SF	2,500 SF ¹	\$950,000 ¹
Mortgage Payment			
Downpayment @ 20%		20% ²	\$190,000
Loan Amount			\$760,000
Interest Rate			5.25% ³
Term of Mortgage			30 years
Annual Mortgage Payment	\$4,200 /month		\$50,400
Other Costs			
Property Taxes	1.30% of sales price ⁴		\$12,350
HOA Dues	\$150 per month ¹		\$1,800
Homeowner Insurance	0.10% of sales price ⁵		\$1,000
Total Annual Housing Cost	\$5,500 /month		\$65,550
% of Income Spent on Hsg			35% ⁶
Annual Household Income Required			\$187,000
Sales Price to Income Ratio			5.1

Notes

(1) Based on KMA Market Survey.

(2) Reflects the median down payment for new purchase loans originated in zip codes corresponding to Alameda and Santa Clara Counties derived from Freddie Mac dataset for loans issued in the 1st Quarter of 2015.

(3) Average mortgage interest rate for prior 15 years derived from Freddie Mac Primary Mortgage Market Survey, West Region (rounded to nearest whole percentage). Based on weekly average rates for 30 year fixed rate mortgages during the period from 6/2002 through 6/2017. Includes a 0.25% premium to reflect the non-conforming nature of the loan (jumbo loan).

(4) Property tax rate is inclusive of ad valorem taxes and applicable voter approved rates, fixed charges, and assessments for the jurisdiction indicated. Source: ListSource.

(5) Estimated from quotes obtained from Progressive Insurance.

(6) Ratio is consistent with Fannie Mae mortgage underwriting eligibility criteria which establishes a debt to income threshold of 36% above which tighter credit standards apply. A debt to income ratio of up to 45% is permitted for borrowers meeting specified credit criteria. Ratio is also consistent with the California Health and Safety Code standard for relating income to housing costs for ownership units. Freddie Mac data on new purchase loans originated in zip codes corresponding to Santa Clara and Alameda Counties for the 1st Quarter of 2015 indicates an average debt to income ratio of 37%; however, most households have other forms of debt such as credit cards, student loans, and auto loans that are included as part of this ratio and the ratio considering housing costs only would be lower.

**TABLE A-2
 PROTOTYPE 2: TOWNHOME
 SALES PRICE TO INCOME RATIO
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

		<u>Prototype 2 Townhome</u>
Sales Price	\$400 /SF 2,000 SF ¹	\$800,000 ¹
Mortgage Payment		
Downpayment @ 20%	20% ²	\$160,000
Loan Amount		\$640,000
Interest Rate		5.25% ³
Term of Mortgage		30 years
Annual Mortgage Payment	\$3,500 /month	\$42,400
Other Costs		
Property Taxes	1.30% of sales price ⁴	\$10,400
HOA Dues	\$250 per month ¹	\$3,000
Homeowner Insurance	0.10% of sales price ⁵	\$800
Total Annual Housing Cost	\$4,700 /month	\$56,600
% of Income Spent on Hsg		35% ⁶
Annual Household Income Required		\$162,000
Sales Price to Income Ratio		4.9

Notes

(1) Based on KMA Market Survey.

(2) Reflects the median down payment for new purchase loans originated in zip codes corresponding to Alameda and Santa Clara Counties derived from Freddie Mac dataset for loans issued in the 1st Quarter of 2015.

(3) Average mortgage interest rate for prior 15 years derived from Freddie Mac Primary Mortgage Market Survey, West Region (rounded to nearest whole percentage). Based on weekly average rates for 30 year fixed rate mortgages during the period from 6/2002 through 6/2017. Includes a 0.25% premium to reflect the non-conforming nature of the loan (jumbo loan).

(4) Property tax rate is inclusive of ad valorem taxes and applicable voter approved rates, fixed charges, and assessments for the jurisdiction indicated. Source: ListSource.

(5) Estimated from quotes obtained from Progressive Insurance.

(6) Ratio is consistent with Fannie Mae mortgage underwriting eligibility criteria which establishes a debt to income threshold of 36% above which tighter credit standards apply. A debt to income ratio of up to 45% is permitted for borrowers meeting specified credit criteria. Ratio is also consistent with the California Health and Safety Code standard for relating income to housing costs for ownership units. Freddie Mac data on new purchase loans originated in zip codes corresponding to Santa Clara and Alameda Counties for the 1st Quarter of 2015 indicates an average debt to income ratio of 37%; however, most households have other forms of debt such as credit cards, student loans, and auto loans that are included as part of this ratio and the ratio considering housing costs only would be lower.

**TABLE A-3
 PROTOTYPE 3: CONDOMINIUM
 SALES PRICE TO INCOME RATIO
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

			<u>Prototype 3 Condominium</u>
Sales Price	\$590 /SF	1,000 SF ¹	\$590,000 ¹
Mortgage Payment			
Downpayment @ 20%		20% ²	\$118,000
Loan Amount			\$472,000
Interest Rate			5.00% ³
Term of Mortgage			30 years
Annual Mortgage Payment	\$2,500 /month		\$30,400
Other Costs			
Property Taxes	1.30% of sales price ⁴		\$7,670
HOA Dues	\$300 per month		\$3,600
Homeowner Insurance	0.10% sale price ⁵		\$600
Total Annual Housing Cost	\$3,500 /month		<hr/> \$42,270
% of Income Spent on Hsg			35% ⁶
Annual Household Income Required			\$121,000
Sales Price to Income Ratio			4.9

Notes

(1) Based on KMA Market Survey.

(2) Reflects the median down payment for new purchase loans originated in zip codes corresponding to Alameda and Santa Clara Counties derived from Freddie Mac dataset for loans issued in the 1st Quarter of 2015.

(3) Average interest rate for prior 15 years derived from Freddie Mac Primary Mortgage Market Survey, West Region (rounded to nearest whole percentage). Based on weekly average rates for 30 year fixed rate mortgages during the period from 6/2002 through 6/2017.

(4) Property tax rate is inclusive of ad valorem taxes and applicable voter approved rates, fixed charges, and assessments for the jurisdiction indicated. Source: ListSource.

(5) Estimated from quotes obtained from Progressive Insurance.

(6) Ratio is consistent with Fannie Mae mortgage underwriting eligibility criteria which establishes a debt to income threshold of 36% above which tighter credit standards apply. A debt to income ratio of up to 45% is permitted for borrowers meeting specified credit criteria. Ratio is also consistent with the California Health and Safety Code standard for relating income to housing costs for ownership units. Freddie Mac data on new purchase loans originated in zip codes corresponding to Santa Clara and Alameda Counties for the 1st Quarter of 2015 indicates an average debt to income ratio of 37%; however, most households have other forms of debt such as credit cards, student loans, and auto loans that are included as part of this ratio and the ratio considering housing costs only would be lower.

**TABLE A-4
 PROTOTYPE 4: APARTMENTS
 RENT TO INCOME RATIO
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

		Prototype 4 Apartments
Market Rent	<u>Unit Size</u>	
Monthly	900 SF ¹	\$2,800 ¹
Utilities ²		<u>\$130</u>
Monthly housing cost		\$2,930
Annual housing cost		\$35,160
% of Income Spent on Rent		30% ³
Annual Household Income Required		\$117,000
Annual Rent to Income Ratio		3.3

Notes

(1) Based on the results of the market survey. Represents rent levels applicable to new units.

(2) Monthly utilities include direct-billed utilities and landlord reimbursements estimated based on County Housing Authority utility allowance schedule.

(3) While landlords may permit rental payments to represent a slightly higher share of total income, 30% represents an average. This relationship is established in the California Health and Safety Code and used throughout housing policy to relate income to affordable rental housing costs.

**TABLE A-5
 INCOME AVAILABLE FOR EXPENDITURES¹
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family Detached	Townhome	Condominium	Apartments
Gross Income	100%	100%	100%	100%
<u>Less:</u>				
Federal Income Taxes ²	12.2%	12.2%	12.2%	14.0%
State Income Taxes ³	4.7%	4.4%	3.7%	3.8%
FICA Tax Rate ⁴	7.65%	7.65%	7.65%	7.65%
Savings & other deductions ⁵	8%	8%	8%	8%
Percent of Income Available for Expenditures⁶ [Input to IMPLAN model]	67%	68%	68%	67%

Notes:

- ¹ Gross income after deduction of taxes and savings. Income available for expenditures is the input to the IMPLAN model which is used to estimate the resulting employment impacts. Housing costs are not deducted as part of this adjustment step because they are addressed separately as expenditures within the IMPLAN model.
- ² Reflects average tax rates (as opposed to marginal) based on U.S. Internal Revenue Services, Tax Statistics, Tables 1.1 and 2.1 for 2014. Homeowners are assumed to itemize deductions. Renter households are assumed to take the standard deduction. Tax rates reflect averages for applicable income range.
- ³ Average tax rate estimated by KMA based on marginal rates per the California Franchise Tax Board and ratios of taxable income to gross income estimated based on U.S. Internal Revenue Service data.
- ⁴ For Social Security and Medicare. Social Security taxes estimated based upon the current ceiling on applicability of Social Security taxes of \$127,200 (ceiling applies per earner not per household) and the average number of earners per household.
- ⁵ Household savings including retirement accounts like 401k / IRA and other deductions such as interest costs on credit cards, auto loans, etc, necessary to determine the amount of income available for expenditures. The 8% rate used in the analysis is based on the average over the past 20 years computed from U.S. Bureau of Economic Analysis data, specifically the National Income and Product Accounts, Table 2.1 "Personal Income and Its Disposition."
- ⁶ Deductions from gross income to arrive at the income available for expenditures are consistent with the way the IMPLAN model and National Income and Product Accounts (NIPA) defines income available for personal consumption expenditures. Income taxes, contributions to Social Security and Medicare, and savings are deducted; however, property taxes and sales taxes are not. Housing costs are not deducted as part of the adjustment because they are addressed separately as expenditures within the IMPLAN model.

**TABLE A-6
FOR SALE PROTOTYPES: SALES PRICE TO INCOME SUMMARY
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA**

Working Draft

		<u>Per Unit</u>	<u>Per Sq.Ft.</u>	<u>100 Unit Building Module (Per 100 Units)</u>
PROTOTYPE 1 : SINGLE FAMILY DETACHED				
Building Sq.Ft. (excludes garage)		2,500		250,000
Sales Price		\$950,000	\$380	\$95,000,000
Sales Price to Income Ratio		5.1		5.1
Gross Household Income		\$187,000		\$18,700,000
Income Available for Expenditure ¹	67% of gross	\$125,300		\$12,530,000
PROTOTYPE 2: TOWNHOME				
Building Sq.Ft. (excludes garage)		2,000		200,000
Sales Price		\$800,000	\$400	\$80,000,000
Sales Price to Income Ratio		4.9		4.9
Gross Household Income		\$162,000		\$16,200,000
Income Available for Expenditure ¹	68% of gross	\$110,200		\$11,020,000
PROTOTYPE 3: CONDOMINIUM				
Building Sq.Ft. (excludes garage)		1,000		100,000
Sales Price		\$590,000	\$590	\$59,000,000
Sales Price to Income Ratio		4.9		4.9
Gross Household Income		\$121,000		\$12,100,000
Income Available for Expenditure ¹	68% of gross	\$82,300		\$8,230,000

Notes:

(1) Represents net income available for expenditures after income tax, payroll taxes, and savings. See Table A-5 for derivation.

Source: See Table A-1 through A-3.

**TABLE A-7
NEW MARKET RATE RESIDENTIAL HOUSEHOLD SUMMARY
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA**

Working Draft

		<u>Per Unit</u>	<u>Per Sq.Ft.</u>	<u>100 Unit Building Module</u> <i>(Per 100 Units)</i>
PROTOTYPE 4: APARTMENTS				
Building Sq.Ft.		900		90,000
Rent				
Monthly		\$2,800	\$3.11 /SF	\$280,000
Monthly with Utilities		\$2,930		
Annual with Utilities		\$35,160		\$3,516,000
Rent to Income Ratio		3.3		3.3
Gross Household Income		\$117,000		\$11,700,000
Income Available for Expenditure ¹	67% of gross	\$78,000		\$7,840,000
Expenditures adjusted for vacancy ²	5% vacancy	\$74,000		\$7,400,000

Notes:

(1) Represents net income available for expenditures after income tax, payroll taxes, and savings. See Table A-5 for derivation.

(2) Allowance to account for standard operational vacancy.

Source: Table A-4

B. The IMPLAN Model

Consumer spending by residents of new housing units will create jobs, particularly in sectors such as restaurants, health care, and retail, which are closely connected to the expenditures of residents. The widely used economic analysis tool, IMPLAN (IMpact Analysis for PLANning), was used to quantify these new jobs by industry sector.

IMPLAN Model Description

The IMPLAN model is an economic analysis software package now commercially available through the IMPLAN Group, LLC. IMPLAN was originally developed by the U.S. Forest Service, the Federal Emergency Management Agency, and the U.S. Department of the Interior Bureau of Land Management and has been in use since 1979 and refined over time. It has become a widely used tool for analyzing economic impacts for a broad range of applications from major construction projects to natural resource programs.

IMPLAN is based on an input-output accounting of commodity flows within an economy from producers to intermediate and final consumers. The model establishes a matrix of supply chain relationships between industries and also between households and the producers of household goods and services. Assumptions about the portion of inputs or supplies for a given industry likely to be met by local suppliers, and the portion supplied from outside the region or study area are derived internally within the model using data on the industrial structure of the region.

The output or result of the model is generated by tracking changes in purchases for final use (final demand) as they filter through the supply chain. Industries that produce goods and services for final demand or consumption must purchase inputs from other producers, which in turn, purchase goods and services. The model tracks these relationships through the economy to the point where leakages from the region stop the cycle. This allows the user to identify how a change in demand for one industry will affect a list of over 500 other industry sectors. The projected response of an economy to a change in final demand can be viewed in terms of economic output, employment, or income.

Data sets are available for each county and state, so the model can be tailored to the specific economic conditions of the region being analyzed. This analysis utilizes the data set for Alameda County. As will be discussed, much of the employment impact is in local-serving sectors, such as retail, eating and drinking establishments, and medical services. A significant portion of these jobs will be located in Hayward or nearby. In addition, the employment impacts will extend throughout the county and beyond based on where jobs are located that serve Hayward residents. In fact, Hayward is part of the larger Bay Area economy and impacts will likewise extend throughout the region. However, consistent with the conservative approach taken in the nexus analysis, only the impacts that occur within Alameda County are included in the analysis.

Application of the IMPLAN Model to Estimate Job Growth

The IMPLAN model was applied to link income to household expenditures to job growth. Employment generated by the household income of residents is analyzed in modules of 100 residential units to simplify communication of the results and avoid awkward fractions. The IMPLAN model distributes spending among various types of goods and services (industry sectors) based on data from the Consumer Expenditure Survey and the Bureau of Economic Analysis Benchmark input-output study, to estimate employment generated.

Job creation, driven by increased demand for products and services, was projected for each of the industries that will serve the new households. The employment generated by this new household spending is summarized below.

Jobs Generated Per 100 Units				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Annual Household Expenditures (100 Units)	\$12,530,000	\$11,020,000	\$8,230,000	\$7,400,000
Total Jobs Generated (100 Units)	93.0	81.8	58.2	52.3

Table B-1 provides a detailed summary of employment generated by industry. The table shows industries sorted by projected employment. The Consumer Expenditure Survey published by the Bureau of Labor Statistics tracks expenditure patterns by income level. IMPLAN utilizes this data to reflect the pattern by income bracket. Estimated employment is shown for each IMPLAN industry sector representing 1% or more of total employment. The jobs that are generated are heavily retail jobs, jobs in restaurants and other eating establishments, and in services that are provided locally such as health care. The jobs counted in the IMPLAN model cover all jobs, full and part time, similar to the U.S. Census and all reporting agencies (unless otherwise indicated).

**TABLE B-1
IMPLAN MODEL OUTPUT
EMPLOYMENT GENERATED
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA**

Working Draft

<i>Per 100 Market Rate Units</i>	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>	
	Single Family Detached	Townhome	Condominium	Apartments	% of Jobs
Household Expenditures <i>(100 Market Rate Units)</i>	\$12,530,000	\$11,020,000	\$8,230,000	\$7,400,000	
Jobs Generated by Industry ¹					
Full-service restaurants	5.1	4.5	3.4	3.1	6%
Limited-service restaurants	4.2	3.7	2.8	2.5	5%
All other food and drinking places	<u>2.7</u>	<u>2.4</u>	<u>1.8</u>	<u>1.6</u>	<u>3%</u>
Subtotal Restaurant	12.0	10.6	8.0	7.2	13%
Retail - Food and beverage stores	2.9	2.6	1.8	1.6	3%
Retail - General merchandise stores	2.4	2.1	1.5	1.3	3%
Personal care services	1.7	1.5	1.2	1.1	2%
Retail - Health and personal care stores	1.0	0.9	0.6	0.6	1%
Retail - Miscellaneous store retailers	1.2	1.0	0.7	0.7	1%
Retail - Building material and garden	1.4	1.2	0.9	0.8	1%
Other personal services	1.3	1.2	0.8	0.7	1%
Retail - Clothing and accessories	0.9	0.8	0.6	0.5	1%
Retail - Motor vehicle and parts dealers	1.1	1.0	0.7	0.6	1%
Retail - Nonstore retailers	<u>1.0</u>	<u>0.9</u>	<u>0.6</u>	<u>0.6</u>	<u>1%</u>
Subtotal Retail and Service	15.0	13.2	9.4	8.4	16%
Hospitals	3.5	3.0	2.5	2.2	4%
Nursing and community care facilities	2.2	1.9	1.6	1.4	2%
Home health care services	1.2	1.1	0.9	0.8	1%
Offices of physicians	2.5	2.2	1.8	1.6	3%
Offices of dentists	1.2	1.0	0.9	0.8	1%
Offices of other health practitioners	<u>1.2</u>	<u>1.0</u>	<u>0.9</u>	<u>0.8</u>	<u>1%</u>
Subtotal Healthcare	11.7	10.3	8.5	7.6	13%
Other educational services	2.5	2.2	1.1	1.0	2%
Colleges, universities	1.1	1.0	0.5	0.4	1%
Elementary and secondary schools	<u>1.6</u>	<u>1.4</u>	<u>0.7</u>	<u>0.6</u>	<u>1%</u>
Subtotal Education	5.2	4.6	2.2	2.0	5%
Individual and family services	3.9	3.4	2.4	2.1	4%
Real estate	3.4	3.0	2.3	2.1	4%
Wholesale trade	3.0	2.6	1.9	1.7	3%
Services to private households	1.9	1.6	1.1	1.0	2%
Child day care services	1.8	1.6	0.8	0.7	2%
Other financial investment activities	1.7	1.5	1.0	0.9	2%
Automotive repair and maintenance	1.5	1.3	1.0	0.9	2%
Services to buildings	1.3	1.1	0.8	0.7	1%
Employment services	1.2	1.0	0.8	0.7	1%
Depository credit (banking)	1.0	0.9	0.6	0.5	1%
All Other	32.3	28.4	19.8	17.8	34%
Total Number of Jobs Generated	93.0	81.8	58.2	52.3	100%

¹ Estimated employment generated by expenditures of households within 100 prototypical market rate units for Industries representing more than 1% of total employment. Employment estimates are based on the IMPLAN Group's economic model, IMPLAN. Includes both full- and part-time jobs.

C. The KMA Jobs Housing Nexus Model

This section presents a summary of the analysis linking the employment growth associated with residential development, or the output of the IMPLAN model (see Section B), to the estimated number of lower income housing units required in each of four income categories, for each of the four residential prototype units.

Analysis Approach and Framework

The analysis approach is to examine the employment growth for industries related to consumer spending by residents in the 100-unit modules. Then, through a series of linkage steps, the number of employees is converted to households and housing units by affordability level. The findings are expressed in terms of numbers of affordable units per 100 market rate units. The analysis addresses the affordable unit demand associated with single family detached, townhomes, condos, and rental units.

The table below shows the 2017 Area Median Income (AMI) for Alameda County, as well as the income limits for the four categories that were evaluated: Extremely Low (30% of AMI), Very Low (50% of AMI), Low (80% of AMI), and Moderate (120% of AMI). The income definitions used in the analysis are those published by the California Department of Housing and Community Development (HCD).

2017 Income Limits for Alameda County	Household Size (Persons)					
	1	2	3	4	5	6 +
Extr. Low (Under 30% AMI)	\$21,950	\$25,050	\$28,200	\$31,300	\$33,850	\$36,350
Very Low (30%-50% AMI)	\$36,550	\$41,750	\$46,950	\$52,150	\$56,350	\$60,500
Low (50%-80% AMI)	\$56,300	\$64,350	\$72,400	\$80,400	\$86,850	\$93,300
Moderate (80%-120% AMI)	\$81,850	\$93,500	\$105,200	\$116,900	\$126,250	\$135,600
Median (100% of Median)	\$68,200	\$77,900	\$87,650	\$97,400	\$105,200	\$113,000

Source: California Department of Housing and Community Development.

The analysis is conducted using a model that KMA developed and has applied to similar evaluations in many other jurisdictions. The model inputs are all local data to the extent possible, and are fully documented in the following description.

Analysis Steps

The tables at the end of this section present a summary of the nexus analysis steps for the prototype units. Following is a description of each step of the analysis.

Step 1 – Estimate of Total New Employees

Table C-1 commences with the total number of employees associated with the new market rate units. The employees were estimated based on household expenditures of new residents using the IMPLAN model (see Section B).

Step 2 – Changing Industries Adjustment and Net New Jobs

The local economy, like that of the U.S. as a whole, is constantly evolving, with job losses in some sectors and job growth in others. Over the past decade, employment in manufacturing sectors of the local economy have declined along with governmental employment, farming, construction and financial activities employment. Jobs lost over the last decade in these declining sectors were replaced by job growth in other industry sectors.

Step 2 makes an adjustment to take ongoing changes in the economy into account recognizing that jobs added are not 100% net new in all cases. A 20% adjustment is utilized based on the long term shifts in employment that have occurred in some sectors of the local economy and the likelihood of continuing changes in the future. Long term declines in employment experienced in some sectors of the economy mean that some of the new jobs are being filled by workers that have been displaced from another industry and who are presumed to already have housing locally. Existing workers downsized from declining industries are assumed to be available to fill a portion of the new retail, restaurant, health care, and other jobs associated with services to residents.

The 20% downward adjustment used for purposes of the analysis was derived from California Employment Development Department data on employment by industry in the Oakland-Hayward-Berkeley and San Jose-Sunnyvale-Santa Clara Metropolitan Districts over the ten-year period from 2005 to 2015 and reflects the ratio between jobs lost in declining industries to jobs gained in growing and stable industries at 20%⁸. The 20% factor is applied as an adjustment in the analysis, effectively assuming one in every five new jobs is filled by a worker down-sized from a declining industry and who already lives locally.

The discount for changing industries is a conservative analysis assumption that may result in an understatement of impacts. The adjustment assumes workers down-sized from declining sectors of the local economy are available to fill a portion of the new service sector jobs documented in a residential nexus analysis. In reality, displaced workers from declining industry sectors of the economy are not always available to fill these new service jobs because they may retire or exit the workforce or may be competitive for and seek employment in one of the other growing sectors of the local economy that is not oriented towards services to local residents.

⁸ The 20% ratio is calculated as 55,000 jobs lost in declining sectors excluding defense divided by 268,000 jobs gained in growing and stable sectors = 20.5% (rounded to 20%).

Step 3 – Adjustment from Employees to Employee Households

This step (Table C-1) converts the number of employees to the number of employee households, recognizing that there is, on average, more than one worker per household, and thus the number of housing units in demand for new workers is reduced. The workers-per-worker-household ratio eliminates from the equation all non-working households, such as retired persons, students, and those on public assistance. The County average of 1.62 workers per worker household (from the U. S. Census Bureau 2011-2015 American Community Survey) is used for this step in the analysis. The number of jobs is divided by 1.62 to determine the number of worker households. This ratio is distinguished from the overall number of workers per household in that the denominator includes only households with at least one worker. If the average number of workers in all households were used, it would have produced a greater demand for housing units. The 1.62 ratio covers all workers, full and part time.

Step 4 – Occupational Distribution of Employees

The occupational breakdown of employees is the first step to arrive at income level. The output from the IMPLAN model provides the number of employees by industry sector, shown in Table B-1. The IMPLAN output is paired with data from the Department of Labor, Bureau of Labor Statistics May 2016 Occupational Employment Survey (OES) to estimate the occupational composition of employees for each industry sector.

Step 4a – Translation from IMPLAN Industry Codes to NAICS Industry Codes

The output of the IMPLAN model is jobs by industry sector using IMPLAN's own industry classification system, which consists of 536 industry sectors. The OES occupation data uses the North American Industry Classification System (NAICS). Estimates of jobs by IMPLAN sector must be translated into estimates by NAICS code for consistency with the OES data.

The NAICS system is organized into industry codes ranging from two- to six-digits. Two-digit codes are the broadest industry categories and six-digit codes are the most specific. Within a two-digit NAICS code, there may be several three-digit codes and within each three-digit code, several four-digit codes, etc. A chart published by IMPLAN relates each IMPLAN industry sector with one or more NAICS codes, with matching NAICS codes ranging from the two-digit level to the five-digit level. For purposes of the nexus analysis, all employment estimates must be aggregated to the four, or in some cases, five-digit NAICS code level to align with OES data which is organized by four and five-digit NAICS code. For some industry sectors, an allocation is necessary between more than one NAICS code. Where required, allocations are made proportionate to total employment at the national level from the OES.

The table below illustrates analysis Step 4a in which employment estimates by IMPLAN Code are translated to NAICS codes and then aggregated at the four and five digit NAICS code level.

The examples used are Child Day Care Centers and Hospitals. The process is applied to all the industry sectors.

Illustration of Model Step 4a.						
A. IMPLAN Output by IMPLAN Industry Sector		B. Link to Corresponding NAICS		C. Aggregate at 4-Digit NAICS Code Level		
<u>Jobs</u>	<u>IMPLAN Sector</u>	<u>Jobs</u>	<u>NAICS Code</u>	<u>Jobs</u>	<u>% Total</u>	<u>4-Digit NAICS</u>
1.6	487 - Child day care services	1.6	6244 Child day care services	1.6	100%	6244 Child day care services
3.0	482 - Hospitals	3.0	622 Hospitals	2.8	92%	6221 General Medical and Surgical Hospitals
				0.1	4%	6222 Psychiatric and Substance Abuse Hospitals
				0.1	4%	6223 Specialty (except Psychiatric and Substance Abuse) Hospitals

Source: KMA, Bureau of Labor Statistics May 2016 Occupational Employment Survey.

Step 4b – Apply OES Data to Estimate Occupational Distribution

Employment estimates by four and five-digit NAICS code from step 4a are paired with data on occupational composition within each industry from the OES to generate an estimate of employment by detailed occupational category. As shown on Table C-1, new jobs will be distributed across a variety of occupational categories. The three largest occupational categories are office and administrative support (16%), food preparation and serving (14%), and sales and related (13%). Step 4 of Table C-1 indicates the percentage and number of employee households by occupation associated with 100 market rate units.

Step 5 – Estimates of Employee Households Meeting the Lower Income Definitions

In this step, occupations are translated to employee incomes based on recent Alameda County wage and salary information from the California Employment Development Department (EDD). The wage and salary information summarized in Appendix B provided the income inputs to the model.

For each occupational category shown in Table C-1, the OES data provides a distribution of specific occupations within the category. For example, within the Food Preparation and Serving Category, there are Supervisors, Cooks, Bartenders, Waiters and Waitresses, Dishwashers, etc. In total there are over 100 detailed occupation categories included in the analysis as shown in the Appendix B tables. Each of these over 100 occupation categories has a different

distribution of wages which was obtained from EDD and is specific to workers in Alameda County as of 2017.

For each detailed occupational category, the model uses the distribution of wages to calculate the percent of worker households that would fall into each income category. The calculation is performed for each possible combination of household size and number of workers in the household. For households with more than one worker, individual *employee* income data was used to calculate the household income by assuming multiple earner households are, on average, formed of individuals with similar incomes.

At the end of Step 5, the nexus model has established a matrix indicating the percentages of households that would qualify in the affordable income tiers for every detailed occupational category and every potential combination of household size and number of workers in the household.

Step 6 – Distribution of Household Size and Number of Workers

In this step, we account for the distribution in household sizes and number of workers for Alameda County households using local data obtained from the U.S. Census. Census data is used to develop a set of percentage factors representing the distribution of household sizes and number of workers within working households. The percentage factors are specific to Alameda County and are derived from the 2011 – 2015 American Community Survey. Application of these percentage factors accounts for the following:

- Households have a range in size and a range in the number of workers.
- Large households generally have more workers than smaller households.

The result of Step 6 is a distribution of Alameda County working households by number of workers and household size.

Step 7 – Estimate of Number of Households that Meet Size and Income Criteria

Step 7 is the final step to calculate the number of worker households meeting the size and income criteria for the four affordability tiers. The calculation combines the matrix of results from Step 5 on percentage of worker households that would meet the income criteria at each potential household size / number of workers combination, with Step 6, the percentage of worker household having a given household size / number of workers combination. The result is the percent of households that fall into each affordability tier. The percentages are then multiplied by the number of households from Step 3 to arrive at number of households in each affordability tier.

Table C-2A shows the result after completing Steps 5, 6, and 7 for the Extremely Low Income Tier. Tables C-2B, C-2C, C-2D show results for the Very Low, Low, and Moderate Income tiers.

Summary Findings

Table C-3 indicates the results of the analysis for all the affordability tiers. The table presents the number of households generated in each affordability category and the total number over 120% of Area Median Income.

The findings in Table C-3 are presented below. The table shows the total demand for affordable housing units associated with 100 market rate units.

<i>New Worker Households per 100 Market Rate Units</i>				
	<i>Single Family</i>			
	<i>Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Extremely Low (0%-30% AMI)	5.1	4.5	3.2	2.9
Very Low (30%-50% AMI)	11.8	10.4	7.4	6.6
Low (50%-80% AMI)	12.2	10.8	7.6	6.8
Moderate (80%-120% AMI)	7.4	6.5	4.6	4.1
Total, Less than 120% AMI	36.6	32.2	22.8	20.5
Greater than 120% AMI	9.3	8.2	5.9	5.3
Total, New Households	45.9	40.3	28.7	25.8

Housing demand for new worker households earning less than 120% of AMI ranges from 36.6 units per 100 market rate units for single family detached units to 20.5 per 100 market rate units for the apartments. Housing demand is distributed across the lower income tiers with the greatest numbers of households in the Very Low and Low tiers. The finding that the jobs associated with consumer spending tend to be low-paying jobs where the workers will require housing affordable at the lower income levels is not surprising. As noted above, direct consumer spending results in employment that is concentrated in lower paid occupations including food preparation, administrative, and retail sales.

TABLE C-1
NET NEW HOUSEHOLDS AND OCCUPATION DISTRIBUTION
EMPLOYEE HOUSEHOLDS GENERATED
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA

Working Draft

	Prototype 1	Prototype 2	Prototype 3	Prototype 4
	Single Family Detached	Townhome	Condominium	Apartments
Step 1 - Employees ¹	93.0	81.8	58.2	52.3
Step 2 - Adjustment for Changing Industries (20%) (2)	74.4	65.4	46.5	41.9
Step 3 - Adjustment for Number of Households (1.62) (3)	45.9	40.3	28.7	25.8
Step 4 - Occupation Distribution ⁴				
Management Occupations	4.5%	4.5%	4.4%	4.4%
Business and Financial Operations	4.5%	4.5%	4.4%	4.4%
Computer and Mathematical	1.5%	1.5%	1.5%	1.5%
Architecture and Engineering	0.5%	0.5%	0.5%	0.5%
Life, Physical, and Social Science	0.3%	0.3%	0.3%	0.3%
Community and Social Services	2.0%	2.0%	2.0%	2.0%
Legal	0.6%	0.6%	0.6%	0.6%
Education, Training, and Library	4.4%	4.4%	3.2%	3.2%
Arts, Design, Entertainment, Sports, and Media	1.9%	1.9%	1.7%	1.7%
Healthcare Practitioners and Technical	6.9%	6.9%	7.7%	7.7%
Healthcare Support	4.2%	4.2%	4.7%	4.7%
Protective Service	1.4%	1.4%	1.3%	1.3%
Food Preparation and Serving Related	13.6%	13.6%	14.4%	14.4%
Building and Grounds Cleaning and Maint.	5.2%	5.2%	5.1%	5.1%
Personal Care and Service	7.0%	7.0%	6.9%	6.9%
Sales and Related	12.6%	12.6%	12.6%	12.6%
Office and Administrative Support	15.7%	15.7%	15.7%	15.7%
Farming, Fishing, and Forestry	0.1%	0.1%	0.1%	0.1%
Construction and Extraction	1.1%	1.1%	1.1%	1.1%
Installation, Maintenance, and Repair	3.8%	3.8%	3.9%	3.9%
Production	1.7%	1.7%	1.7%	1.7%
Transportation and Material Moving	<u>6.3%</u>	<u>6.3%</u>	<u>6.1%</u>	<u>6.1%</u>
Totals	100.0%	100.0%	100.0%	100.0%
Management Occupations	2.0	1.8	1.3	1.1
Business and Financial Operations	2.1	1.8	1.3	1.1
Computer and Mathematical	0.7	0.6	0.4	0.4
Architecture and Engineering	0.2	0.2	0.1	0.1
Life, Physical, and Social Science	0.1	0.1	0.1	0.1
Community and Social Services	0.9	0.8	0.6	0.5
Legal	0.3	0.3	0.2	0.2
Education, Training, and Library	2.0	1.8	0.9	0.8
Arts, Design, Entertainment, Sports, and Media	0.9	0.8	0.5	0.4
Healthcare Practitioners and Technical	3.2	2.8	2.2	2.0
Healthcare Support	1.9	1.7	1.3	1.2
Protective Service	0.6	0.6	0.4	0.3
Food Preparation and Serving Related	6.2	5.5	4.1	3.7
Building and Grounds Cleaning and Maint.	2.4	2.1	1.5	1.3
Personal Care and Service	3.2	2.8	2.0	1.8
Sales and Related	5.8	5.1	3.6	3.2
Office and Administrative Support	7.2	6.3	4.5	4.1
Farming, Fishing, and Forestry	0.0	0.0	0.0	0.0
Construction and Extraction	0.5	0.5	0.3	0.3
Installation, Maintenance, and Repair	1.7	1.5	1.1	1.0
Production	0.8	0.7	0.5	0.4
Transportation and Material Moving	<u>2.9</u>	<u>2.6</u>	<u>1.8</u>	<u>1.6</u>
Totals	45.9	40.3	28.7	25.8

Notes:

- ¹ Estimated employment generated by expenditures of households within 100 prototypical market rate units from Table B-1.
- ² The 20% adjustment is based upon job losses in declining sectors of the local economy over the past 10 years. "Downsized" workers from declining sectors are assumed to fill a portion of new jobs in sectors serving residents. 20% adjustment calculated as 54,700 jobs lost in declining sectors divided by 267,700 jobs gained in growing and stable sectors = 20%.
- ³ Adjustment from number of workers to households using county-wide average of 1.62 workers per worker household derived from the U.S. Census American Community Survey 2011 to 2015.
- ⁴ See Appendix B Tables 1 - 4 for additional information on Major Occupation Categories.

**TABLE C-2A
EXTREMELY LOW-INCOME (ELI) EMPLOYEE HOUSEHOLDS¹ GENERATED
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA**

Working Draft

Per 100 Market Rate Units

	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family			
	Detached	Townhome	Condominium	Apartments
Step 5 & 6 - Extremely Low Income Households (under 30% AMI) within Major Occupation Categories ²				
Management	0.00	0.00	0.00	0.00
Business and Financial Operations	-	-	-	-
Computer and Mathematical	-	-	-	-
Architecture and Engineering	-	-	-	-
Life, Physical and Social Science	-	-	-	-
Community and Social Services	-	-	-	-
Legal	-	-	-	-
Education Training and Library	0.11	0.10	0.05	0.05
Arts, Design, Entertainment, Sports, & Media	-	-	-	-
Healthcare Practitioners and Technical	0.00	0.00	0.00	0.00
Healthcare Support	0.17	0.15	0.11	0.10
Protective Service	-	-	-	-
Food Preparation and Serving Related	1.44	1.27	0.96	0.86
Building Grounds and Maintenance	0.26	0.22	0.16	0.14
Personal Care and Service	0.62	0.54	0.38	0.34
Sales and Related	1.08	0.95	0.67	0.60
Office and Admin	0.37	0.33	0.23	0.21
Farm, Fishing, and Forestry	-	-	-	-
Construction and Extraction	-	-	-	-
Installation Maintenance and Repair	0.03	0.02	0.02	0.02
Production	-	-	-	-
Transportation and Material Moving	0.31	0.27	0.19	0.17
ELI Households - Major Occupations	4.38	3.86	2.78	2.50
ELI Households¹ - all other occupations	0.70	0.62	0.43	0.39
Total ELI Households¹	5.09	4.47	3.21	2.88

(1) Includes households earning from zero through 30% of Alameda County Area Median Income.

(2) See Appendix B Tables 1 - 4 for additional information on Major Occupation Categories. Note that the model places individual employees into households. Many households have multiple income sources and therefore household income is higher than the wages shown in Appendix B Table 2 and 4. The distribution of the number of workers per worker household and the distribution of household size are based on American Community Survey data.

TABLE C-2B
VERY LOW-INCOME EMPLOYEE HOUSEHOLDS¹ GENERATED
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA

Working Draft

Per 100 Market Rate Units

	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family			
	Detached	Townhome	Condominium	Apartments
Step 5 & 6 - Very Low Income Households (30%-50% AMI) within Major Occupation Categories ²				
Management	0.03	0.03	0.02	0.02
Business and Financial Operations	0.02	0.01	0.01	0.01
Computer and Mathematical	-	-	-	-
Architecture and Engineering	-	-	-	-
Life, Physical and Social Science	-	-	-	-
Community and Social Services	-	-	-	-
Legal	-	-	-	-
Education Training and Library	0.48	0.43	0.22	0.20
Arts, Design, Entertainment, Sports, & Media	-	-	-	-
Healthcare Practitioners and Technical	0.05	0.05	0.04	0.03
Healthcare Support	0.63	0.55	0.44	0.39
Protective Service	-	-	-	-
Food Preparation and Serving Related	2.19	1.93	1.45	1.31
Building Grounds and Maintenance	0.80	0.70	0.49	0.44
Personal Care and Service	1.14	1.01	0.70	0.63
Sales and Related	1.88	1.66	1.17	1.06
Office and Admin	1.80	1.58	1.13	1.02
Farm, Fishing, and Forestry	-	-	-	-
Construction and Extraction	-	-	-	-
Installation Maintenance and Repair	0.29	0.25	0.18	0.16
Production	-	-	-	-
Transportation and Material Moving	0.88	0.78	0.54	0.48
Very Low Households - Major Occupations	10.20	8.97	6.38	5.74
Very Low Households ¹ - all other occupations	1.63	1.44	0.99	0.89
Total Very Low Inc. Households¹	11.83	10.41	7.37	6.63

(1) Includes households earning from 30% through 50% of Alameda County Area Median Income.

(2) See Appendix B Tables 1 - 4 for additional information on Major Occupation Categories. Note that the model places individual employees into households. Many households have multiple income sources and therefore household income is higher than the wages shown in Appendix B Table 2 and 4. The distribution of the number of workers per worker household and the distribution of household size are based on American Community Survey data.

TABLE C-2C
LOW-INCOME EMPLOYEE HOUSEHOLDS¹ GENERATED
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA

Working Draft

Per 100 Market Rate Units

	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family			
	Detached	Townhome	Condominium	Apartments
Step 5 & 6 - Low Income Households (50%-80% AMI) within Major Occupation Categories ²				
Management	0.11	0.10	0.07	0.07
Business and Financial Operations	0.22	0.20	0.14	0.12
Computer and Mathematical	-	-	-	-
Architecture and Engineering	-	-	-	-
Life, Physical and Social Science	-	-	-	-
Community and Social Services	-	-	-	-
Legal	-	-	-	-
Education Training and Library	0.58	0.51	0.26	0.24
Arts, Design, Entertainment, Sports, & Media	-	-	-	-
Healthcare Practitioners and Technical	0.17	0.15	0.11	0.10
Healthcare Support	0.59	0.52	0.41	0.37
Protective Service	-	-	-	-
Food Preparation and Serving Related	1.79	1.57	1.18	1.06
Building Grounds and Maintenance	0.75	0.66	0.46	0.41
Personal Care and Service	0.97	0.85	0.59	0.53
Sales and Related	1.65	1.45	1.03	0.93
Office and Admin	2.31	2.03	1.45	1.30
Farm, Fishing, and Forestry	-	-	-	-
Construction and Extraction	-	-	-	-
Installation Maintenance and Repair	0.47	0.42	0.30	0.27
Production	-	-	-	-
Transportation and Material Moving	0.92	0.81	0.56	0.50
Low Households - Major Occupations	10.54	9.27	6.58	5.91
Low Households ¹ - all other occupations	1.69	1.48	1.02	0.92
Total Low Inc. Households¹	12.23	10.76	7.60	6.83

(1) Includes households earning from 50% through 80% of Alameda County Area Median Income.

(2) See Appendix B Tables 1 - 4 for additional information on Major Occupation Categories. Note that the model places individual employees into households. Many households have multiple income sources and therefore household income is higher than the wages shown in Appendix B Table 2 and 4. The distribution of the number of workers per worker household and the distribution of household size are based on American Community Survey data.

**TABLE C-2D
 MODERATE-INCOME EMPLOYEE HOUSEHOLDS¹ GENERATED
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

Per 100 Market Rate Units

	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family Detached	Townhome	Condominium	Apartments

Step 5 & 6 - Moderate Income Households (80%-120% AMI) within Major Occupation Categories²

Management	0.28	0.25	0.18	0.16
Business and Financial Operations	0.41	0.36	0.25	0.23
Computer and Mathematical	-	-	-	-
Architecture and Engineering	-	-	-	-
Life, Physical and Social Science	-	-	-	-
Community and Social Services	-	-	-	-
Legal	-	-	-	-
Education Training and Library	0.46	0.40	0.21	0.19
Arts, Design, Entertainment, Sports, & Media	-	-	-	-
Healthcare Practitioners and Technical	0.46	0.40	0.31	0.28
Healthcare Support	0.36	0.32	0.25	0.23
Protective Service	-	-	-	-
Food Preparation and Serving Related	0.52	0.46	0.34	0.31
Building Grounds and Maintenance	0.43	0.38	0.26	0.24
Personal Care and Service	0.31	0.28	0.19	0.17
Sales and Related	0.68	0.60	0.42	0.38
Office and Admin	1.54	1.35	0.96	0.87
Farm, Fishing, and Forestry	-	-	-	-
Construction and Extraction	-	-	-	-
Installation Maintenance and Repair	0.45	0.39	0.29	0.26
Production	-	-	-	-
Transportation and Material Moving	0.50	0.44	0.30	0.27
Moderate Households - Major Occupations	6.40	5.62	3.97	3.57
Modereate Households¹ - all other occupations	1.02	0.90	0.62	0.55
Total Moderate Inc. Households¹	7.42	6.53	4.59	4.12

(1) Includes households earning from 80% through 120% of Alameda County Area Median Income.

(2) See Appendix B Tables 1 - 4 for additional information on Major Occupation Categories. Note that the model places individual employees into households. Many households have multiple income sources and therefore household income is higher than the wages shown in Appendix B Table 2 and 4. The distribution of the number of workers per worker household and the distribution of household size are based on American Community Survey data.

**TABLE C-3
 IMPACT ANALYSIS SUMMARY
 EMPLOYEE HOUSEHOLDS GENERATED
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

RESIDENTIAL UNIT DEMAND IMPACTS - PER 100 MARKET RATE UNITS

Number of New Households ¹	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family Detached	Townhome	Condominium	Apartments
Under 30% AMI	5.1	4.5	3.2	2.9
30% to 50% AMI	11.8	10.4	7.4	6.6
50% to 80% AMI	12.2	10.8	7.6	6.8
80% to 120% AMI	7.4	6.5	4.6	4.1
Subtotal through 120% AMI	36.6	32.2	22.8	20.5
Over 120% AMI	9.3	8.2	5.9	5.3
Total Employee Households	45.9	40.3	28.7	25.8

RESIDENTIAL UNIT DEMAND IMPACTS - PER EACH (1) MARKET RATE UNIT

Number of New Households ¹	<i>Prototype 1</i>	<i>Prototype 2</i>	<i>Prototype 3</i>	<i>Prototype 4</i>
	Single Family Detached	Townhome	Condominium	Apartments
Under 30% AMI	0.05	0.04	0.03	0.03
30% to 50% AMI	0.12	0.10	0.07	0.07
50% to 80% AMI	0.12	0.11	0.08	0.07
80% to 120% AMI	0.07	0.07	0.05	0.04
Subtotal through 120% AMI	0.37	0.32	0.23	0.20
Over 120% AMI	0.09	0.08	0.06	0.05
Total Employee Households	0.46	0.40	0.29	0.26

Notes

¹ Households of retail, education, healthcare and other workers that serve residents of new market rate units.

AMI = Area Median Income

D. Mitigation Costs

This section takes the conclusions of the previous section on the number of households in the lower income categories associated with the market rate units and identifies the total cost of assistance required to make housing affordable. This section puts a cost on the units for each income level to produce the “total nexus cost.” This is done for each of the prototype units.

A key component of the analysis is the size of the gap between what households can afford and the cost of producing new housing in Hayward, known as the ‘affordability gap.’ Affordability gaps are calculated for each of the four categories of Area Median Income: Extremely Low (under 30% of median), Very Low (30% to 50%), Low (50% to 80%), and Moderate (80% to 120%). The following summarizes the analysis of mitigation cost which is based on the affordability gap or net cost to deliver units that are affordable to worker households in the lower income tiers.

City Assisted Affordable Unit Prototypes

For estimating the affordability gap, there is a need to match a household of each income level with a unit type and size according to governmental regulations and City practices and policies. The analysis assumes that the City will assist Moderate Income households earning between 80% and 120% of Area Median Income with ownership units. The prototype affordable unit should reflect a modest unit consistent with what the City is likely to assist and appropriate for housing the average Moderate Income worker household. The typical project assumed for Hayward is a three-bedroom attached townhome unit for a four-person household.

For Low-, Very Low-, and Extremely Low-Income households, it is assumed that the City will assist in the development of multi-family rental units. The analysis uses a two-bedroom affordable rental unit for a three-person household.

Development Costs

KMA prepared an estimate of the total development cost for the two affordable housing prototypes described above (inclusive of land acquisition costs, direct construction costs, indirect costs of development, and financing) based on a review of development pro formas for recent affordable projects, recent residential land sale comps, and other construction data sources such as RS Means. It is estimated that the new affordable for-sale townhome unit would have a total development cost of approximately \$564,000 and the new affordable multi-family apartment unit would have a total development cost of approximately \$502,000. Development cost assumptions were designed to be reflective of averages for affordable projects in Hayward. Tables D-1 and D-3 provide further details.

Development Costs for Affordable Units		
<i>Income Group</i>	<i>Unit Tenure / Type</i>	<i>Development Cost</i>
Under 30% AMI	Rental	\$502,000
30% to 50% AMI	Rental	\$502,000
50% to 80% AMI	Rental	\$502,000
80% to 120% AMI	Ownership	\$564,000

The multi-family construction costs reflect the costs of building at higher densities, including structured parking garages as well as the inclusion of common building areas such as internal hallways, lobbies, community rooms, and a manager’s office, which townhome developments typically do not have. Prevailing wages are assumed in the construction of both affordable housing prototypes, as it is assumed that public funds will be used to subsidize the projects.

Development cost estimates were informed by KMA’s review of pro forma information for three recent affordable projects in Hayward as well as numerous other local multi-family affordable housing projects. Direct construction costs from these projects were adjusted to account for such factors as time, unit size, housing type, and project density to appropriately reflect the multi-family prototype assumed in the analysis. Other costs, such as land acquisition costs, are more site and area specific than direct construction costs and therefore the inputs for those costs were derived from other sources.

Unit Values

For affordable ownership units, the unit value was based on an estimate of the restricted affordable purchase price for a qualifying Moderate Income household. For a 3-bedroom unit, KMA calculated the affordable sales price for the matching 4-person household at \$391,600. Details of the calculation are presented in Table D-3.

For the Extremely Low, Very Low, and Low-Income rental units, unit values are based upon the funding sources assumed to be available for the project. The funding sources include permanent debt financing supported by the project’s operating income, a deferred developer fee, and equity generated by the sale of Low Income Housing Tax Credits (LIHTC), a common source of financing for affordable apartment projects. Affordable housing subsidies from other sources such as CDBG, HOME, AHP, Section 8, and various Federal and State funding programs are limited and difficult to obtain and therefore are not assumed in this analysis as available to offset the cost of mitigating the affordable housing impacts of new development.

On this basis, KMA estimated the unit value (total permanent funding sources) of the Extremely Low-Income rental units at \$223,800, the Very Low-Income units at \$295,800, and the Low-income units at \$331,800. Details for these calculations are presented in Table D-1.

Unit Values for Affordable Units			
Income Group	Unit Tenure / Type	Household Size	Unit Values / Affordable Sales Price
Under 30% AMI	Rental	3 persons	\$223,800
30% to 50% AMI	Rental	3 persons	\$295,800
50% to 80% AMI	Rental	3 persons	\$331,800
80% to 120% AMI	Ownership	4 persons	\$391,600

Affordability Gap

The affordability gap is the difference between the cost of developing the affordable units and the unit value based on the restricted affordable rent or sales price.

The resulting affordability gaps are as follows:

Affordability Gap Calculation			
	Unit Value / Affordable Sales Price	Development Cost	Affordability Gap
<u>Affordable Rental Units</u>			
Extremely Low (Under 30% AMI)	\$223,800	\$502,000	\$278,200
Very Low (30% to 50% AMI)	\$295,800	\$502,000	\$206,200
Low (50% to 80% AMI)	\$331,800	\$502,000	\$170,200
<u>Affordable Ownership Units</u>			
Moderate (80% to 120% AMI)	\$391,600	\$564,000	\$172,400

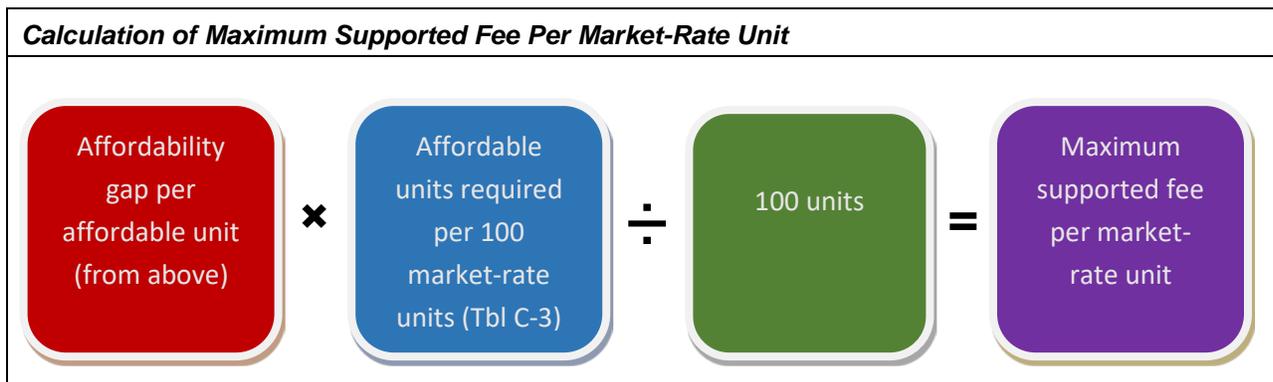
AMI = Area Median Income

Tables D-1 through D-3 present the detailed affordability gap calculations.

Total Nexus Cost / Maximum Fee Levels

The last step in the linkage fee analysis marries the findings on the numbers of households in each of the lower income ranges associated with the four prototypes to the affordability gaps, or the costs of delivering housing to them in Hayward.

Table D-4 summarizes the analysis. The Affordability Gaps are drawn from the prior discussion. The “Total Nexus Cost per Market Rate Unit” shows the results of the following calculation:



The total nexus costs or maximum supported fee per market rate unit for each of the prototypes are as follows:

Total Nexus Cost Per Market Rate Unit, City of Hayward				
<i>Income Category</i>	<i>Single Family Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
Extremely Low (0%-30% AMI)	\$14,200	\$12,400	\$8,900	\$8,000
Very Low (30%-50% AMI)	\$24,400	\$21,500	\$15,200	\$13,700
Low (50%-80% AMI)	\$20,800	\$18,300	\$12,900	\$11,600
Moderate (80%-120% AMI)	\$12,800	\$11,200	\$7,900	\$7,100
Total Supported Fee/ Nexus Costs	\$72,200	\$63,400	\$44,900	\$40,400

The Total Nexus Costs, or Mitigation Costs, indicated above, may also be expressed on a per square foot level. The square foot area of the prototype unit used throughout the analysis becomes the basis for the calculation (the per unit findings from above are divided by unit size to get the per square foot findings). The results per square foot of building area (based on net rentable or sellable square feet excluding parking areas, external corridors and other common areas) are as follows:

Total Nexus Cost Per Sq. Ft., City of Hayward				
	<i>Single Family Detached</i>	<i>Townhome</i>	<i>Condominium</i>	<i>Apartments</i>
<i>Unit Size (Sq Ft)</i>	<i>2,500 SF</i>	<i>2,000 SF</i>	<i>1,000 SF</i>	<i>900 SF</i>
Extremely Low (0%-30% AMI)	\$5.70	\$6.20	\$8.90	\$8.90
Very Low (30%-50% AMI)	\$9.80	\$10.80	\$15.20	\$15.20
Low (50%-80% AMI)	\$8.30	\$9.20	\$12.90	\$12.90
Moderate (80%-120% AMI)	\$5.10	\$5.60	\$7.90	\$7.90
Total Nexus Costs	\$28.90	\$31.80	\$44.90	\$44.90

These costs express the total linkage or nexus costs for the four prototype developments in the City of Hayward. These total nexus costs represent the ceiling for any requirement placed on market rate development. **The totals are not recommended levels for fees; they represent only the maximums established by the analysis, below which fees may be set.**

**TABLE D-1
AFFORDABILITY GAPS FOR EXTREMELY LOW, VERY LOW, AND LOW INCOME
CITY OF HAYWARD**

	Extremely Low	Very Low	Low Income
I. Affordable Prototype			
Tenure	Rental		
Average Unit Size	800 square feet		
II. Development Costs ^[1]			
	Per Unit	Per Unit	Per Unit
Land Acquisition	\$40,000	\$40,000	\$40,000
Directs	\$328,000	\$328,000	\$328,000
Indirects	\$115,000	\$115,000	\$115,000
Financing	\$19,000	\$19,000	\$19,000
Total Development Costs	\$502,000	\$502,000	\$502,000
III. Supported Financing			
	Per Unit	Per Unit	Per Unit
<u>Affordable Rents</u>			
Average Number of Bedrooms	2 Bedrooms	2 Bedrooms	2 Bedrooms
Maximum TCAC Rent ^[2]	\$704	\$1,173	\$1,408
(Less) Utility Allowance ^[3]	(\$92)	(\$92)	(\$92)
Maximum Monthly Rent	\$612	\$1,081	\$1,316
<u>Net Operating Income (NOI)</u>			
Gross Potential Income			
Monthly	\$612	\$1,081	\$1,316
Annual	\$7,344	\$12,972	\$15,792
Other Income	\$250	\$250	\$250
(Less) Vacancy 5.0%	(\$380)	(\$661)	(\$802)
Effective Gross Income (EGI)	\$7,214	\$12,561	\$15,240
(Less) Operating Expenses	(\$6,000)	(\$6,000)	(\$6,000)
(Less) Property Taxes ^[4]	\$0	\$0	\$0
Net Operating Income (NOI)	\$1,214	\$6,561	\$9,240
<u>Permanent Financing</u>			
Permanent Loan 5.0%	\$16,000	\$88,000	\$124,000
Deferred Developer Fee	\$7,000	\$7,000	\$7,000
4% Tax Credit Equity	\$200,800	\$200,800	\$200,800
Total Sources	\$223,800	\$295,800	\$331,800
IV. Affordability Gap			
	Per Unit	Per Unit	Per Unit
Supported Permanent Financing	\$223,800	\$295,800	\$331,800
(Less) Total Development Costs	(\$502,000)	(\$502,000)	(\$502,000)
Affordability Gap	(\$278,200)	(\$206,200)	(\$170,200)

^[1] Development costs estimated by KMA based on affordable project pro formas in Alameda County (includes prevailing wages) and residential land sale comps.

^[2] Maximum rents per Tax Credit Allocation Committee (TCAC) for projects utilizing Low Income Housing Tax Credits.

^[3] Utility allowances from Alameda County Housing Authority (2017).

^[4] Assumes tax exemption for non-profit general partner.

**TABLE D-2
AFFORDABILITY GAP FOR MODERATE INCOME
CITY OF HAYWARD**

I. Affordable Prototype

Tenure	For-Sale
Density	20 du/acre
Unit Size	1,600 SF
Bedrooms	3-Bedrooms
Construction Type	Townhomes

II. Development Costs Per Unit

Land Acquisition	\$70,000
Directs	\$368,000 ^[1]
Indirects	\$110,000
Financing	\$16,000
Total Costs	<u>\$564,000</u>

III. Affordable Sales Price Per Unit

Household Size	4 person HH
110% of Median Income ^[2]	\$107,140
Maximum Affordable Sales Price	\$391,600 ^[3]

IV. Affordability Gap Per Unit

Affordable Sales Price	\$391,600
(Less) Development Costs	<u>(\$564,000)</u>
Affordability Gap - Moderate Income	(\$172,400)

^[1] Construction costs include prevailing wages.

^[2] Per California Health and Safety Code Section 50052.5, the affordable sale price for a Moderate Income household is to be based on 110% of AMI, whereas qualifying income can be up to 120% of AMI.

^[3] See Table D-3 for Moderate Income home price estimate.

**TABLE D-3
MODERATE INCOME HOME PRICE ESTIMATES
CITY OF HAYWARD**

Unit Size	3-Bedroom
Household Size	<u>4-person HH</u>
Median Income - Alameda County 2017	\$97,400
Annual Income @ 110%	\$107,140
% Available for Housing Costs	35%
Income Available for Housing Costs	\$37,499
(Less) Property Taxes	(\$5,208)
(Less) HOA	(\$2,400)
(Less) Utilities	(\$1,536)
(Less) Insurance	(\$800)
(Less) Mortgage Insurance	(\$3,213)
Income Available for Mortgage	<u>\$24,342</u>
Mortgage Amount	\$377,900
Down Payment (homebuyer cash)	\$13,700
Affordable Home Price	<u>\$391,600</u>
Key Assumptions	
- Mortgage Interest Rate	5.0%
- Down Payment	3.5%
- Property Taxes (% of sales price)	1.33%
- HOA (per month)	\$200 ⁽¹⁾
- Utilities (per month)	\$128 ⁽²⁾
- Mortgage Insurance (% of loan amount)	0.85%

⁽¹⁾ HOA dues estimated based on new development projects currently on the market in Hayward.

⁽²⁾ Utilities estimated based on utility allowance schedule from the Housing Authority of Alameda County.

**TABLE D-4
SUPPORTED FEE / NEXUS SUMMARY
RESIDENTIAL NEXUS ANALYSIS
HAYWARD, CA**

Working Draft

TOTAL NEXUS COST PER MARKET RATE UNIT

	Affordability Gap Per Unit	Nexus Cost Per Market Rate Unit ³			
		Prototype 1	Prototype 2	Prototype 3	Prototype 4
		Single Family Detached	Townhome	Condominium	Apartments
Household Income Level					
Under 30% AMI	\$278,200 ¹	\$14,200	\$12,400	\$8,900	\$8,000
30% to 50% AMI	\$206,200 ¹	\$24,400	\$21,500	\$15,200	\$13,700
50% to 80% AMI	\$170,200 ¹	\$20,800	\$18,300	\$12,900	\$11,600
80% to 120% AMI	\$172,400 ²	\$12,800	\$11,200	\$7,900	\$7,100
Total Supported Fee Per Unit		\$72,200	\$63,400	\$44,900	\$40,400

TOTAL NEXUS COST PER SQUARE FOOT⁴

	Avg. Unit Size (SF)	Nexus Cost Per Square Foot ⁴			
		Prototype 1	Prototype 2	Prototype 3	Prototype 4
		Single Family Detached	Townhome	Condominium	Apartments
Household Income Level					
Under 30% AMI	2,500 SF	\$5.70	\$6.20	\$8.90	\$8.90
30% to 50% AMI	2,000 SF	\$9.80	\$10.80	\$15.20	\$15.20
50% to 80% AMI	1,000 SF	\$8.30	\$9.20	\$12.90	\$12.90
80% to 120% AMI	900 SF	\$5.10	\$5.60	\$7.90	\$7.90
Total Supported Fee Per Sq.Ft.		\$28.90	\$31.80	\$44.90	\$44.90

Notes:

¹ Assumes affordable rental units. Affordability gaps represent the remaining affordability gap after tax credit financing. See affordability gap section for details.

² Affordability gap for moderate income households based on ownership unit.

³ Nexus cost per unit calculated by multiplying the affordable unit demand per market rate units from Table C-3 by the affordability gap.

⁴ Nexus cost per square foot computed by dividing the nexus cost per unit from above by the average unit size.

III. ADDENDUM: ADDITIONAL BACKGROUND AND NOTES ON SPECIFIC ASSUMPTIONS

No Excess Supply of Affordable Housing

An assumption of this residential nexus analysis is that there is no excess supply of affordable housing available to absorb or offset new demand; therefore, new affordable units are needed to mitigate the new affordable housing demand generated by development of new market rate residential units. Based on a review of the current Census information for Hayward, conditions are consistent with this underlying assumption. According to the Census (2011 to 2015 ACS), approximately 48% of all households in the City were paying thirty percent or more of their income on housing. In addition, housing vacancy is minimal.

Geographic Area of Impact

The analysis quantifies impacts occurring within Alameda County. While many of the impacts will occur within the City, some impacts will be experienced elsewhere in Alameda County and beyond. The IMPLAN model computes the jobs generated within the county and sorts out those that occur beyond the county boundaries. The KMA Jobs Housing Nexus Model analyzes the income structure of jobs and their worker households, without assumptions as to where the worker households live.

In summary, the nexus analysis quantifies all the job impacts occurring within the county and related worker households. Job impacts, like most types of impacts, occur irrespective of political boundaries. And like other types of impact analyses, such as traffic, impacts beyond city boundaries may be mitigated by the city.

For clarification, counting all impacts associated with new housing units does not result in double counting, even if all jurisdictions were to adopt similar programs. The impact of a new housing unit is only counted once, in the jurisdiction in which it occurs. Obviously, within a metropolitan region such as the Bay Area, there is much commuting among jurisdictions, and cities house each other's workers in a very complex web of relationships. The important point is that impacts of residential development are only counted once.

Affordability Gap

The use of the affordability gap for establishing a maximum fee supported from the nexus analysis is grounded in the concept that a jurisdiction will be responsible for delivering affordable units to mitigate impacts. The nexus analysis has established that units will be needed at one or more different affordability levels and the type of unit to be delivered depends on the income/affordability level. In Hayward, the City is anticipated to assist in the development of rental units for households with incomes up to 80% of AMI and ownership units for moderate income households with incomes from 80% to 120% of AMI.

The units assisted by the public sector for affordable households are usually small in square foot area (for the number of bedrooms) and modest in finishes and amenities. As a result, in some communities these units are similar in physical configuration to what the market is delivering at market rate; in other communities (particularly very high income communities), they may be smaller and more modest than what the market is delivering. Parking, for example, is usually the minimum permitted by the code. Where there is a wide range in land cost per acre or per unit, it may be assumed that affordable units are built on land parcels in the lower portion of the cost range. KMA tries to develop a total development cost summary that represents the lower half of the average range, but not so low as to be unrealistic.

Excess Capacity of Labor Force

In the context of economic downturns such as the last recession, the question is sometimes raised as to whether there is excess capacity in the labor force to the extent that consumption impacts generated by new households will be in part, absorbed by existing jobs and workers, thus resulting in fewer net new jobs. In response, an impact analysis of this nature is a one-time impact requirement to address impacts generated over the life of the project. Recessions are temporary conditions; a healthy economy will return and the impacts will be experienced. The economic cycle also self-adjusts. Development of new residential units is likely to be reduced until conditions improve or there is confidence that improved conditions are imminent. When this occurs, the improved economic condition of the households in the local area will absorb the current underutilized capacity of existing workers, employed and unemployed. By the time new units become occupied, economic conditions will have likely improved.

The Burden of Paying for Affordable Housing

Hayward's inclusionary housing program does not place all burden for the creation of affordable housing on new residential construction. The burden of affordable housing is also borne by many sectors of the economy and society. A most important source of funding for affordable housing development comes from the federal government in the form of tax credits (which result in reduced income tax payment by tax credit investors in exchange for equity funding). Additionally, there are other federal grant and loan programs administered by the Department of Housing and Urban Development and other federal agencies. The State of California also plays a major role with a number of special financing and funding programs. Much of the state money is funded by voter approved bond measures paid for by all Californians.

Local governments play a large role in affordable housing. In addition, private sector lenders play an important role, some voluntarily and others less so with the requirements of the Community Reinvestment Act. Then there is the non-profit sector, both sponsors and developers that build much of the affordable housing.

In summary, all levels of government and many private parties, for profit and non-profit contribute to supplying affordable housing. Residential developers are not being asked to bear the burden alone any more than they are assumed to be the only source of demand or cause for needing affordable housing in our communities. Based on past experience, affordable housing requirements placed on residential development will satisfy only a small percentage of the affordable housing needs in the City of Hayward.

APPENDIX A: RESIDENTIAL MARKET SURVEY

I. INTRODUCTION

One of the underlying components of the Residential Nexus Study is the identification of residential building prototypes that are expected to be developed in Hayward both today and in the future, and what the market prices and rents for those prototypes will be. These market prices and rents are then used to estimate the incomes of the new households that will live in the new units and quantify the number and types of jobs created as a result of their demand for goods and services. In this Appendix A, KMA describes the residential building prototypes utilized for the analysis, summarizes the residential market data researched, and describes the market price point conclusions drawn therefrom.

II. RESIDENTIAL PROTOTYPES

KMA worked with City staff to select representative development prototypes envisioned to be developed in Hayward in the future. The following summarizes the basic characteristics of these prototypes.

Hayward Residential Prototypes				
	<i>Typical Density</i>	<i>Average Unit Size</i>	<i>Average Price/Rent</i>	<i>Price/Rent \$/SF</i>
For-Sale Prototypes				
1) Single Family Detached	10 du/acre	2,500 sq. ft.	\$950,000	\$380/SF
2) Townhomes/Attached	20 du/acre	2,000 sq. ft.	\$800,000	\$400/SF
3) Condominiums (Stacked Flats)	50 du/acre	1,000 sq. ft.	\$590,000	\$590/SF
Rental Prototype				
4) Apartments	60 du/acre	900 sq. ft.	\$2,800	\$3.11/SF

Source: *Prototype densities and unit sizes by KMA in collaboration with City of Hayward; prices and sale prices estimated by KMA.*

The prototypes were developed largely based upon the characteristics of residential development projects recently built and in the development pipeline in Hayward. The following table lists the development pipeline projects in Hayward, which is illustrative of the range of housing types and the geographic dispersion of projects throughout the City.

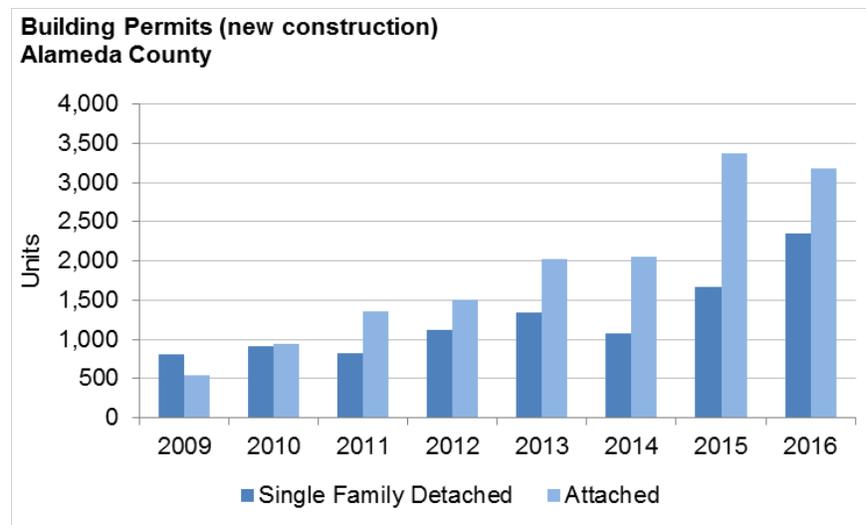
Development Pipeline Projects, City of Hayward		
<i>Project</i>	<i>Address</i>	<i>Unit Type</i>
Maple & Main	22455 Main St	High Density Apartments (mixed use)
Lincoln Landing	22301 Foothill Blvd	High Density Apartments (mixed use)
Campways	28168 Mission Blvd	Apartments
Mission Seniors	29312 Mission Blvd	High Density Condos & Single Family
Matyas Village	22634 Second St	High Density Condos
Mission Village	411 Industrial Pkwy	Townhomes
Haymont Village	Mission & Sorenson (NWC)	Townhomes & Apartments
Mission Crossings	25501 Mission Blvd	Townhomes & Hotel
Ward Creek Cottages	Walpert & 2 nd (SWC)	Single Family Detached
Hesperian	2475 Hesperian Blvd	Single Family Detached

Source: *City of Hayward*

III. MARKET SURVEY & PRICING ESTIMATES

A. Residential Building Activity

The City of Hayward and Alameda County as a whole have experienced significant new residential development in the years following the recession. New development has taken the form of both low-density single family detached homes, which is characteristic of the historic development patterns in suburban portions of the county, as well as higher density attached homes, condominiums, and multi-family apartments. Only in recent years have real estate market conditions supported the development of higher density multi-family projects in Hayward and other suburban East Bay communities. As shown in the table above, there are higher density multi-family projects in Hayward’s development pipeline today.

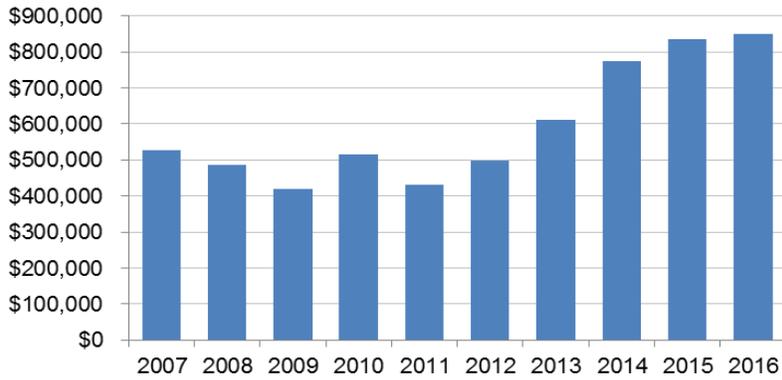


Source: Real Estate Research Council

Overview of For-Sale Market

Home prices in Hayward and throughout Alameda County have risen significantly in the last several years due to the strength of the regional economy, low mortgage interest rates, and limited housing market supply. New home prices now well exceed pre-recession levels, even on an inflation adjusted basis, although the pace of price escalation has moderated in more recent years.

**New Home Prices
Alameda County**

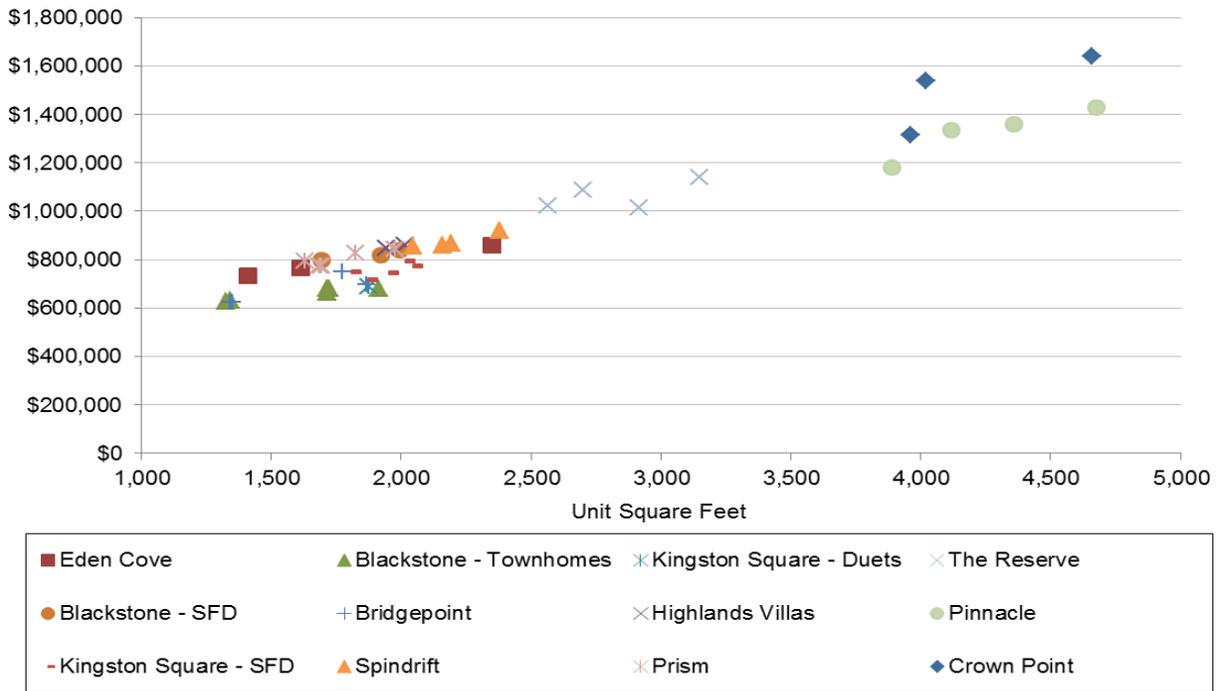


Source: Dataquick

B. Recent Home Prices of Newly Built Units

At the time of the market survey in mid-July 2017, 12 new for-sale housing developments were being tracked by market data firm Real Estate Economics. Most of the new homes on the market were attached townhome-type units and single family detached homes up to 2,500 square feet. There were two developments in the Hayward hills with large homes in the 4,000 to 5,000 square feet range. There were no stacked flat condominiums on the market.

**Sale Prices of New Home Developments
City of Hayward**



Source: Real Estate Economics (July 2017)

C. For-Sale Prototype Price Estimates

The sale prices of new homes on the market, combined with an analysis of resales of existing homes, formed the basis for KMA’s price estimates. It is noted that there were no comparable units on the market for the stacked flat condominium prototype. Therefore, pricing for this prototype was estimated based upon smaller townhome-type units on the market and adjusted for unit size, density, and location.

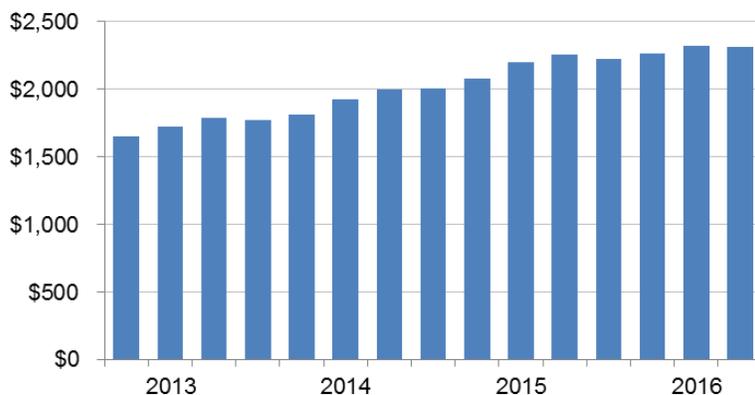
The table below summarizes KMA’s conclusions regarding for-sale prototype unit sizes and pricing.

For-Sale Prototype Price Estimates			
	Unit Size	Price	\$/SF
Single Family Detached	2,500 sq. ft.	\$950,000	\$380
Townhomes/Attached	2,000 sq. ft.	\$800,000	\$400
Condominiums (Stacked Flats)	1,000 sq. ft.	\$590,000	\$590

D. Rental Housing Market

In recent years, apartment market conditions have improved throughout Alameda County as exhibited by rising rents and occupancy rates. In addition, new development projects have been built and are in the development pipeline throughout the county, particularly near public transit and in mixed use downtown settings where access to job centers and neighborhood services is convenient. For example, new apartment developments were recently completed near the South Hayward and Union City BART Stations (The Cadence and Union Flats). Four market rate rental developments are current in the City of Hayward’s development pipeline including Lincoln Landing, Maple and Main, Campways and Haymont Village (also includes townhomes).

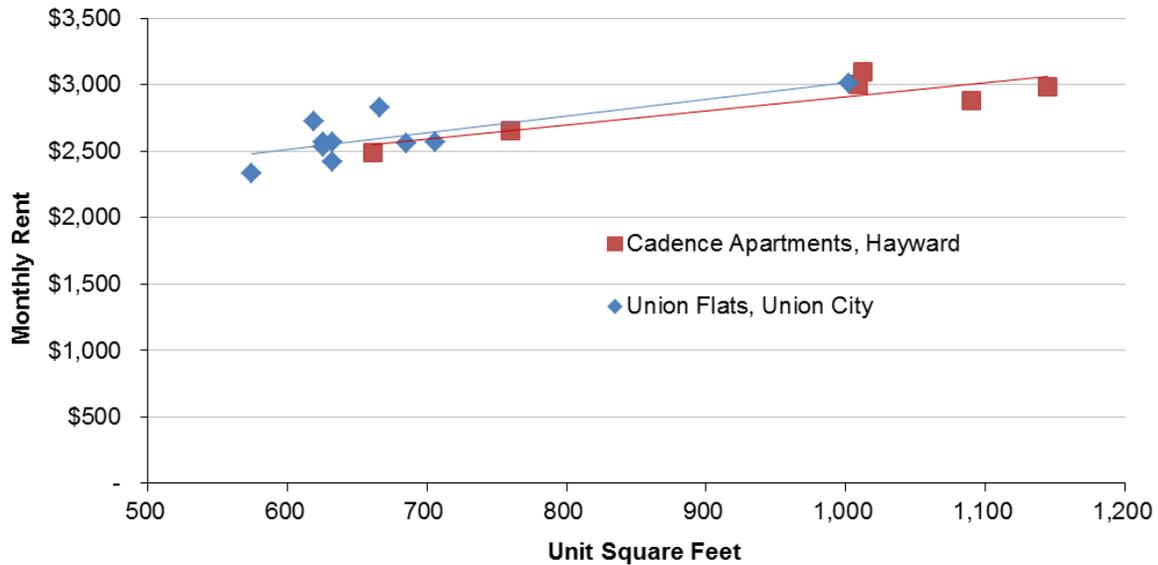
**Average Apartment Rents (Quarterly)
Alameda County**



Source: RealAnswers

Current market rents for the Cadence and Union Flats projects are shown in the chart below. Based on these rent comps, KMA estimates the average monthly rent for the apartment prototype (new construction) would be in the range of \$2,800 for the 900 square foot apartment prototype.

**Apartment Rent Comparables - Newly Built Properties
Hayward, Union City**



Source: On-line listings (July 2017)
Further survey detail is provided in Appendix Table 2.

Supporting data on new home sales, apartment rents, and pipeline projects in Hayward is provided in Appendix A Tables 1 to 3.

**Appendix Table A-1
Sales Prices for New Homes in Hayward
City of Hayward**

DRAFT

Project	Plan Type	Units Released	No. of Beds	Living Area	Asking Sales Price	\$/SF	HOA
New Single Family Homes							
Highlands Villas - SFD	Plan 1	9	3	1,942	\$848,000	\$437	\$230
Grupe Homes	Plan 2	5	4	2,014	\$859,000	\$427	
Spindrift - SFD	Plan 1	12	3	2,046	\$855,990	\$418	\$35
Pulte Homes	Plan 2	11	4	2,160	\$857,990	\$397	
	Plan 3	13	4	2,193	\$867,990	\$396	
	Plan 4	11	4	2,377	\$919,990	\$387	
The Reserve	Plan 1	6	4	2,566	\$1,019,880	\$397	\$175
DR Horton	Plan 2	4	3	2,701	\$1,085,880	\$402	
	Plan 3	6	5	2,915	\$1,013,880	\$348	
	Plan 4	3	4	3,150	\$1,138,880	\$362	
Prism	Plan 1	3	3	1,632	\$794,965	\$487	\$127
Meritage Homes	Plan 2	2	4	1,684	\$774,965	\$460	
	Plan 3	1	4	1,693	\$773,950	\$457	
	Plan 4	2	4	1,824	\$824,950	\$452	
	Plan 5	1	4	1,978	\$840,950	\$425	
	Plan 6	1	4	1,979	\$840,950	\$425	
Pinnacle	Plan 1	9	5	3,891	\$1,179,950	\$303	\$230
Meritage Homes	Plan 2	23	4	4,117	\$1,334,950	\$324	
	Plan 3	28	5	4,358	\$1,359,950	\$312	
	Plan 4	19	4	4,674	\$1,429,950	\$306	
Crown Point	Plan 1	19	4	3,961	\$1,315,000	\$332	\$230
Brookfield	Plan 2	16	5	4,021	\$1,540,000	\$383	
	Plan 3	17	5	4,657	\$1,640,000	\$352	
Blackstone	Plan 1	18	3	1,692	\$796,900	\$471	\$240
Tri Pointe Homes	Plan 2	14	3	1,922	\$819,900	\$427	
	Plan 3	12	4	1,995	\$837,900	\$420	
Kingston Square	Plan 1	6	4	1,814	\$751,000	\$414	\$188
Meritage Homes	Plan 2	3	4	1,876	\$717,000	\$382	
	Plan 3	4	3	1,958	\$747,000	\$382	
	Plan 4	7	4	2,021	\$792,000	\$392	
	Plan 5	5	4	2,047	\$772,000	\$377	
Eden Cove	Plan 1	7	3	1,410	\$733,686	\$520	\$238
KB Home	Plan 2	3	3	1,613	\$765,993	\$475	
	Plan 3	5	3	2,350	\$860,400	\$366	
New Attached Townhomes and Duets							
Blackstone - Townhomes	Plan 1	2	2	1,344	\$629,370	\$468	\$240
TRI Ponte	Plan 2	2	3	1,326	\$628,210	\$474	
	Plan 3	17	3	1,723	\$679,385	\$394	
	Plan 4	12	3	1,716	\$665,900	\$388	
	Plan 5	10	3	1,716	\$681,900	\$397	
	Plan 6	13	3	1,915	\$681,900	\$356	
Kingston Square - Duets	Plan 1	10	4	1,876	\$689,450	\$368	\$188
Meritage Homes							
Bridgepoint - Duets	Plan 1	1	2	1,341	\$625,000	\$466	\$157
Nuvera Homes	Plan 2	1	2	1,350	\$625,000	\$463	
	Plan 3	2	3	1,774	\$749,000	\$422	
	Plan 4	1	4	1,866	\$695,000	\$372	

Source: Real Estate Economics (July 2017)

**Appendix Table A-2
Apartment Rental Comps
City of Hayward**

DRAFT

	Sq. Ft.	Monthly Rent		\$/SF		Notes
		Low	High	Low	High	
Cadence Apartments, Hayward						
1 Bd / 1 Ba	661	\$2,375	\$2,605	\$3.59	\$3.94	28850 Dixon Street, Hayward
1 Bd / 1 Ba	760	\$2,615	\$2,690	\$3.44	\$3.54	(S. Hayward BART)
2 Bd / 2 Ba	1,009	\$2,900	\$3,100	\$2.87	\$3.07	2016
2 Bd / 2 Ba	1,012	\$3,100	\$3,100	\$3.06	\$3.06	206 Units
2 Bd / 2 Ba	1,090	\$2,880	\$2,880	\$2.64	\$2.64	
2 Bd / 2 Ba	1,145	\$2,985	\$2,985	\$2.61	\$2.61	
Union Flats, Union City						
Studio	574	\$2,330	\$2,330	\$4.06	\$4.06	34588 11th Street, Union City
Studio	632	\$2,390	\$2,445	\$3.78	\$3.87	(Union City BART)
Studio	632	\$2,570	\$2,570	\$4.07	\$4.07	2017
1 Bd / 1 Ba	619	\$2,720	\$2,720	\$4.39	\$4.39	243 Units
1 Bd / 1 Ba	626	\$2,530	\$2,605	\$4.04	\$4.16	
1 Bd / 1 Ba	626	\$2,530	\$2,530	\$4.04	\$4.04	
1 Bd / 1 Ba	666	\$2,825	\$2,825	\$4.24	\$4.24	
1 Bd / 1 Ba	685	\$2,555	\$2,555	\$3.73	\$3.73	
1 Bd / 1 Ba	706	\$2,570	\$2,570	\$3.64	\$3.64	
2 Bd / 2 Ba	1002	\$3,010	\$3,010	\$3.00	\$3.00	

**Appendix Table A-3
Pipeline Residential Projects
City of Hayward**

DRAFT

Project Info	Plan Type	# of Beds	# of units	Living Area
<u>Mission Village</u>				
Townhomes	Plan 1	3+Loft	13	1953 SF
w/ retail	Plan 2	3+Den	17	2094 SF
Doug Rich + Valley Oak Partners	Plan 3	3+Den	11	2111 SF
30' to roof eave	Plan 4	3+Den	12	2042 SF
Type V: R2 occupancy	Plan 5	3+Den	4	2108 SF
Parking: 2 spaces per unit	Plan 6	4	4	2216 SF
	Plan 7	3	7	1608 SF
	Plan 8	4+Loft	4	1930 SF
<i>Total / Average</i>			72	2014 SF
<i>Site Area</i>			3.3 Acres	
<i>Density</i>			21.8 du/acre	
<u>Mission Crossings</u>				
Townhomes	Plan 1	2	31	1437 SF
w/ hotel	Plan 2	4	18	2021 SF
Justin Derby w/ MLC Holdings	Plan 3	4	27	2110 SF
36' tall	Plan 4	4	27	2150 SF
Type V	Plan 5	4	37	1889 SF
<i>Total / Average</i>			140	1899 SF
<i>Site Area</i>			7.39 Acres	
<i>Density</i>			19 du/acre	
<u>Matyas Villas (Guru Thalagangni)</u>				
Stacked flat condominiums	Plan 1	2	15	830 SF
w/ ground floor comm.	Plan 2	3	42	1110 SF
2298 SF ground floor retail				
55' tall, Parking: 86 stalls				
<i>Total / Average</i>			57	1036 SF
<i>Site Area</i>			0.93 Acres	
<i>Density</i>			61 du/acre	
<u>Mission Seniors</u>				
stacked flat condos for seniors (mkt rate)	Plan 1	Studio	1	601 SF
57' tall	Plan 2	1	72	-
Type 1A, VA Construction	Plan 3	2	98	-
Parking: 259 stalls	Plan 4	3	29	1701 SF
<i>Total / Average</i>			200	N/A
<i>Site Area</i>			4.8 Acres	
<i>Density</i>			41.7 du/acre	

Project Info	Plan Type	# of Beds	# of units	Living Area
<u>Haymont Village</u>				
Townhomes				
Townhomes and rental apartments	Plan 1	3	5	1735 SF
Ray Panek w/ KB Home	Plan 2	3	16	1823 SF
Townhomes: 35'	Plan 3	3	<u>14</u>	<u>2074 SF</u>
Apartments: 50'			35	1911 SF
Type V construction				
Apartments				
	Plan 1	1	9	692 SF
	Plan 2	1	3	779 SF
	Plan 3	1	3	655 SF
	Plan 4	1	3	785 SF
	Plan 5	2	<u>21</u>	<u>1012 SF</u>
			39	875 SF
<i>Total units</i>			74 units	
<i>Density</i>			35 du/acre	
<u>Ward Creek Cottages</u>				
Single Family Detached	Plan 1	3	-	1941 SF
34' - 37'	Plan 2	3	-	1868 SF
VB Construction	Plan 3	3	-	2007 SF
Parking: 2 spaces per unit	Plan 4	5	-	2431 SF
<i>Site Area</i>			14.9 Acres	
<i>Park/ Open Space</i>			7.44 Acres	
<u>Hesperian</u>				
Single Family	Plan 1	4	-	2240 SF
27'	Plan 2	4	-	2550 SF
VB Construction				
Parking: 2 spaces per unit				
<i>Net Density</i>			8.5 du/acre	

Project Info	Plan Type	# of Beds	# of units	Living Area
<u>Lincoln Landing</u>				
Market Rate Apartments	Plan 1	Studio	12	590 SF
Dollinger Properties	Plan 2	1	334	750 SF
22' - 84.5' Height	Plan 3	2	102	1250 SF
Type 1A ground floor	Plan 4	3	28	1350 SF
Type IIIA on upper levels				
Parking: 863 Stalls				
1.8 stalls per unit				
<i>Total Units</i>			476 units	
<i>Site Area</i>			11.3 Acres	
<i>Density</i>			42 du/acre	
<u>Maple and Main</u>				
Mrkt. rate and Aff. Apts	Plan 1	Studio	15	568
Bay Area Property Developers	Plan 2	1	82	582 SF
58' Height	Plan 3	2	123	930 SF
Type IIIA Construction	Plan 4	2	20	1100 SF
5 story parking structure				
Total Parking: 481				
Res Parking: 1.36/unit				
<i>Total Units</i>			240 units	
<i>Site Area</i>			3.93 Acres	
<i>Density</i>			61 du/acre	
<u>Campways</u>				
Market Rate apts w/ retail	Plan 1	Studio	3	541 SF
JC Martin Company	Plan 2	1	40	661 SF
4 stories, 60' height	Plan 3	1	4	759 SF
Type V construction	Plan 4	2	33	1021 SF
Res. Parking: 1.11/unit	Plan 5	2	7	1017 SF
	Plan 6	2	6	976 SF
	Plan 7	3	4	1571 SF
<i>Total units</i>			97 units	
<i>Site Area</i>			1.81 Acres	
<i>Density</i>			54 du/acre	
<u>808 A Street</u>				
Affordable Senior Apartments	Plan 1	1	45	561 SF
Meta Housing	Plan 2	2	15	754 SF
56' Height				
Type V Construction				
Parking 0.5/unit				
<i>Total units</i>			60 units	
			65 max du/acre	

Source: City of Hayward

APPENDIX B: WORKER OCCUPATIONS AND COMPENSATION LEVELS

**RESIDENTIAL NEXUS APPENDIX B TABLE 1
 WORKER OCCUPATION DISTRIBUTION, 2016
 SERVICES TO HOUSEHOLDS EARNING \$100 - \$150K, RESIDENT SERVICES
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

Major Occupations (2% or more)	Worker Occupation Distribution ¹ Services to Households Earning \$100,000 to \$150,000
Management Occupations	4.3%
Business and Financial Operations Occupations	4.3%
Education, Training, and Library Occupations	3.1%
Healthcare Practitioners and Technical Occupations	7.5%
Healthcare Support Occupations	4.6%
Food Preparation and Serving Related Occupations	13.9%
Building and Grounds Cleaning and Maintenance Occupations	5.0%
Personal Care and Service Occupations	6.7%
Sales and Related Occupations	12.2%
Office and Administrative Support Occupations	15.3%
Installation, Maintenance, and Repair Occupations	3.8%
Transportation and Material Moving Occupations	6.0%
All Other Worker Occupations - Services to Households Earning \$100,000 to \$150,000	<u>13.4%</u>
INDUSTRY TOTAL	100.0%

¹ Distribution of employment by industry is per the IMPLAN model and the distribution of occupational employment within those industries is based on the Bureau of Labor Statistics Occupational Employment Survey.

RESIDENTIAL NEXUS APPENDIX B TABLE 2
 AVERAGE ANNUAL WORKER COMPENSATION, 2017
 SERVICES TO HOUSEHOLDS EARNING \$100,000 TO \$150,000
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA

Working Draft

Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Page 1 of 4</i>			
<i>Management Occupations</i>			
Chief Executives	\$232,400	3.0%	0.1%
General and Operations Managers	\$147,300	35.4%	1.5%
Sales Managers	\$157,500	4.5%	0.2%
Administrative Services Managers	\$110,400	3.4%	0.1%
Financial Managers	\$162,800	8.1%	0.3%
Food Service Managers	\$50,200	4.9%	0.2%
Medical and Health Services Managers	\$134,700	6.4%	0.3%
Property, Real Estate, and Community Association Managers	\$102,400	8.7%	0.4%
Social and Community Service Managers	\$78,200	3.6%	0.2%
Managers, All Other	\$147,100	3.4%	0.1%
All other Management Occupations (Avg. All Categories)	<u>\$136,300</u>	<u>18.5%</u>	<u>0.8%</u>
	Weighted Mean Annual Wage	\$136,300	100.0%
<i>Business and Financial Operations Occupations</i>			
Claims Adjusters, Examiners, and Investigators	\$79,500	3.3%	0.1%
Human Resources Specialists	\$79,600	5.8%	0.2%
Management Analysts	\$109,400	6.0%	0.3%
Training and Development Specialists	\$86,000	3.8%	0.2%
Market Research Analysts and Marketing Specialists	\$86,600	7.9%	0.3%
Business Operations Specialists, All Other	\$88,600	9.5%	0.4%
Accountants and Auditors	\$89,600	17.7%	0.8%
Financial Analysts	\$105,500	7.3%	0.3%
Personal Financial Advisors	\$182,600	9.6%	0.4%
Loan Officers	\$100,900	4.4%	0.2%
All Other Business and Financial Operations Occupations (Avg. All Categories)	<u>\$103,400</u>	<u>24.7%</u>	<u>1.1%</u>
	Weighted Mean Annual Wage	\$103,400	100.0%
<i>Education, Training, and Library Occupations</i>			
Vocational Education Teachers, Postsecondary	\$70,700	4.3%	0.1%
Preschool Teachers, Except Special Education	\$37,500	16.3%	0.5%
Elementary School Teachers, Except Special Education	\$76,300	6.8%	0.2%
Secondary School Teachers, Except Special and Career/Technical Education	\$74,100	4.7%	0.1%
Self-Enrichment Education Teachers	\$54,300	13.3%	0.4%
Teachers and Instructors, All Other, Except Substitute Teachers	\$42,600	8.7%	0.3%
Substitute Teachers	\$43,200	3.9%	0.1%
Teacher Assistants	\$34,200	15.3%	0.5%
All Other Education, Training, and Library Occupations (Avg. All Categories)	<u>\$48,700</u>	<u>26.7%</u>	<u>0.8%</u>
	Weighted Mean Annual Wage	\$48,700	100.0%

RESIDENTIAL NEXUS APPENDIX B TABLE 2
 AVERAGE ANNUAL WORKER COMPENSATION, 2017
 SERVICES TO HOUSEHOLDS EARNING \$100,000 TO \$150,000
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA

Working Draft

Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Page 2 of 4</i>			
<i>Healthcare Practitioners and Technical Occupations</i>			
Pharmacists	\$139,600	3.5%	0.3%
Physicians and Surgeons, All Other	\$225,500	3.9%	0.3%
Physical Therapists	\$95,400	3.4%	0.3%
Registered Nurses	\$119,400	29.4%	2.2%
Dental Hygienists	\$104,200	4.2%	0.3%
Pharmacy Technicians	\$46,200	4.8%	0.4%
Licensed Practical and Licensed Vocational Nurses	\$57,900	8.7%	0.7%
All Other Healthcare Practitioners and Technical Occupations (Avg. All Categories)	<u>\$110,000</u>	<u>41.9%</u>	<u>3.1%</u>
	Weighted Mean Annual Wage	100.0%	7.5%
<i>Healthcare Support Occupations</i>			
Home Health Aides	\$30,300	22.9%	1.0%
Nursing Assistants	\$35,800	29.8%	1.4%
Massage Therapists	\$53,500	4.4%	0.2%
Dental Assistants	\$43,100	10.9%	0.5%
Medical Assistants	\$43,000	15.3%	0.7%
All Other Healthcare Support Occupations (Avg. All Categories)	<u>\$37,500</u>	<u>16.7%</u>	<u>0.8%</u>
	Weighted Mean Annual Wage	100.0%	4.6%
<i>Food Preparation and Serving Related Occupations</i>			
First-Line Supervisors of Food Preparation and Serving Workers	\$42,400	6.9%	1.0%
Cooks, Fast Food	\$23,900	3.8%	0.5%
Cooks, Restaurant	\$28,300	8.8%	1.2%
Food Preparation Workers	\$26,700	6.5%	0.9%
Bartenders	\$33,800	6.8%	0.9%
Combined Food Preparation and Serving Workers, Including Fast Food	\$25,500	25.9%	3.6%
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	\$25,800	3.5%	0.5%
Waiters and Waitresses	\$34,200	19.3%	2.7%
Dishwashers	\$25,700	3.9%	0.6%
All Other Food Preparation and Serving Related Occupations (Avg. All Categories)	<u>\$29,800</u>	<u>14.6%</u>	<u>2.0%</u>
	Weighted Mean Annual Wage	100.0%	13.9%

RESIDENTIAL NEXUS APPENDIX B TABLE 2
 AVERAGE ANNUAL WORKER COMPENSATION, 2017
 SERVICES TO HOUSEHOLDS EARNING \$100,000 TO \$150,000
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA

Working Draft

Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Building and Grounds Cleaning and Maintenance Occupations</i>			
First-Line Supervisors of Landscaping, Lawn Service, and Groundskeeping Workers	\$57,600	3.6%	0.2%
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	\$36,200	44.5%	2.2%
Maids and Housekeeping Cleaners	\$34,300	10.7%	0.5%
Landscaping and Groundskeeping Workers	\$34,800	32.4%	1.6%
All Other Building and Grounds Cleaning and Maintenance Occupations (Avg. All Cat)	<u>\$36,300</u>	<u>8.7%</u>	<u>0.4%</u>
Weighted Mean Annual Wage	\$36,300	100.0%	5.0%
<i>Personal Care and Service Occupations</i>			
First-Line Supervisors of Personal Service Workers	\$51,300	3.9%	0.3%
Nonfarm Animal Caretakers	\$26,800	6.7%	0.5%
Hairdressers, Hairstylists, and Cosmetologists	\$33,700	14.9%	1.0%
Manicurists and Pedicurists	\$25,000	4.0%	0.3%
Childcare Workers	\$29,800	10.4%	0.7%
Personal Care Aides	\$28,700	35.7%	2.4%
Fitness Trainers and Aerobics Instructors	\$47,500	6.1%	0.4%
Recreation Workers	\$33,000	4.3%	0.3%
All Other Personal Care and Service Occupations (Avg. All Categories)	<u>\$32,000</u>	<u>13.9%</u>	<u>0.9%</u>
Weighted Mean Annual Wage	\$32,000	100.0%	6.7%
<i>Sales and Related Occupations</i>			
First-Line Supervisors of Retail Sales Workers	\$49,600	8.8%	1.1%
Cashiers	\$26,700	25.7%	3.1%
Counter and Rental Clerks	\$38,300	5.0%	0.6%
Retail Salespersons	\$30,800	34.6%	4.2%
Sales Representatives, Services, All Other	\$65,800	5.2%	0.6%
Sales Representatives, Wholesale and Manufacturing, Except Technical and Scientific	\$71,000	5.3%	0.7%
All Other Sales and Related Occupations (Avg. All Categories)	<u>\$36,600</u>	<u>15.3%</u>	<u>1.9%</u>
Weighted Mean Annual Wage	\$36,600	100.0%	12.2%
<i>Office and Administrative Support Occupations</i>			
First-Line Supervisors of Office and Administrative Support Workers	\$67,100	6.6%	1.0%
Bookkeeping, Accounting, and Auditing Clerks	\$51,600	7.3%	1.1%
Customer Service Representatives	\$45,300	11.4%	1.7%
Receptionists and Information Clerks	\$36,100	8.2%	1.2%
Stock Clerks and Order Fillers	\$30,000	10.5%	1.6%
Medical Secretaries	\$46,000	4.1%	0.6%
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	\$45,600	11.1%	1.7%
Office Clerks, General	\$39,000	14.3%	2.2%
All Other Office and Administrative Support Occupations (Avg. All Categories)	<u>\$43,600</u>	<u>26.5%</u>	<u>4.0%</u>
Weighted Mean Annual Wage	\$43,600	100.0%	15.3%

RESIDENTIAL NEXUS APPENDIX B TABLE 2
 AVERAGE ANNUAL WORKER COMPENSATION, 2017
 SERVICES TO HOUSEHOLDS EARNING \$100,000 TO \$150,000
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA

Working Draft

Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Installation, Maintenance, and Repair Occupations</i>			
First-Line Supervisors of Mechanics, Installers, and Repairers	\$83,400	7.9%	0.3%
Telecommunications Equipment Installers and Repairers, Except Line Installers	\$62,700	3.2%	0.1%
Automotive Body and Related Repairers	\$51,000	6.7%	0.3%
Automotive Service Technicians and Mechanics	\$53,800	19.8%	0.7%
Bus and Truck Mechanics and Diesel Engine Specialists	\$56,100	4.3%	0.2%
Maintenance and Repair Workers, General	\$48,200	31.0%	1.2%
All Other Installation, Maintenance, and Repair Occupations (Avg. All Categories)	<u>\$54,900</u>	<u>27.2%</u>	<u>1.0%</u>
Weighted Mean Annual Wage	\$54,900	100.0%	3.8%
<i>Transportation and Material Moving Occupations</i>			
Bus Drivers, School or Special Client	\$38,300	4.8%	0.3%
Driver/Sales Workers	\$41,000	6.3%	0.4%
Heavy and Tractor-Trailer Truck Drivers	\$49,900	15.1%	0.9%
Light Truck or Delivery Services Drivers	\$41,400	10.0%	0.6%
Taxi Drivers and Chauffeurs	\$32,100	3.1%	0.2%
Parking Lot Attendants	\$31,200	7.0%	0.4%
Industrial Truck and Tractor Operators	\$41,500	3.3%	0.2%
Cleaners of Vehicles and Equipment	\$28,000	7.4%	0.4%
Laborers and Freight, Stock, and Material Movers, Hand	\$35,000	20.3%	1.2%
Packers and Packagers, Hand	\$27,400	6.0%	0.4%
All Other Transportation and Material Moving Occupations (Avg. All Categories)	<u>\$37,800</u>	<u>16.8%</u>	<u>1.0%</u>
Weighted Mean Annual Wage	\$37,800	100.0%	6.0%
			86.6%

¹ The methodology utilized by the California Employment Development Department (EDD) assumes that hourly paid employees are employed full-time. Annual compensation is calculated by EDD by multiplying hourly wages by 40 hours per work week by 52 weeks.

² Occupation percentages are based on the 2016 National Industry - Specific Occupational Employment survey compiled by the Bureau of Labor Statistics. Wages are based on the 2016 Occupational Employment Survey data applicable to Alameda County updated by the California Employment Development Department to 2017 wage levels.

³ Including occupations representing 3% or more of the major occupation group

**RESIDENTIAL NEXUS APPENDIX B TABLE 3
 WORKER OCCUPATION DISTRIBUTION, 2016
 SERVICES TO HOUSEHOLDS EARNING \$150K+, RESIDENT SERVICES
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

Major Occupations (2% or more)	Worker Occupation Distribution¹ Services to Households Earning \$150,000 and up
Management Occupations	4.3%
Business and Financial Operations Occupations	4.4%
Education, Training, and Library Occupations	4.3%
Healthcare Practitioners and Technical Occupations	6.7%
Healthcare Support Occupations	4.1%
Food Preparation and Serving Related Occupations	13.2%
Building and Grounds Cleaning and Maintenance Occupations	5.1%
Personal Care and Service Occupations	6.8%
Sales and Related Occupations	12.2%
Office and Administrative Support Occupations	15.2%
Installation, Maintenance, and Repair Occupations	3.7%
Transportation and Material Moving Occupations	6.2%
All Other Worker Occupations - Services to Households Earning \$150,000 and up	<u>13.8%</u>
INDUSTRY TOTAL	100.0%

¹ Distribution of employment by industry is per the IMPLAN model and the distribution of occupational employment within those industries is based on the Bureau of Labor Statistics Occupational Employment Survey.

**RESIDENTIAL NEXUS APPENDIX B TABLE 4
 AVERAGE ANNUAL WORKER COMPENSATION, 2017
 SERVICES TO HOUSEHOLDS EARNING \$150,000 AND UP
 RESIDENTIAL NEXUS ANALYSIS
 HAYWARD, CA**

Working Draft

Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
Page 1 of 4			
<i>Management Occupations</i>			
Chief Executives	\$232,400	3.0%	0.1%
General and Operations Managers	\$147,300	35.6%	1.5%
Sales Managers	\$157,500	4.5%	0.2%
Administrative Services Managers	\$110,400	3.5%	0.1%
Financial Managers	\$162,800	8.1%	0.3%
Food Service Managers	\$50,200	4.6%	0.2%
Medical and Health Services Managers	\$134,700	5.6%	0.2%
Property, Real Estate, and Community Association Managers	\$102,400	8.0%	0.3%
Social and Community Service Managers	\$78,200	3.6%	0.2%
Managers, All Other	\$147,100	3.5%	0.2%
All other Management Occupations (Avg. All Categories)	<u>\$137,000</u>	<u>20.0%</u>	<u>0.9%</u>
Weighted Mean Annual Wage	\$137,000	100.0%	4.3%
<i>Business and Financial Operations Occupations</i>			
Claims Adjusters, Examiners, and Investigators	\$79,500	3.4%	0.2%
Human Resources Specialists	\$79,600	5.7%	0.2%
Management Analysts	\$109,400	5.9%	0.3%
Training and Development Specialists	\$86,000	4.1%	0.2%
Market Research Analysts and Marketing Specialists	\$86,600	7.7%	0.3%
Business Operations Specialists, All Other	\$88,600	9.6%	0.4%
Accountants and Auditors	\$89,600	17.5%	0.8%
Financial Analysts	\$105,500	7.2%	0.3%
Personal Financial Advisors	\$182,600	9.6%	0.4%
Loan Officers	\$100,900	4.4%	0.2%
All Other Business and Financial Operations Occupations (Avg. All Categories)	<u>\$103,300</u>	<u>24.9%</u>	<u>1.1%</u>
Weighted Mean Annual Wage	\$103,300	100.0%	4.4%
<i>Education, Training, and Library Occupations</i>			
Vocational Education Teachers, Postsecondary	\$70,700	4.6%	0.2%
Preschool Teachers, Except Special Education	\$37,500	16.0%	0.7%
Elementary School Teachers, Except Special Education	\$76,300	6.7%	0.3%
Secondary School Teachers, Except Special and Career/Technical Education	\$74,100	4.7%	0.2%
Self-Enrichment Education Teachers	\$54,300	13.1%	0.6%
Teachers and Instructors, All Other, Except Substitute Teachers	\$42,600	8.9%	0.4%
Substitute Teachers	\$43,200	3.8%	0.2%
Teacher Assistants	\$34,200	14.9%	0.6%
All Other Education, Training, and Library Occupations (Avg. All Categories)	<u>\$48,800</u>	<u>27.4%</u>	<u>1.2%</u>
Weighted Mean Annual Wage	\$48,800	100.0%	4.3%

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Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Page 2 of 4</i>			
<i>Healthcare Practitioners and Technical Occupations</i>			
Pharmacists	\$139,600	3.9%	0.3%
Physicians and Surgeons, All Other	\$225,500	3.8%	0.3%
Physical Therapists	\$95,400	3.3%	0.2%
Registered Nurses	\$119,400	28.9%	1.9%
Dental Hygienists	\$104,200	4.1%	0.3%
Pharmacy Technicians	\$46,200	5.3%	0.4%
Licensed Practical and Licensed Vocational Nurses	\$57,900	8.6%	0.6%
All Other Healthcare Practitioners and Technical Occupations (Avg. All Categ	<u>\$109,500</u>	<u>42.0%</u>	<u>2.8%</u>
Weighted Mean Annual Wage	\$109,500	100.0%	6.7%
<i>Healthcare Support Occupations</i>			
Home Health Aides	\$30,300	23.7%	1.0%
Nursing Assistants	\$35,800	29.4%	1.2%
Massage Therapists	\$53,500	4.4%	0.2%
Dental Assistants	\$43,100	10.6%	0.4%
Medical Assistants	\$43,000	14.9%	0.6%
Veterinary Assistants and Laboratory Animal Caretakers	\$34,900	3.0%	0.1%
All Other Healthcare Support Occupations (Avg. All Categories)	<u>\$37,300</u>	<u>14.1%</u>	<u>0.6%</u>
Weighted Mean Annual Wage	\$37,300	100.0%	4.1%
<i>Food Preparation and Serving Related Occupations</i>			
First-Line Supervisors of Food Preparation and Serving Workers	\$42,400	6.8%	0.9%
Cooks, Fast Food	\$23,900	3.8%	0.5%
Cooks, Restaurant	\$28,300	8.8%	1.2%
Food Preparation Workers	\$26,700	6.5%	0.9%
Bartenders	\$33,800	6.8%	0.9%
Combined Food Preparation and Serving Workers, Including Fast Food	\$25,500	25.8%	3.4%
Counter Attendants, Cafeteria, Food Concession, and Coffee Shop	\$25,800	3.6%	0.5%
Waiters and Waitresses	\$34,200	19.2%	2.5%
Dishwashers	\$25,700	3.9%	0.5%
All Other Food Preparation and Serving Related Occupations (Avg. All Categ	<u>\$29,800</u>	<u>14.7%</u>	<u>1.9%</u>
Weighted Mean Annual Wage	\$29,800	100.0%	13.2%

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Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Building and Grounds Cleaning and Maintenance Occupations</i>			
First-Line Supervisors of Landscaping, Lawn Service, and Groundskeeping Workers	\$57,600	3.7%	0.2%
Janitors and Cleaners, Except Maids and Housekeeping Cleaners	\$36,200	45.0%	2.3%
Maids and Housekeeping Cleaners	\$34,300	10.0%	0.5%
Landscaping and Groundskeeping Workers	\$34,800	32.6%	1.7%
All Other Building and Grounds Cleaning and Maintenance Occupations (Avg)	<u>\$36,400</u>	<u>8.8%</u>	<u>0.4%</u>
Weighted Mean Annual Wage	\$36,400	100.0%	5.1%
<i>Personal Care and Service Occupations</i>			
First-Line Supervisors of Personal Service Workers	\$51,300	4.0%	0.3%
Nonfarm Animal Caretakers	\$26,800	7.1%	0.5%
Hairdressers, Hairstylists, and Cosmetologists	\$33,700	13.2%	0.9%
Manicurists and Pedicurists	\$25,000	3.5%	0.2%
Childcare Workers	\$29,800	13.1%	0.9%
Personal Care Aides	\$28,700	34.2%	2.3%
Fitness Trainers and Aerobics Instructors	\$47,500	6.7%	0.5%
Recreation Workers	\$33,000	4.3%	0.3%
All Other Personal Care and Service Occupations (Avg. All Categories)	<u>\$32,000</u>	<u>14.0%</u>	<u>1.0%</u>
Weighted Mean Annual Wage	\$32,000	100.0%	6.8%
<i>Sales and Related Occupations</i>			
First-Line Supervisors of Retail Sales Workers	\$49,600	8.9%	1.1%
Cashiers	\$26,700	25.8%	3.2%
Counter and Rental Clerks	\$38,300	4.8%	0.6%
Retail Salespersons	\$30,800	34.9%	4.3%
Sales Representatives, Services, All Other	\$65,800	5.2%	0.6%
Sales Representatives, Wholesale and Manufacturing, Except Technical and	\$71,000	5.3%	0.7%
All Other Sales and Related Occupations (Avg. All Categories)	<u>\$36,600</u>	<u>15.2%</u>	<u>1.9%</u>
Weighted Mean Annual Wage	\$36,600	100.0%	12.2%
<i>Office and Administrative Support Occupations</i>			
First-Line Supervisors of Office and Administrative Support Workers	\$67,100	6.6%	1.0%
Bookkeeping, Accounting, and Auditing Clerks	\$51,600	7.3%	1.1%
Customer Service Representatives	\$45,300	11.5%	1.8%
Receptionists and Information Clerks	\$36,100	7.7%	1.2%
Stock Clerks and Order Fillers	\$30,000	10.6%	1.6%
Medical Secretaries	\$46,000	3.6%	0.6%
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	\$45,600	11.4%	1.7%
Office Clerks, General	\$39,000	14.5%	2.2%
All Other Office and Administrative Support Occupations (Avg. All Categories)	<u>\$43,500</u>	<u>26.8%</u>	<u>4.1%</u>
Weighted Mean Annual Wage	\$43,500	100.0%	15.2%

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Occupation ³	2017 Avg. Compensation ¹	% of Total Occupation Group ²	% of Total No. of Service Workers
<i>Installation, Maintenance, and Repair Occupations</i>			
First-Line Supervisors of Mechanics, Installers, and Repairers	\$83,400	7.8%	0.3%
Automotive Body and Related Repairers	\$51,000	6.5%	0.2%
Automotive Service Technicians and Mechanics	\$53,800	19.6%	0.7%
Bus and Truck Mechanics and Diesel Engine Specialists	\$56,100	4.5%	0.2%
Maintenance and Repair Workers, General	\$48,200	30.5%	1.1%
All Other Installation, Maintenance, and Repair Occupations (Avg. All Catego	<u>\$54,600</u>	<u>31.2%</u>	<u>1.1%</u>
Weighted Mean Annual Wage	\$54,600	100.0%	3.7%
<i>Transportation and Material Moving Occupations</i>			
Bus Drivers, School or Special Client	\$38,300	5.7%	0.3%
Driver/Sales Workers	\$41,000	5.9%	0.4%
Heavy and Tractor-Trailer Truck Drivers	\$49,900	15.1%	0.9%
Light Truck or Delivery Services Drivers	\$41,400	9.8%	0.6%
Taxi Drivers and Chauffeurs	\$32,100	3.3%	0.2%
Parking Lot Attendants	\$31,200	7.3%	0.4%
Industrial Truck and Tractor Operators	\$41,500	3.2%	0.2%
Cleaners of Vehicles and Equipment	\$28,000	6.9%	0.4%
Laborers and Freight, Stock, and Material Movers, Hand	\$35,000	19.8%	1.2%
Packers and Packagers, Hand	\$27,400	5.9%	0.4%
All Other Transportation and Material Moving Occupations (Avg. All Categorie	<u>\$37,800</u>	<u>17.2%</u>	<u>1.1%</u>
Weighted Mean Annual Wage	\$37,800	100.0%	6.2%
			86.2%

¹ The methodology utilized by the California Employment Development Department (EDD) assumes that hourly paid employees are employed full-time. Annual compensation is calculated by EDD by multiplying hourly wages by 40 hours per work week by 52 weeks.

² Occupation percentages are based on the 2016 National Industry - Specific Occupational Employment survey compiled by the Bureau of Labor Statistics. Wages are based on the 2016 Occupational Employment Survey data applicable to Alameda County updated by the California Employment Development Department to 2017 wage levels.

³ Including occupations representing 3% or more of the major occupation group

STAKEHOLDERS' COMMENTS		
DATE	NAME	COMMENTS / QUESTIONS
09/11/17	Dana Bailey, Community Services Manager, City of Hayward	I read through the report and have no additional feedback. I have questions about their comments regarding lack of enough data to recommend condo development (there are a number of existing condo complexes in Hayward which I would think could provide a benchmark). I also wondered about the use of the FHA assumption that housing expenses represent 35% of gross income particularly in the Bay Area. Most of my questions will probably be addressed at Thursdays meeting.
09/12/17	Leigha Schmidt, Senior Planner, City of Hayward	1. Recommendation on Affordable Unit Percentage: Almost every other jurisdiction requires 15% or some hybrid of fees plus providing units however we are not adjusting our requirements of 7.5% and 10% for attached and detached housing types, respectively.
		<p>a. Why are we setting the percentage so much lower than other jurisdictions? As described in the Recommendations Report and supporting Appendices, the demand for housing in Hayward and throughout the region is so strong that we do not need to keep these numbers down in order to incentivize development particularly in the current market. We should increase to 15% in line with other jurisdictions. See also comment no. 8 below</p> <p>2. Recommendation on Project Size Threshold: The justification for allowing developers to pay fees by right for developments with 15 or more units this threshold is provided on page 2 of Attachment A, Residential Nexus Study, that is it “may not be practical” to provide inclusionary housing for these smaller projects; however, according to Table 4 of the Report, almost all other jurisdictions (with the exception of Dublin and Pleasanton) have significantly lower thresholds down to a single unit in some cases.</p> <p>a. Why is it not practical in Hayward to justify a lower threshold for requiring units?</p> <p>b. Is it possible to require that units be included for small projects within a certain distance to BART/mass transit and/or downtown to ensure that units are included in areas where it would be most beneficial to lower income households?</p>

DATE	NAME	COMMENTS / QUESTIONS
		<p>3. Phase in of Fees. On page 10 of the Report, a phase period of 18-24 months is recommended. It isn't clear to me if this phase in is just related to Fees for Small Projects, as recommended on page 9, or if this is a phase in for the program/fee changes as a whole. Please clarify.</p> <p>a. If the recommendation is to have a long phase in for program/fee changes as a whole, then I disagree. At the most, we should allow projects that are already entitled to have fees in place at the time of entitlement and all others should be subject to fees in place at time of entitlement. This is a typical approach for impact fees. If we wait 18-24 months to phase this in, we will miss this strong housing market and countless fees and units.</p> <p>4. Recommendation on In Lieu Fee amount:</p> <p>a. Why do we charge affordable housing impact fees on a per square vs. per unit basis?</p> <p>b. Why is the recommendation for the in lieu amount set at \$15-20 per square foot to get "nearer to but still below" (Recommendations Report, page 8) what other jurisdictions in the East Bay require? Why don't we match those jurisdictions?</p> <p>c. Further, it looks like many other jurisdictions require dynamic fees based on a percentage of the sale price or market value minus the cost of affordable housing development, which might capture market changes without making the local jurisdiction adjust fees every time the market goes up or down (and subsequently lose fees when we lag in adjusting upwards). Why should we not take this approach as well? What is the purpose of having a fixed fee?</p> <p>5. Rental Program Recommendations: I do not think that staff should be in a position of negotiating with a developer for development of on-site affordable units vs. payment of fees. This puts staff in an awkward position and could result in inconsistent application of the standards. I think that we should set fee amounts/percentage requirements to incentive inclusion of the affordable units within projects and set up special findings to allow developers to fee out depending on project site or undesirable location for affordable units (see also comment no. 2b above).</p>

DATE	NAME	COMMENTS / QUESTIONS
		<p>6. Global comment. I think that we should look, if permitted in the scope of this study, at all impact fees (permit fees, utility, park, school) associated with development in Hayward vs. other jurisdictions. This is touched on generally in the Summary of Residual Land Value Analysis on page 19 of the Recommendations Report, but that summary only looks at development by housing type within Hayward and doesn't break out the various fees by type. I think that if we looked at a comparison of the impact fees and costs of developing housing in Hayward vs. other jurisdictions, then we would be significantly lower as a whole, not just in the area of affordable housing impact fees. For that reason, I think that we need to consider increasing the percentage requirement/raising the fee if we want to prioritize development of affordable housing here.</p>
		<p>7. Global comment/question. I understand that the affordable housing impact fee for each market rate house is tied to the demand for goods and services generated by new market rate households. However the Gross Household Incomes (between \$117,000 to \$187,000) shown in Appendix A are higher than the median income here in Hayward. Further, there is assumption in the report that households are only paying 30% (for rental) to 35% (for for-sale) of their income for housing which I think that we know is not the case for most households in the Bay Area, many of which are defined as rent burdened (http://hcd.ca.gov/policy-research/plans-reports/docs/California's-Housing-Future-Full-Public-Draft.pdf). I am curious about how this analysis reflects or doesn't reflect the reality of housing issues in the region and whether there are other ways to measure these impacts that might better reflect that reality.</p>
		<p>8. Global comment. I think that we could be much more aggressive with regard to staff's recommendation. I think that the goal here should be to generate affordable housing units, followed by generation of fees, followed by retention of development activity. These recommendations seem to value retention of development activity above development of affordable housing and fees. If we are concerned about making an aggressive recommendation, then we could offer a less aggressive option in line with some of KMA's recommendations for the Council to consider.</p>

DATE	NAME	COMMENTS / QUESTIONS
09/12/17	Micah Hinkle, Economic Development Manager, City of Hayward	<p>Below is my general comment on the nexus fee study:</p> <p>I believe the recommendations are too conservative and that we should be more aggressive in setting the affordable housing requirements in both required % and fee options. The reasoning is that housing is and will continue to be a bay area wide need and that Hayward will need to provide affordable housing by design and not by condition. We anticipate additional housing units throughout the City. The study allows full legal justification for raising the percentage and fees, but it will come down to a political position. Our ability to provide workforce housing is a key economic driver and our future developments should set the expectations on development as we are one of the few inner core bay area cities that has the infrastructure to provide for more housing and a desire to build more housing. Housing affordability and availability is a decision factor for businesses.</p>
09/13/17	Sara Buizer, Planning Manager, City of Hayward	<p>Ownership Units Type Recommendations:</p>
		<p>I like the blended approach KMA recommends, but wonder if it will result in projects with fewer units so as to avoid providing the units on site? I am concerned that the recommendation would allow payment of fees for detached projects of any size given how many small lot single family developments we have seen. I think it may be a missed opportunity and as the report also indicates these increased amount can likely be absorbed in the sales prices of the units.</p> <p>As far as the fee level, I definitely think the fee should be on the higher side (\$20/sq. ft.) despite the huge increase from the current requirement so that our fees are more in line with surrounding jurisdictions as well as in line with the on-site compliance cost identified on page 24 of the report which shows the costs at \$15-24 per sq. ft. We want to encourage the units, not courage payment of fees. If the costs are high or at least on par with the provision of the units, Hayward stands a better chance of getting the affordable units. Is there a way to include an inflation factor for whatever fee we recommend?</p>

DATE	NAME	COMMENTS / QUESTIONS
		<p>I understand that KMA is not recommending we increase the percentage requirements at this time especially with the recommended fee increases, however, we may want to consider doing this as I am not sure when we will be able to accomplish additional changes. Perhaps a phased approach on increasing percentage requirements may be an option?</p> <p>Rental Unit Type Recommendations:</p> <p>As far as the fee level, I definitely think the fee should be on the higher side (\$15/sq. ft.) despite the huge increase from the current requirement so that our fees are more in line with surrounding jurisdictions. As with the ownership unit types, is there a way to include an inflation factor for whatever fee we recommend?</p> <p>Overall comments/questions:</p> <p>I do not support the phased in approach for these fees or requirements. I do not think that gets the City where we want to be based on feedback we've gotten from City Council nor does it capitalize on the hot market we have right now. The requirements should be applicable to any project that has not received its Planning entitlement, or at the very least any project under Planning review that has not yet been deemed complete.</p> <p>On page 19 of the summary report, there is a table Summary of Residual Land Value Analysis, which identifies a density for the various prototypes analyzed and I am confused by the numbers shown in the Table as they are not representative of the allowable General Plan densities and curious how that impacts the analysis?</p>
09/13/17	Larry Mayers, Mayers Architecture	<p>"It appears that the Nexus Study will be confined to studying the effects of market rate housing on the need for increased affordable housing, presumably to determine if an "inclusionary housing" requirement will be added to new market-rate housing development. There was no mention of studying the effects of commercial—specifically office—development to the need for affordable housing. From our research, that link is much more critical. Not only is it more effective in producing affordable housing, but it addresses the biggest cause of our housing crises—the jobs/housing balance—while simultaneously addressing traffic congestion and related pollution/energy use by reducing Vehicle Miles Traveled."</p>

DATE	NAME	COMMENTS / QUESTIONS
09/13/17	Stacey Bristow, Acting Development Services Director	I don't have anything new to add as my team provided thoughtful and valuable feedback. My hope is that these inputs are taken into careful consideration. I look forward to the next update.
10/03/17	Leigha Schmidt, Senior Planner, City of Hayward	I have a few comments on KMA's revised report:
		<p>1. As I am sure you are aware, the Governor did sign AB1505 into law and I strongly recommend that we require all rental developments to provide inclusionary units. I am sure that KMA and you have lots of evidence and information about why we need more rental units at all levels of affordability.</p> <p>2. I recommend that we <u>do not</u> grandfather in developments that are currently in the pipeline, even if they are deemed complete. We should make all projects subject to the requirements and fees that are adopted and in place when they receive entitlements. I think that is reasonable and most reputable developers understand that is the case and the cost of doing business.</p> <p>3. I liked that they added in the lot threshold for requiring affordable units on-site. But I think that we can go further and require that <u>all new residential developments</u> (including rental now, see comment 1) within a certain distance (maybe half-mile or mile) of BART or high frequency transit (defined as 15 minutes or less headways) or within Downtown Hayward boundaries be required to include units and not fee out. This is consistent with City, Regional and State environmental goals to minimize single occupancy vehicle trips to reduce GHG emission, and to minimize the combined costs of housing/transportation. I really think that the Council will appreciate this recommendation which is in line with so many stated environmental and affordability goals. I strongly suggest that you consider adding at least the recommendation for them to consider.</p>

DATE	NAME	COMMENTS / QUESTIONS
10/05/17	Lisa A. Vorderbrueggen, Executive Director for Governmental Affairs, Building Industry Association of the Bay Area	Please see letter below
10/10/17	Sara Buizer, Planning Manager, City of Hayward	Overall, we are fairly pleased with the recommendations, but have a few comments:
		<p><i>Recommendation:</i> (Utilize a step-up calculation of fees for projects with two to nine projects ...</p> <p><i>Comments:</i> Interesting approach, but I hope Council is aware that projects with less than 10 units will not pay the full price per square foot fee they establish in this scenario. I anticipate receiving many smaller projects that would also then pay a lesser fee with this recommendation.</p> <p><i>Recommendation:</i> Set the onsite affordable unit percentage requirement at no more than 10%, and make the on-site affordable unit percentage requirements consistent for attached and detached units.</p> <p><i>Comments:</i> From a practicable standpoint, we think it is important that the ordinance indicate how to address fractional units. For example, an ownership project that proposes 35 units a 10% requirement would be 3.5 units. Would the development have to provide 3 or 4 units? How will fractional units be addressed? Will it always be rounded up or rounded down? Could there be options to pay a fee for the fractional unit?</p> <p><i>Recommendation:</i> Allow a fee payment for units with a lot size of 4,000 sq. ft. and higher ...</p> <p><i>Comments :</i> Why is this 4,000 square feet and not something greater like 5,000 square feet as is the minimum lot size in most single family residential areas?</p> <p><i>Recommendation:</i> Keep the 7.5% on-site requirement and/or allow fee payments for high density condominium projects.</p>

DATE	NAME	COMMENTS / QUESTIONS
		<i>Comments</i> : What about large high density projects that are near transit? I think this would be a missed opportunity to lower the requirement or allow those projects the ability to pay a fee.
		<i>Recommendation</i> : Require on-site units for projects with over 100 units ...
		<i>Comments</i> : Why such a high threshold? We are just not seeing these types of densities on projects and I anticipate there may be fewer and fewer opportunities for larger rental projects and with such a high threshold, I think we may be missing opportunities to have more affordable rental units.
		<i>Recommendation</i> : Reduce the on-site requirement for the above projects from 7.5% to between 6% and 5% while maintaining the existing low- and very low-income level split ...
		Alternatively, allow rents for the on-site units to be set up at 80% of AMI ...
		<i>Comments</i> : Wondering if these could be kept as options for a developer to choose from, either provide a lower percentage but require the units maintain the low and very low income level split or provide a higher percentage, say 7.5% but allow them to be set-up at 80% of AMI.
		<i>Recommendation</i> : Table 3: Recommended Fee Range Structure Options
		<i>Comments</i> : I found this Table confusing in the executive Summary since there is no explanation of what Alternative A and B are?
		<i>Recommendation</i> : Council also has the option to include no grandfathering provision - in other words, Council may require that all projects that receive entitlements after the amendments become effective are subject to the new requirements
		<i>Comments</i> : This would be Planning staff's preference as it is easier to administer.
		<i>Recommendation</i> : Consider transit-oriented inclusionary requirements.
		<i>Comments</i> : We truly believe this is important, especially if we want to obtain units in close proximity to services and transit. Glad to see this part of the discussion with Council.
		<i>Next Steps</i> : Grandfathering: Does Council concur with the recommendation to include a grandfathering provision to mitigate financial impacts to projects currently in the pipeline?
		<i>Comments</i> : Should the question be asked what level of grandfathering they feel comfortable with?



DATE: Oct. 5, 2017

TO: Hayward Acting Housing Manager Omar Cortez (*via email to Yolanda Cruz at yolanda.cruz@hayward-ca.gov*)

FROM: BIA|Bay Area East Bay Executive Director for Governmental Affairs Lisa Vorderbrueggen

RE: Comments and Input on Hayward Affordable Housing Ordinance Update

Dear Mr. Cortez,

BIA|Bay Area is a membership organization that consists of more than 400 residential developers and associated companies that entitle and construct homes for people of all income levels. A BIA representative and a number of its members attended the Hayward Housing Department stakeholders' meeting on Sept. 21, 2017, to hear about proposed changes to the city's affordable housing ordinance. We came away from the session with a number of concerns detailed below.

We are most troubled about the surprise proposed elimination of the by right fee option for the provision of affordable housing units. Not only is the by right fee option featured in Hayward's state-certified Housing Element, local revenue is more important than ever as local jurisdictions will need those dollars to compete for limited new state and county affordable housing funds. The state has a number of housing-related programs available for local affordable housing that will receive significant funding increases starting in 2018. In addition, Alameda County voters two years ago passed a \$580 million affordable housing measure. Most of these programs require a local match and with the elimination of redevelopment, Hayward will need a local revenue source to leverage these new dollars.

Local funds are also especially critical when it comes to assembling cash to build homes for the very poor. The city's own consultant noted at the stakeholder meeting that fees "are the only way you get extremely low income housing." It appears to be working. Hayward outperformed most other Alameda County cities in 2007-2014, providing 246 very low income units or 32 percent of its very-low RHNA need, the second highest number of units after Oakland among cities in Alameda County. Similarly, fees are the only viable option to fund transitional shelters for the homeless.

Rather than eliminate a policy that works, BIA encourages Hayward to expand the discussion and look to increase production of all types of housing units. "The single most important factor for an inclusionary zoning policy to achieve its goals is a significant and sustained level of market-rate development in the local market," wrote an expert in an article in the Urban Land Institute magazine in July 2016. A California Legislative Analyst wrote in March 2015, "Inclusionary housing programs rely on private housing development to fund construction of affordable housing. Because of this, barriers that constrain private housing development also limit the amount of affordable housing produced by inclusionary housing programs."

While retaining the by right fee provision, Hayward can encourage the construction of affordable units as part of new housing projects by increasing the certainty involved with the city's existing "Combination of Alternatives" compliance option and tie it to an updated density bonus ordinance. In order to facilitate new

partnerships between private developers and nonprofits to build housing for low income residents, the alternative compliance option should contain clear criteria for mandatory approval as well as expedited processing. The density bonus program should provide a sufficient number of meaningful concessions and incentives to serve as financial incentives for developers to partner with a nonprofit to build the affordable units onsite or provide the units themselves. As an added resource, one of the statewide housing bills adopted this year – Building Homes and Jobs Act by state Sen. Toni Atkins, D-San Diego – earmarks planning money in its first year to cities that Hayward could use to update its density bonus ordinance.

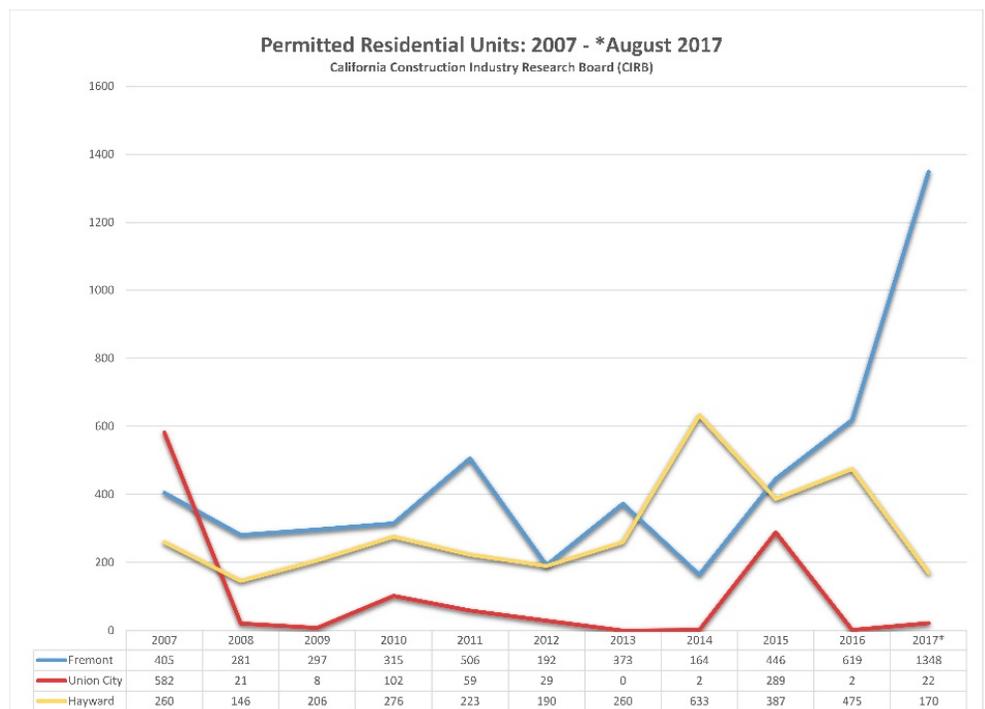
Among our other areas of concern:

OUTREACH APPEARS PERFUNCTORY. The slideshow presented at the stakeholders’ meeting strongly indicated that policy decisions had already been made, particularly on the key issue of the elimination of the by right fee option. For example, the consultants’ recommendations assume based on adoption of the very policy that is supposed to be under consideration. By definition, a stakeholders’ process is held to take input before decisions are made.

THE CITY PROVIDED AN INSUFFICIENT TIME TO REVIEW THE NEXUS STUDY AND PROPOSED POLICIES. No draft materials or draft policy recommendations were provided prior to the Sept. 21, 2017, stakeholder meeting. You provided BIA via email on Sept. 26, 2017, a copy of the consultants’ slide presentation and the nexus study. The deadline to submit comments to the city was a little more than a week later on Oct. 5, 2017. This is an insufficient amount of time to review a complex 66-page financial analysis.

NEXUS STUDY DATA DOES NOT APPEAR TO HAVE BEEN GROUND-TRUTHED. None of the market rate developers that attended the stakeholder meeting was consulted about the cost or other data used in the nexus study update or about the fundamental policy question on the fee option.

WE ACKNOWLEDGE THAT THE CURRENT IN LIEU FEE CAN BE INCREASED. But we question the consultants’ recommendation to immediately set the fees at rates comparable to Fremont and Union City. The markets in each of these communities is very different than Hayward. As you can see from the table on the right, Fremont is dramatically out-producing Hayward this year and Union City lags. In addition, Hayward’s housing production rate appears to be slowing compared with prior years. A steep and punitive fee increase will cost the city much needed new housing at all income levels.



Any fee hike should be phased in over a period of several years in order to allow developers to factor the added costs into their financing plans. In addition, projects currently in the development pipeline should be grandfathered under the current fee structure.

In summary, BIA|Bay Area and its members strongly oppose the elimination of the by right fee option and what the consultant described as the “disincentivizing” of the use of the fee option by hiking Hayward’s rates beyond what other jurisdictions charge. Rather than narrow the choices available to homebuilders and reduce the potential numbers of new homes in the city, we encourage Hayward to broaden its policy discussion and pursue options that will increase production of all housing types. This includes new partnerships between market-rate and nonprofit housing developers through density bonus incentives.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Vorderbrueggen".

Lisa A. Vorderbrueggen
BIA|Bay Area East Bay Executive Director for Government Affairs
1350 Treat Blvd., Ste. 140, Walnut Creek, CA 94597
925-348-1956 (cell)
lvorderbrueggen@biabayarea.org

CC:
The Honorable Mayor Barbara Halliday
Hayward Councilmembers Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall, Elisa Márquez and Mark Salinas
Hayward City Manager Kelly McAdoo



CITY OF HAYWARD

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

File #: PH 17-091

DATE: October 17, 2017

TO: Mayor and City Council

FROM: City Attorney & Interim Development Services Director

SUBJECT

Adoption of a Resolution and Introduction of Ordinances Related to Cannabis:

1. Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code.
2. Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward.
3. Ordinance adding Article 14 to Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses.
4. Ordinance amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control.
5. Revisions in the City's 2018 Master Fee Schedule to include Commercial Cannabis Licensing and Inspection program.

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) and introduces the following ordinances related to cannabis:

1. Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions, of the Hayward Municipal Code (Attachment III);
2. Land Use Regulations for Medical and Adult Use Cannabis for Personal Cultivation and Commercial Cannabis Businesses (Attachment III);
3. Ordinance adding Article 14 to Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses (Attachment IV);
4. Ordinance amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control (Attachment V).
5. Master Fee Schedule revisions for the annual inspections related to Commercial Cannabis Businesses.

File #: PH 17-091

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Land Use Resolution
Attachment III	Land Use Ordinance
Attachment IV	Regulatory Ordinance
Attachment V	Smoking Ordinance Amendments
Attachment VI	Master Fee Schedule Resolution
Attachment VII	Land Use Summary and Maps
Attachment VIII	Draft Planning Commission Minutes of 09/14/17



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SUMMARY

In response to State mandated deadlines and Council direction, the Development Services Department and City Attorney's Office have drafted a new regulatory and land use ordinance to establish guidelines for personal cultivation and provide land use guidelines and development standards to allow the commercial cultivation, distribution, delivery, manufacturing, testing, and retail dispensaries of cannabis land uses in the City of Hayward.

City staff is proposing a series of zoning text amendments, coupled with new land use guidelines that rely on the existing land use entitlement process, to permit the establishment of new commercial cannabis businesses in the City and regulate the placement of personal cultivation, consistent with State law. The existing Administrative Use Permit (AUP) and Conditional Use Permit (CUP) process contained in the Zoning Ordinance is sufficient to undertake the processing of land use approvals under these circumstances. Staff proposes to make the following text amendments to the Zoning Ordinance to accommodate commercial cannabis uses: (1) amend the Zoning Ordinance to include land use descriptions of commercial cannabis businesses; (2) amend provisions related to various commercial and industrial zoning districts to identify compatible cannabis land use types which are permitted outright or as an allowed use, subject to issuance of an Administrative Use Permit or Conditional Use Permit (CUP); (3) amend the Zoning Ordinance to include general regulations and special findings that must be made by the Council in order to approve a commercial cannabis business land use; and (4) amend the Zoning Ordinance to include general regulations pertaining to personal cultivation. The proposed zoning text amendments and land use ordinance, included as Attachment III, were reviewed and recommended for City Council adoption by the Planning Commission during the September 14, 2017 Planning Commission meeting.

Staff has also developed a commercial cannabis business regulatory ordinance that creates a regulatory framework for issuance of commercial cannabis business permits and imposes specific minimum performance standards on those businesses. Additionally, staff has developed amendments to the Smoking Ordinance to conform with state law and the proposed local cannabis regulatory framework.

BACKGROUND

City Council Work Sessions. The City Council held two separate work sessions earlier this year to discuss cannabis in Hayward: March 2017 and July 2017. During the [March 21, 2017](#) work session, staff provided background and relevant information regarding the state and local regulatory framework for the medical use and the adult recreational use of cannabis.

At that time, the Council was generally in favor of allowing cannabis businesses in Hayward with a focus on uses that would be compatible with the Industrial zoning district. Council favored limiting the number of cannabis businesses initially and was open to considering more businesses in the future assuming positive outcomes from the initial businesses. Council and staff were mindful that Hayward had previously allowed a limited number of medical cannabis dispensaries that were unsuccessful for a variety of reasons. The Council

emphasized the necessity of imposing the Measure EE tax approved by the voters on any newly permitted cannabis businesses.

Based on the comments received from the work session in March, staff prepared a draft regulatory ordinance that establishes a framework for the issuance of business permits for commercial cannabis operations and imposes operational and performance standards for commercial cannabis businesses. On [July 18, 2017](#), staff presented the draft regulations for Council review and feedback. While generally supportive of the regulatory framework, the Council directed staff to eliminate the proposed limit to the number of cannabis business permits and suggested that new cannabis businesses be evaluated on a case-by-case basis following the issuance of a RFP process to ensure that the business operations are consistent with the City's long-term economic, environmental and land use objectives. The Council also indicated a willingness to allow a variety of cannabis land uses in the City's commercial and industrial areas. Staff has revised the draft regulatory ordinance and has developed a draft land use framework consistent with the direction provided by Council.

Planning Commission. The Hayward Planning Commission reviewed the draft land use Ordinance at their regular meeting on [September 14, 2017](#). Following feedback from the public, the Commission voted unanimously to recommend approval of the proposed land use Ordinance to the City Council. Additionally, the Commission recommended the buffer requirements for "Park" and "Open Space" areas be clarified and further defined to provide guidance to potential cannabis operators as it relates to buffering use to children. In response to Commission feedback, staff has revised the proposed land use ordinance to clarify the recommended buffers from park areas that contain children's playgrounds and/or children activities. Similar to Alcohol Beverage Outlets, staff has included an additional provision that provides some flexibility on the required buffer setback distance with the approval of a Conditional Use Permit. The additional language allows the Planning Commission the ability to reduce the required 600-foot buffer from public parks and open space areas upon finding that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business.

DISCUSSION

As part of the regulatory and land use framework proposed by staff, cannabis operators would be required to obtain multiple approvals through a two-step process at the local level in addition to State licensing. First, an applicant would be required to receive approval of a Commercial Cannabis Business Permit by the City to assure that all regulatory requirements are met. Second, the applicant would be required to obtain the necessary land use entitlements, that consider the location, size and types of proposed uses allowed, consistent with the Zoning Ordinance standards. Any cannabis business operating in the City pursuant to City-issued permits must also obtain a cannabis license from the State. As currently proposed, failure to obtain the State license would be grounds for revoking the City's permit.

In response to local and state licensing requirements, the cannabis industry has been adjusting to the new regulatory oversight from the State and the local agencies that choose to regulate this industry. Local agencies in California generally have little experience regulating

cannabis uses and best practices will evolve over time. As such, any community choosing to allow this use and regulate this industry, including the City of Hayward, will most likely need to adapt and update the regulatory and land use framework to respond to unforeseen issues. If warranted, staff will propose adjustments to the regulatory and land use ordinance for consideration by the Council in the future.

Draft Regulatory Ordinance. Following Council direction at the two previous work sessions, staff has prepared a revised draft of the regulatory ordinance (Attachment IV) for review by the Council. The ordinance would create a regulatory framework for issuance of commercial cannabis business permits and impose specific minimum performance standards on those businesses. The key features of the proposed regulations include:

- Applications for permits will be accepted pursuant to a request for proposal process.
- Applications will be scored and ranked based on objective criteria and standards.
- Applicants for permits must submit detailed operational/business plans, security plans, and submit to criminal background investigations as part of the application process.
- Once all applications have been evaluated, staff will provide a report and recommendation to Council regarding selection of permittees.
- In order to commence operation, a business must obtain the commercial cannabis business permit, land use authorization such as AUP or CUP, state cannabis license, and pay all required local fees.
- Permittees are subject to inspection of records and premises by the City to ensure compliance with local regulations.
- Violations of operating and performance conditions constitute a basis for potential revocation of a permit.
- The City Council may adopt a resolution setting limits on the number of permits to be issued.
- The City Council may adopt a resolution setting the local tax to be imposed pursuant to Measure EE.

Draft Land Use Ordinance. The proposed land use ordinance would establish performance and operational standards for all commercial cannabis activities in the City of Hayward, including cultivation, manufacturing, testing laboratories, delivery, distribution, and retail dispensaries. Specifically, the Ordinance proposes seven new land use definitions and includes a set of development and operational standards applicable for each:

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

Additionally, the Ordinance establishes general criteria for the regulation of personal cannabis cultivation, including location and minimum screening requirements. Details on the specific regulatory and land use requirements are listed below.

Special Use Permit Findings. In addition to the required findings in the City's Zoning Ordinance for Administrative Use Permits and Conditional Use Permits, staff is recommending four special findings be made for all cannabis land uses. These more specific land use findings allow the City the opportunity to evaluate site-specific locations and business operations on a case-by-case basis and provide greater direction on mitigating potential impacts. Staff is recommending these four special findings be made in addition to the general findings necessary to approve any Administrative or Conditional Use Permit:

1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted; and
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation; and
3. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

Personal Cultivation. Both AUMA/MAUCRSA legislation allows cultivation of cannabis by persons aged 21 or older on private property for personal use. Specifically, the State law allows cultivation for personal use of up to 6 cannabis plants per dwelling. While the City can impose reasonable regulations on indoor cultivation for personal use, the City cannot prohibit it. AUMA/MAUCRSA authorizes municipalities to completely prohibit outdoor cultivation for personal use; however, staff is not proposing such a prohibition at this time.

While the proposed Ordinance does not regulate the indoor vs. outdoor location of cannabis cultivation, it does include some general regulations that govern placement on the site, screening, and provisions that require indoor cultivation be within a legally constructed structure and grown by someone who resides on the property. In addition, State law does allow landlords the ability to prohibit cannabis cultivation from being grown by tenants on-site if the property owner chooses to prohibit this activity as part of a lease agreement. The proposed Ordinance regulations are not intended to be overly burdensome, but are intended to ensure that any personal cultivation activity in a residential area does not result in increased public safety, building code or public nuisance issues.

Smoking Pollution Control Revisions. In addition to the regulatory and land use ordinance proposed, other text amendments to the Hayward Municipal Code are necessary to ensure consistency with existing regulatory and land use regulations adopted by the Council, as well as to ensure consistency with the new requirements of State law. Specifically, staff has included the revisions to Chapter 5, Article 6 (Smoking Pollution Control) to reflect the addition of cannabis and cannabis products.

Annual Cannabis License Fee. Consistent with City Council directives to ensuring the cannabis licensing program maintains full cost recovery, staff is proposing an annual cannabis license fee of \$10,000 per business, to cover the total cost of one annual inspection by the City's code enforcement and public safety divisions to ensure compliance with local and state law. The proposed cannabis licensing and inspection program is similar to the existing smoking inspection program, which is currently administered for tobacco related businesses operating in the City.

Tax Revenue. Hayward voters adopted Measure EE authorizing the City Council to impose a tax not exceeding fifteen percent (15%) of gross sales of adult use of recreational and medical cannabis. The tax would apply to the cultivation, distribution, manufacturing, business-to-business sales, as well as retail sales. During the previous work session, there was general interest from the Council regarding cannabis tax rates in neighboring jurisdictions. The tax rates are as follows:

- San Jose – 10%
- Pittsburg – 10%
- San Leandro – 6% until June 2019, 7% beginning July 1, 2019, and 8% on July 1, 2021
- Oakland – 5% (medical marijuana)
- Berkeley – 2.5% (medical marijuana)

It is important to note that the taxes in San Jose, Berkeley and Oakland were all adopted in 2010 when Prop. 19 could have legalized recreational marijuana. The Berkeley and Oakland ballot initiatives include a 10% tax on recreational marijuana in the event Prop. 19 passed, which it did not. Staff is currently evaluating different tax scenarios and will present this options for Council consideration at their special meeting on October 30, 2017. Council can also provide preliminary feedback on desired tax rates at this meeting.

Other Regulatory Ordinances. As of March 2017, there were eighteen licensed medical marijuana retailers in Alameda County – six in Berkeley, seven in Oakland, two in San Leandro (with a third pending) and two in unincorporated Alameda County.

All local jurisdictions that allow MCRSA businesses have adopted regulatory ordinances unique to these kinds of business models. These ordinances require ownership disclosures and backgrounds of the owners and employees, hours of operations, security requirements, signage and lighting controls on air emissions, inventory controls and financial practices, license review, inspections and revocation and so on. These requirements would be in addition to the state licensing requirements under MCRSA and AUMA. The City's proposed land use regulations incorporate similar operational measures to minimize environmental impacts and ensure public safety.

Some jurisdictions have established a limit on the number of MCRSA businesses allowed – San Leandro has a maximum of three MCRSA businesses, while unincorporated Alameda County will allow up to five dispensaries. With this approach, jurisdictions often invite requests for qualifications to evaluate potential businesses before selecting an operator. Other jurisdictions use land use controls and separation requirements, which by their nature tend to limit the number of such businesses. While the City Council did not support a limit to the total

number of cannabis businesses operating in the City, there was some support to limit certain types of cannabis businesses and evaluate the impacts and benefits of those businesses through a RFP process, which is anticipated to be released shortly. While neither the draft land use ordinance nor the regulatory ordinance propose a limit on the number of cannabis businesses in Hayward, the City Council retains the discretion to limit the number of licenses issued, if desired.

Based on feedback from Council, staff is proposing several zoning text amendments to accommodate commercial cannabis land uses in the City as well as establish a series of cannabis specific guidelines that apply to personal cultivation and commercial cannabis businesses in the City. As previously mentioned in this report, the proposed zoning ordinance text amendment would amend select commercial and industrial zoning districts to add six new land use definitions and related business activities for commercial cannabis uses and establish an entitlement process required for each. A more thorough review and analysis for each of the proposed land uses is detailed below.

Commercial Cannabis Cultivation. The State defines, regulates and licenses Commercial Cultivation businesses based on the size of the proposed land use: Cannabis Cultivation up to 5,000 square feet; and Cannabis Cultivation 5,001 square feet and over. Similarly, staff believes that the scale of the Commercial Cannabis Cultivation operations should be considered when evaluating potential land use impacts and processing land use entitlements. For smaller-scale Cultivation businesses containing 5,000 square feet and below, staff is recommending these be permitted in the Industrial zoning district with an Administrative Use Permit. For large-scale Cultivation operations that exceed 5,000 square feet, staff is recommending these be permitted in the Industrial zoning district with a Conditional Use Permit. Additionally, both small and large-scale cultivation activities would be subject to the general requirements and use-specific regulations contained in Section 10-1.3600.

Commercial Cannabis Testing Laboratories. Commercial Cannabis Testing Laboratories are not anticipated to have noticeably different impacts than other testing facilities currently in operation in Hayward. In fact, staff anticipates that many of the existing testing facilities currently operating in the City, will expand their business operations to accommodate the new State licensing requirements related to cannabis testing. Staff believes the additional business operations, which will be regulated by the State, will have little, if any, land use impacts as a result of cannabis and as such, staff is recommending that these cannabis testing laboratories be permitted (Industrial) or administratively permitted (Commercial), pursuant to the general requirements established in Section 10-1.3600.

Commercial Cannabis Manufacturing. For the purposes of the land use impacts, there are two types of manufacturing activities designated by the State: Level 1 and Level 2. The principal distinction between the two levels is that Level 1 involves the use of non-volatile solvents or no solvents for the manufacturing process while Level 2 may involve use of volatile solvents, such as butane. Allowing both types of manufacturing creates opportunities for additional cannabis businesses to operate within the City, but Level 2 manufacturing has a greater potential for public safety issues, including a higher risk for explosion and fire. Although the State does regulate the use and storage of Level 2 volatile substances in the manufacturing

process, much of the regulations and oversight depend on the level and degree of business compliance with the State regulations. Due to the relatively unknown use of these substances in the cannabis manufacturing process, staff is recommending a prohibition on this type of activity until greater and more detailed research is completed.

While manufacturing operations can vary greatly, the Commercial Cannabis Manufacturing – Level 1 uses are not anticipated to be noticeably different from other manufacturing uses that do not involve cannabis. For example, the impacts related to the manufacturing and production of edible cannabis products, such as candy or baked goods, may not be significantly different from other food production uses already in existence in the City. Staff believes the CUP for Level 1 manufacturing activities is appropriate and provides an opportunity for the City to evaluate these uses on a case-by-case basis and to incorporate any site or use-specific conditions to mitigate impacts. Additionally, all Commercial Cannabis Manufacturing operations would be subjected to the general regulations and use-specific requirements contained in Section 10-1.3600.

Commercial Cannabis Retail Dispensaries. Commercial Cannabis Retail Dispensaries are typically the land use activity that results in the greatest number of potential impacts related to public safety, traffic, noise, and odors. In evaluating possible locations where retail dispensaries could locate, staff reviewed the existing commercial zoning districts that allowed the age-restricted, controlled access land uses, such as bars, nightclubs, smoking lounges, and determined that from a land use perspective, retail cannabis dispensaries were not significantly different. As such, the draft land use ordinance only proposes to allow retail cannabis dispensaries in select zoning districts that currently permit similarly sensitive land uses but includes additional site and operational requirements intended to mitigate and minimize potential impacts on-site and on nearby properties. Staff believes that similar to other controlled-accessed land uses, retail cannabis dispensaries should be subject to the CUP process and be required to meet all the general and land use regulations identified in Section 10-1.3600.

Commercial Cannabis Delivery. Although cannabis delivery operations associated with a Commercial Cannabis Retail Dispensary would be conditionally permitted and evaluated as part of the CUP process, staff considers a delivery-only business that provides the transport of medical and non-medical cannabis to clients and between various cannabis operators to be similar in nature to other Administrative and Professional Office uses currently established in the City. Many of these proposed uses would require multiple vehicles to facilitate the delivery of goods and an office area for the personnel, operational and administrative functions of the business. Staff believes these business operations will have little, if any, site-specific impacts resulting from cannabis delivery. As such, staff is recommending Commercial Cannabis Delivery be a “permitted” use in the Industrial zoning district and allowed in select Commercial zoning districts with an Administrative Use Permit. Like other uses, Commercial Cannabis Delivery operations are subject to the general regulations and use-specific requirements in Section 10-1.3600.

Development Standards and Mandatory Buffer. While many of the existing development standards for the underlying zoning district would apply to cannabis land uses (parking,

building setbacks, landscaping), there are additional guidelines which staff has included in the draft Ordinance to ensure public safety and minimize potential impacts to other sensitive land uses in the area. Specifically, State law requires that all Cannabis businesses be subject to a 600-foot minimum setback from the sensitive land uses as described in California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768. These sensitive land uses include kindergarten, any schools (grades 1 through 12), day care center, and youth/recreation centers. In addition to the uses identified by the State, staff is proposing to expand the buffer to include other land uses where children and under-aged persons could congregate, including public parks, libraries and designated open space areas. Public parks and open space areas that do not contain a playground or children's activities are not included as part of staff's recommendation. While the inclusion of parks and open space areas is over and above the State's minimum requirements, the proposed buffers will further limit the possible exposure of these uses by minors and are consistent with how the City has controlled other sensitive, age-restricted uses, including bars, nightclubs, liquor stores and smoking establishments. As part of the CUP issuance for any proposed cannabis business, the Planning Commission may reduce the buffer around parks that contain playgrounds or children's activities if the Commission finds that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business.

In addition to the 600-foot mandated State buffer, staff is also recommending a commercial cannabis retail dispensary buffer of 1,000 feet to minimize potential for over-concentration of these uses in the City's commercial areas. Even with the proposed 1,000-foot minimum buffer, staff believes the potential number of retail dispensaries, unless limited, remains significant. Maps of the permitted zoning districts for each of the cannabis land uses are included as Attachment III.

ECONOMIC IMPACT

It is difficult to predict the potential tax revenue stream created by up to three (3) commercial cannabis businesses in Hayward. Different business types (i.e. Manufacturing vs. cultivation) may generate different levels of revenue. Staff will focus efforts on compiling data and information on this matter in order to assist the Council with determining the optimal tax rate to be imposed.

In late 2016, the University of the Pacific business school and law school authored a report studying the economic impact of a cannabis industry to the greater Sacramento area.¹ The report, among other things, analyzed the potential economic impact of various sectors of the cannabis industry and assumed a range of potential market models from strictly regulated local models to less regulated regional market models. Although the assumptions utilized in the report may not hold true for Hayward, the methodology will be useful to Hayward staff as staff moves forward with a more detailed economic impact analysis.

FISCAL IMPACT

Staff anticipates that a significant cost from cannabis uses would be associated with the administration of land use and regulatory ordinances, depending on the number and type

of businesses Council chooses to allow. Staff would be required to process applications, prepare reports to the Planning Commission and City Council, review business plans, obtain background investigation results for proposed owners and employees, and interact with the State's cannabis regulators. Staff would also be involved in auditing financial records to determine if the City is accurately receiving funds resulting from the application of Measure EE. These staff functions would cover multiple departments and several full-time equivalent higher-level classifications, at the outset of operations in Hayward and subsequently to assure ongoing compliance. Some or possibly all of these administrative costs could be covered by City licensing fees approved as part of the Master Fee Schedule, but it would take at least two fiscal years of operations to identify true administrative costs.

Following the July work session, Council set an initial deposit of \$5,000 in the Master Fee Schedule per proposal. If staff charges exceed this amount, the applicant will be billed on a time and materials basis. After two years of experience with the staff charges associated with these types of applications, staff will return to Council to adjust the deposit amount as needed.

STRATEGIC INITIATIVES

The proposed regulatory and land use ordinances are consistent with the goals and policies of the Hayward 2040 General Plan, and more specifically, are consistent with two of the Council's Strategic Initiatives: Complete Communities and Tennyson Corridor. Under the proposed regulatory and land use framework, new cannabis land uses could be established in select locations along the Tennyson Corridor and would support the Complete Communities Initiatives by diversifying employment opportunities and creating redevelopment and adaptive reuse of existing properties along the Tennyson Corridor and other locations throughout Hayward. Staff has identified several goals and policies of the Hayward 2040 General Plan, which support the Council's Initiatives:

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

LU-6.1 Land Uses. The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.

ED-1.6 Advances and Specialized Manufacturing. The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.

ED-3.2 Fast Growing Industries. The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

HLQ-4.1 Adequate Health Care Facilities. The City shall encourage the development and maintenance of a full range of health care facilities, including hospitals, acute care facilities, neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.

SUSTAINABILITY FEATURES

As part of the land use entitlement process, the Administrative Use Permit and Conditional Use Permit process would identify and address sustainability impacts related to commercial cannabis businesses. While each proposed project will be subject to CEQA environmental assessment, the proposed land use ordinance requires cannabis cultivation and manufacturing operations submit a Sustainability Plan that demonstrates and incorporates project-specific sustainable features, such as green building materials, incorporation of water conserving devices and use of solar panels.

PUBLIC CONTACT

Following the March 21, 2017 City Council work session, the Development Services Department began conducting Lean Empathy interviews to solicit feedback and public opinion on possible cannabis businesses operating in the City of Hayward. Staff interviewed nearly fifty (50) residents, business owners, employees, property owners and various stakeholders on their views of cannabis. Staff also created an on-line survey, and placed door hangers in key residential neighborhoods, along commercial corridors downtown, and within the Industrial area. Staff also solicited broader input from the general public by creating a cannabis webpage, which was on the City's main website and highlighted in The Stack newsletter (June 2017). The webpage provides answers to frequently asked questions, status updates, and links to the survey. In total, over 2,250 stakeholders responded to the survey and have asked to receive information regarding progress towards the adoption of cannabis regulations.

Overall, the survey showed that a large majority of respondents (82%) support permitting cannabis businesses in Hayward and 78% indicated that both medical and recreational cannabis operations should be allowed. When asked about limiting the number of cannabis businesses, 50% of respondents believed the City should allow an unlimited number of businesses, while 13% said the City should only allow delivery operations. Overwhelmingly, 66% of respondents indicated that the City should allow cannabis businesses in the commercially and industrially zoned areas of the City. A copy of the survey results is included as Attachment IV.

NEXT STEPS

If the City Council introduces the attached ordinances this evening, they will be brought back for adoption during a special meeting scheduled for October 30, 2017. The text amendment to the zoning ordinance and the land use regulations will be effective upon adoption. The regulatory ordinance and the amendments to the Smoking Ordinance will be effective 30 days after adoption. At the October 30 special meeting, the City Council will also be asked to consider possible scoring criteria for the Request for Proposal process and discuss the proposed sales tax rate for commercial cannabis businesses in Hayward. Staff has hired an outside consultant to assist in the identification of possible scoring criteria and best practices for inclusion in the draft Request for Proposals and will assist with the discussion during the special meeting. This third-party consultant will provide an independent evaluation and scoring of the cannabis business proposals following the release of the RFP and anticipates presenting the final scores for proposals in each land use category to the Council for final consideration in December 2017.

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

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

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO 17-

Introduced by Council Member _____

RESOLUTION ADOPTING FINDINGS SUPPORTING AMENDMENTS TO THE CITY OF HAYWARD MUNICIPAL CODE ESTABLISHING REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND THE ESTABLISHMENT OF COMMERCIAL CANNABIS LAND USE REGULATIONS

WHEREAS, at the direction of the City Council, staff prepared amendments to the City's Municipal Code to establish regulations related to the placement and enforcement of personal cannabis cultivation and the placement, maintenance and enforcement of Commercial Cannabis land uses to implement the proposed regulatory framework for commercial cannabis businesses in the City of Hayward (the "Project"); and

WHEREAS, the City Council independently finds and determines that this action is exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under 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; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 14, 2017, and where the motion passed (6-0-0), that the City Council approve the proposed text amendments (Application No. 201705042) to Chapter 10 of the Hayward Municipal Code, including the establishment of regulations governing Personal Cannabis Cultivation and Commercial Cannabis Land Uses; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 17, 2017.

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. The proposed land use ordinance and text amendments are exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under 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.

AMENDMENTS TO THE MUNICIPAL CODE RELATED TO PERSONAL CULTIVATION AND COMMERCIAL CANNABIS LAND USES (REFERRED TO AS THE “TEXT AMENDMENTS”)**A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.**

The proposed text amendments and land use ordinance will promote the public health, safety, convenience, and general welfare of the residents of Hayward by providing additional employment and business opportunities with the allowance of commercial cannabis businesses in Hayward. Additionally, the proposed changes will result in land uses in the commercially and industrially zoned areas that are compatible with existing and future uses and will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. As proposed, the land use regulations will ensure that any cannabis business will operate in such a manner to minimize public safety and public nuisance impacts while incorporating appropriate measures to mitigate possible environmental impacts associated with business activities. The State, through the passage of the MAUCRSA, has found substantial evidence that cannabis has medicinal value for many health conditions that otherwise would result in a compromised quality of life for residents.

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed zoning amendments contained herein are consistent with the goals and policies of all elements of the *Hayward 2040 General Plan*, and any applicable specific plan in that the amendments will direct commercial cannabis businesses to appropriate commercial and industrial districts designated to support such uses. The proposed zoning amendments are internally consistent with other applicable provisions of Chapter 10 of the Municipal Code in that the entirety of the Code will apply to cannabis as a new land use classification, such as identifying where the use is allowed, under what permit authority development and parking

standards and processes. The proposed recommendations within land use ordinance are consistent with the following policies and actions of the Hayward 2040 General Plan:

LU-5.2 Flexible Land Use Regulations. The City shall maintain flexible land use regulations that allow the establishment of economically productive uses in regional and community centers.

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

LU-6.1 Land Uses. The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.

ED-1.6 Advances and Specialized Manufacturing. The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.

ED-3.2 Fast Growing Industries. The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

ED-6.2 Land Use Certainty. The City shall strive to enhance land use certainty for businesses by identifying and removing unnecessary regulatory barriers that discourage private-sector investment.

HLQ-4.1 Adequate Health Care Facilities. The City shall encourage the development and maintenance of a full range of health care facilities, including hospitals, acute care facilities, neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.

HQL-10.6 Parks as Buffers. The City shall consider the use of parks and recreational corridor as buffers between incompatible land uses.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and

The streets and public facilities that currently serve the City are not expected to be significantly impacted with additional cannabis land uses. Much of the proposed land use activities associated with cannabis are consistent and compatible with the other land uses that are

currently permitted or conditionally permitted in the zoning districts. No properties are proposed to be reclassified or rezoned with the proposed text amendment. As such, the streets and public facilities, both existing and proposed, would be adequate to serve the potential development of new cannabis and cannabis-related businesses in the City.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified with the proposed text amendment and land use regulations pertaining to cannabis. A beneficial effect will be achieved with the proposed revision to the HMC, as it will allow for additional land uses and create additional business and employment opportunities in Hayward that would not be obtainable under the City’s exclusionary Zoning Ordinance. As conditioned, the proposed regulations with special findings and operational requirements, will ensure that any proposed cannabis business will operate in a manner which is compatible with present and potential future land uses

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings in support of Zoning Text Amendment Application 201705042 and Proposed Adoption of New Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward, subject to the adoption of the companion ordinances.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE NO. ____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE); ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS); ARTICLE 24 (SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE); AN ARTICLE 25 (HAYWARD MISSION BOULEVARD CORRIDOR FORM-BASED CODE).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

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

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

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

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

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

SEC. 10-1.800 - NEIGHBORHOOD COMMERCIAL DISTRICT (CN)

SEC. 10-1.820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the CN District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (e) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

SEC. 10-1.845 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.**Commercial Buildings and Uses.**

For commercial buildings (including second story residential uses) refer to the design criteria contained in the City of Hayward Design Guidelines, the Hillside Design and Urban/Wildland Interface Guidelines and the following specific criteria and standards.

- i. Cannabis. Refer to Section 10-1.3600, Cannabis. j. Decks and Ramps.
- k. Drive-in Establishments - Special Standards and Conditions.
- l. Fences, Hedges, Walls.
- m. Grading
- n. Landscaping.
- o. Lighting,
- p. Mixed-Use Development.
- q. Outdoor Storage.
- r. Parking.
- s. Retaining Walls.
- t. Roof-Mounted Equipment.
- u. Signs.
- v. Surfacing.
- w. Trash and Recycling Facilities.
- x. Window Coverage.

SEC. 10-1.900 - NEIGHBORHOOD COMMERCIAL-RESIDENTIAL DISTRICT (CN-R)**SEC. 10-1.920 - CONDITIONALLY PERMITTED USES.**

- a. Administrative Uses. The following uses are permitted in the CN-R District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See [Section 10-1.1045](#) for special requirements; not allowed in the SD6 Special Design District.)

SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)**SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.**

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.

- (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
- (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Dance or night club.
 - (f) Liquor store.
 - (g) Theater, Large Motion Picture.
 - (h) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)**SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES**

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

SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)**SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES**

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

SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)**SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.**

- b. Conditional Uses. The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
- (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret, Dance or Nightclub. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Convenience Market
 - (f) Liquor store.
 - (g) Pawn Shop
 - (h) Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See [Sec. 10-1.1045](#) for special requirements.)

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

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

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
- (5) Retail Commercial Uses.
 - Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

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

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

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
- (5) Retail Commercial Uses. (See General Regulations Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Convenience Market
 - (e) Liquor store

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

- g. Cannabis. Refer to Section 10-1.3600, Cannabis. h. Decks and Ramps.
- . i. Fences, Hedges, Walls.
- j. Grading.
- k. Landscaping.
- l. Lighting, Exterior.

- m. Office Uses in the CC-P Subdistrict.
- n. Open Space (Residential).
- o. Outdoor Storage.
- p. Parking, Driveways and Paving.
- q. Roof-Mounted Equipment.
- r. Signs.
- s. Surfacing.
- t. Trash and Recycling Facilities.
- u. Window Coverage.

SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)

SEC. 10-1.1615 - USES PERMITTED.

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

SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.

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

- (k) Truck terminal.
- (l) Truck rental.
- (m) Truck storage yard.
- (n) Vehicle dismantling facility. (Indoors only)
- (o) Wind energy conversion system.
- (p) Hazardous materials use and storage

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

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

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

Industrial Buildings and Uses.

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

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

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

SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.

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

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

Special standards and conditions as set forth below are applicable to uses enumerated in this Section and listed in the individual districts. Departure or variation from these standards is permitted only when it can be established by the applicant that the intent and purpose of the district or the necessary findings for permit approval, as specified in this ordinance, are not compromised. Where warranted by ordinance regulations or to implement official City policy, standards of development may be required that exceed those listed in this Section.

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

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

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

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

USES	PARKING SPACES REQUIRED
OFFICES, medical and dental offices, clinics and laboratories, including <u>Cannabis Testing Laboratories</u>	1.0 for each 200 square feet of gross floor area
RETAIL establishments characterized by hand-carried merchandise in which a customer makes quick purchases or	1.0 per 175 square feet of gross floor area where the total gross floor area of the development, whether an individual

rentals in small quantities, including: Cleaners without a cleaning plant Convenience stores <u>Commercial Cannabis Retail Dispensaries</u> Delicatessen Doughnut shops Ice cream shops Laundry without a cleaning plant Off-sale liquor establishments Take out restaurants Video stores	establishment or a shopping center, is 10,000 square feet or less or 1.0 per 215 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is over 10,000 square feet
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SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES. The minimum requirements for wholesale, manufacturing, storage, transportation, and similar uses are:

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

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 24 (South Hayward BART/Mission Boulevard Form-Based Code) to read as follows:

SEC. 10-24.300 - STANDARDS AND TABLES

TABLE 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T4	T5	CS
a. RESIDENTIAL			
Multiple Family	P	P	-
Second Dwelling Unit	P	P	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-
b. LODGING			
Bed & Breakfast	AU	AU	-
Hotel	CU	CU	-
c. OFFICE			
Commercial Cannabis Delivery	AU	AU	
Office	P	P	-
d. RETAIL			
Alcohol Sales**	CU	CU	-
Artisan/Craft Production	P	P	-
Appliance Repair Shop	P	P	
Check Cashing & Loans	-	-	-
Commercial Cannabis Retail Dispensary	CU	CU	
Dance/Nightclub	-	-	-
Equipment Rentals	AU	AU	-
Home Occupation	P	P	-
Indoor Recreation	AU	AU	CU
Kennel	AU	AU	-
Liquor Store	-	-	
Massage Parlor	CU	CU	-
Media Production	AU	P	-
Pawn Shop	-	-	
Personal Services	P	P	-
Printing and Publishing	AU	P	-
Recycling Collection Area	AU	AU	-
Restaurant	P	P	-
Retail Sales	P	P	CU
Tattoo Parlor	-	-	
Tobacco Specialty Store	-	-	-
Small Motion Picture Theater	P	P	CU

Large Motion Picture Theater ⁽¹⁾	CU	CU	CU
Live Performance Theater	P	P	CU
e. CIVIC			
Assembly*	AU	AU	CU
Conference Center	-	CU	CU
Cultural Facility	P	P	CU
Park & Recreation	P	P	P
Parking Facility	AU	AU	CU
Public Agency Facility	P	P	P
Religious Facility*	AU	AU	CU
Wind Energy	P	P	P
f. OTHER: AGRICULTURE			
Vegetable Garden	P	-	P
Urban Farm	P	P	P
Community Garden	P	P	P
Green Roof			
Extensive	P	P	P
Semi Intensive	P	P	P
Intensive	P	P	P
Vertical Farm	-	P	P
g. OTHER: AUTOMOTIVE			
Automobile Repair (Minor)	AU	AU	-
Automobile Repair (Major)	CU	CU	-
Drive-Through Facility	CU	CU	-
Gas Station	CU	CU	-
Taxi Company	AU	AU	-
h. OTHER: CIVIL SUPPORT			
Fire Station	P	P	P
Hospital	CU	CU	CU
Medical/Dental Clinic	AU	AU	CU
Mortuary	AU	AU	CU
Police Station	P	P	P
i. OTHER: EDUCATION			
Day Care Center	P	P	CU
Day Care Home	AU	AU	-
Educational Facility	AU	AU	CU
Vocational School	AU	AU	CU

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
 - (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT
 - * Places of Assembly and Religious Facility: for properties fronting Mission Blvd., such uses are not allowed within one-half mile of existing similar uses that front Mission Blvd.
** Unless exempted by the Alcohol Beverage Outlet Regulations contained in [Section 10-1.2735\(b\)](#) of the Hayward Municipal Code or specifically exempted by this Code.
- ⁽¹⁾ An application for conditional use Permit for a Large Motion Picture Theater shall be accompanied by a study acceptable to the Planning Director documenting the absence of negative impact upon the downtown of the opening of another Large Motion Picture Theater.

Section 5. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 25 (Hayward/Mission Boulevard Corridor Form-Based Code) to read as follows:

SEC. 10-25.400 - STANDARDS AND TABLES

Table 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T3	T4-1	T4-2	T5	CS
a. RESIDENTIAL					
Multiple Family ^{1,2}	CU	P/CU	P/CU	P/CU	-
Second Dwelling Unit ^{1,2}	P	P/CU	P/CU	P/CU	-
Single Family ^{1,2}	P	-	-	-	-
Live/Work ^{1,2}	-	P/CU	P/CU	-	-
Emergency Homeless Shelter ^{1,2}	-	P/CU	P/CU	-	-
Single Room Occupancy (SRO)	-	-	-	CU	-
b. LODGING					
Bed & Breakfast	CU	AU	AU	AU	-
Hotel	-	AU	AU	AU	-
c. OFFICE					
Commercial Cannabis Delivery		AU	AU	AU	
Office	CU	P	P	P	-
d. RETAIL					
Alcohol Sales	-	CU	CU	CU	-
Artisan/Craft Production	-	P	P	P	-
Appliance Repair Shop	-	P	P	P	-
Check Cashing & Loans	-	-	-	-	-
Commercial Cannabis Retail Dispensary		CU	CU	CU	
Dance/Nightclub	-	-	-	-	-
Equipment Rentals	-	AU	AU	AU	-
Home Occupation	P	P	P	P	-
Indoor Recreation	-	AU	AU	AU	CU
Kennel	-	AU	AU	AU	-
Liquor Store	-	-	-	-	-
Massage Establishment ³	-	-	-	-	-
Media Production	-	AU	AU	P	-
Pawn Shop	-	-	-	-	-
Personal Services	CU	P	P	P	-
Printing and Publishing	-	AU	AU	P	-
Recycling Collection Area	-	AU	AU	AU	-
Restaurant	-	P	P	P	-
Retail Sales	-	P	P	P	CU

Tattoo Parlor	-	-	-	-	-
Tobacco Specialty Store	-	-	-	-	-
Small Motion Picture Theater	-	P	P	P	CU
Large Motion Picture Theater ⁴	-	CU	CU	CU	CU
Live Performance Theater	-	P	P	P	CU
e. CIVIC					
Assembly	CU	AU	AU	AU	CU
Conference Center	-	-	AU	AU	CU
Cultural Facilities	CU	AU	AU	AU	CU
Park & Recreation	P	P	P	P	P
Parking Facility	-	AU	AU	AU	CU
Public Agency Facilities	CU	P	P	P	P
Wind Energy	P	P	P	P	P
f. OTHER: AGRICULTURE					
Vegetable Garden	P	P	P	-	P
Urban Farm	P	P	P	P	P
Community Garden	P	P	P	P	P
Green Roof	P	P	P	P	P
Vertical Farm	-	-	-	P	P
f. OTHER: AUTOMOTIVE					
Automobile Repair (Minor)	-	AU	AU	AU	-
Automobile Repair (Major)	-	CU	CU	CU	-
Drive-Through Facility	-	CU	CU	CU	-
Gas Station	-	CU	CU	CU	-
Taxi Company	-	AU	AU	AU	-
f. OTHER: CIVIL SUPPORT					
Fire Station	CU	P	P	P	P
Hospital		AU	AU	AU	AU
Medical/Dental Clinic		AU	AU	AU	CU
Mortuary	-	AU	AU	AU	-
Police Station	CU	P	P	P	P
f. OTHER: EDUCATION					
Day Care Center	CU	P	P	P	CU
Day Care Home	P	AU	AU	AU	-
Educational Facilities	-	AU	AU	AU	CU
Vocational School	-	AU	AU	AU	CU
f. OTHER: LIGHT INDUSTRIAL					
Research and Development	-	-	P	-	-
Wholesale	-	-	P	-	-
Manufacturing/Assembly of Clothing	-	-	P	-	-
Woodworking Shop	-	-	P	-	-
Light Manufacturing	-	-	P	-	-

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
- (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT

- ¹ For properties located within Commercial Overlay Zone 1, as shown in the Regulating Plan (Figure 4-1), residential units are not permitted on the ground floor.
- ² For properties located within Commercial Overlay Zone 2, as shown in the Regulating Plan (Figure 4-1), residential units are only allowed on the ground floor with a conditional use permit.
- ³ Massage establishments are only permitted where mandated by State law.

Section 6. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600 to read follows:

Chapter 10-1.3600

CANNABIS

Sections:

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

10-1.3600 Purpose.

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

10-1.3601 Limitations on Use.

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

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

of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.

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

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

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

10-1.3602 Personal Cannabis Cultivation.

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

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

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

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

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

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

1. **Visibility.** No visible markers or evidence indicating that cannabis is being cultivated on the site shall be visible from the public right of way.
2. **Security.** All enclosures and structures used for cannabis cultivation shall have security measures sufficient to prevent access by children or other unauthorized persons.
3. **Prohibition of Volatile Solvents.** The manufacturing of cannabis products for personal non-commercial consumption shall be limited to processes that are solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug and Cosmetic Act. The use of volatile solvents to manufacture cannabis products for personal consumption is prohibited.

10-1.3603 Commercial Cannabis Businesses.

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

A. **Land Use.** All Commercial Medical and Non-Medical Cannabis Businesses shall be located in compliance with the requirements of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and as designated in the Zoning Code. For purposes of this Chapter, Commercial Cannabis Businesses shall include the following land use classifications, all of which are further defined in Chapter 10, Section 10.1-3500 (Definitions):

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

B. **Required Setbacks.** All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including any public parks, libraries and public open space areas. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

C. **Development Standards.** The development standards for specific cannabis land uses in this Chapter supplement and are required in addition to the underlying

zoning districts listed in Chapter 10, Article 1 (Zoning Ordinance), Chapter 10, Article 2 (Off-Street Parking Regulations), Chapter 10, Article 22 (Green Building Requirements for Private Development), Chapter 10, Article 24 (South Hayward BART Mission Form Based Code), and Chapter 10, Article 25 (Hayward/Mission Boulevard Form Based Code) of the Hayward Municipal Code.

10-1.3604 General Requirements.

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

A. **Dual Licensing.** The City recognizes that state law requires dual licensing at the state and local level for all Cannabis Businesses. All Cannabis Operators shall therefore be required to diligently pursue and obtain a state cannabis license at such time as the state begins issuing such licenses, and shall comply at all times with all applicable state licensing requirements and conditions related to that license.

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

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

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

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

D. **Multiple Permits Per Site.** Multiple Cannabis Businesses and Cannabis Operators proposed on any one site or parcel shall be permitted only if all the proposed Cannabis Businesses and their co-location operators are located on separate and distinct premises as defined in Business and Professions Code section 26001 and have obtained all necessary local and state permits or licenses, and land use approvals from

appropriate local and state agencies. Subject to the provisions of this Zoning Ordinance, Cannabis Operators holding multiple licenses from the state may operate from a single premises to the extent such operation is consistent with state law, as it may be amended from time to time.

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

F. Security. Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, armed Security Officer on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:

1. Security Cameras. Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.

2. Alarm System. A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.

3. Secure Storage and Waste. Commercial Cannabis products and associated product manufacturing, distribution or cultivation waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance.

4. Transportation. Commercial Cannabis Businesses shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Commercial Medical and Non-Medical Cannabis products and currency in accordance with state law.

5. Building Security. All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.

6. Emergency Access. Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

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

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

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

1. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;

2. Staff training procedures; and

3. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted

and best available industry-specific technologies designed to effectively mitigate cannabis odors.

10-1.3605 Commercial Cannabis Cultivation

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

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

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

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

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

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

10-1.3606 Commercial Medical and Non-Medical Cannabis Manufacturing

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

- A. **Conditional Use Permit Required.** A Conditional Use Permit shall be required for all Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1 operations, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2 is prohibited.
- B. **Extraction Processes.** Commercial Cannabis Manufacturers shall utilize only extraction processes that are (a) solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act, and/or (b) use solvents exclusively within a closed loop system that meets the requirements of the federal Food, Drug, and Cosmetic Act including use of authorized solvents only, the prevention of off-gassing, and certification by a California licensed engineer. The use of volatile solvents, defined as Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2, is prohibited.
- C. **Loop Systems.** No closed loop systems shall be utilized without prior inspection and approval of the City’s Building Official and Fire Code Official.
- D. **Standards of Equipment.** Manufacturing, processing and analytical testing devices used by the Cannabis Manufacturer must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the City’s Building Official and Fire Code Official.
- E. **Food Handler Certification.** All owners, employees, volunteers or other individuals that participate in the production of edible Cannabis Products must be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the Cannabis Manufacturer’s facility where that individual participates in the production of edible Cannabis Products.
- F. **Edible Product Manufacturing.** Commercial Cannabis Businesses that sell or manufacture edible cannabis products shall obtain a permit from the Alameda County Public Health Department. Permit holders shall comply with State and County health permit requirements. These requirements provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, demonstrate industry manager knowledge, ensure safe food preparation practices and delineate acceptable levels of sanitation for preparation of edible products.

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

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

10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery.

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

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

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

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

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

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

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

1. Employees. The Commercial Cannabis Retail Operator shall maintain a current register of the names of all employees employed by the Commercial Cannabis Retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.
2. Recordkeeping. The Commercial Cannabis Retail Operator shall maintain patient and sales records in accordance with state law.
3. Protocols and requirements for patients and persons entering the site. No person shall be permitted to enter a Commercial Cannabis Retail dispensary without government issued photo identification. A Commercial Cannabis Retail dispensary shall not provide Cannabis or Cannabis Products (Medical or Non-Medical) to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government-issued photo identification card or a valid physician's recommendation under Section 11362.712 of the Health and Safety Code.
4. Hours of Operation. A Commercial Cannabis Dispensary may operate between the hours of 8:00 a.m. and 8:00 p.m., up to seven (7) days per week or as approved as part of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City's Police Department. The basis for any restriction on the hours or operation shall be specified in the permit.
5. Secured Access. A Commercial Cannabis Retail Dispensary shall be designed to prevent unauthorized entrance into areas containing Cannabis or Cannabis Products. Limited access areas accessible to only authorized personnel shall be established.
6. Product Storage. Commercial Cannabis and Cannabis Products that are not used for display purposes or immediate sale shall be stored in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.
7. Cannabis Paraphernalia. No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit. The sale of such products must comply with the City's zoning code and any other applicable state regulations.

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

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

10. Permit Display. All Commercial Cannabis Retail dispensaries shall maintain a copy of the valid operating license issued by the City on display during business hours and in a conspicuous place so that the same may be readily seen by all persons entering the facility.

11. Storefront Entrance & Accessibility. The storefront entrance of a Commercial Cannabis Retail dispensary shall be ADA accessible and placed in a visible location that provides an unobstructed view from the public right of way.

E. On-Site Consumption. In general, On-Site Consumption of cannabis and cannabis products by customers or employees is prohibited. If permitted, the consumption of Cannabis and Cannabis Products shall be subject to the following requirements:

1. Patients. Qualified Patients, as defined by state law, shall not be permitted to consume medical cannabis on the site of a Commercial Cannabis Retail dispensary except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as follows:

i. Conditional Use Permit applications for a Commercial Cannabis Retail business shall include a statement as to whether the use will include on-site consumption by patients of Medical Cannabis and Medical Cannabis Products.

ii. If on-site consumption will be included, the application shall describe the operational plan and specific extent of such provision, security protocols, and how the consumption will comply with the requirements set forth in this Chapter and state law. Specifically, any on-site consumption shall be subject to the following conditions: (1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) Cannabis consumption is not visible from any public place or non-

age restricted area; (3) sale or consumption of alcohol or tobacco is not allowed on the premises.

2. Employees. Employees of a Commercial Cannabis Retail facility who are qualified patients may consume Medical Cannabis or Medical Cannabis Products on-site within designated spaces not visible by members of the public, provided that such consumption is in compliance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law.

3. Signage and Public Notice. The entrance to a Commercial Cannabis Retail dispensary shall be clearly and legibly posted with a notice indicating that smoking, vaping, and consumption of cannabis and cannabis products is prohibited on site, except as permitted in accordance with Chapter 5, Article 6 of the Hayward Municipal Code (Smoking Pollution Control) and state law.

F. Delivery Services. In addition to the requirements established in this Chapter for Commercial Cannabis Retail Dispensaries, the delivery of Medical and Non-Medical Cannabis and Cannabis Products shall be subject to the following requirements:

1. An Administrative Use Permit shall be required for Commercial Cannabis Delivery Only businesses, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. If the delivery service is ancillary to a Commercial Cannabis Retail Dispensary, a Conditional Use Permit that identified both uses shall be required.

2. A Commercial Cannabis Retail Dispensary shall not conduct sales exclusively by delivery.

3. All applications for Commercial Cannabis Retail dispensary shall indicate a statement as to whether the proposed use will include delivery of Cannabis and Cannabis Products to customers or qualified patients.

4. If delivery services will be provided as part of the Commercial Cannabis Retail operations, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this Chapter and state law.

5. Delivery vehicles shall not contain identifiable markings that associate the delivery service with the cannabis business.

6. Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site.

10-1.3608 Special Events

A. Temporary special events that involve onsite cannabis sales to, and consumption by persons 21 years of age or older shall not be allowed unless the Commercial Cannabis Business obtains a special event permit from the City pursuant to the adopted Rules and Regulations for Food Vendors and the Rules and/or the Regulations for Special Event Organizers, as applicable, and, demonstrates that it possesses a local cannabis business permit and state license for retail cannabis sales.

B. Permit Required. Applications for a special event that includes cannabis shall be considered a Temporary Use, per Chapter 10, Article 1 (Zoning Ordinance) and shall obtain an Administrative Use Permit, pursuant to the zoning district and location of the event.

10-1.3609 Findings

In addition to the required findings contained in Section 10-1.3125 (Administrative Use Permit) and Section 10-1.3125 (Conditional Use Permit), every land use application requiring discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted;
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;
3. The cannabis operation is designed to be safe, secure, sustainable and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

10-1.3610 Grounds for Permit Revocation or Modification

In addition to the permitting requirements contained in Chapter 6 (Businesses, Professions and Trades), the reviewing authority may require modification, discontinuance or revocation of a Conditional Use Permit or Administrative Use Permit for a Commercial Cannabis Business permit if the review authority finds that the use is operated or maintained in a manner that it:

- A. Adversely affects the health, peace or safety of persons living or working in the surrounding area;

- B. Contributes to a public nuisance; or
- C. Has resulted in excessive nuisance activities including disturbances of the peace, illegal drug activity, diversion of Commercial Cannabis or Commercial Cannabis Products, public intoxication, smoking in public, harassment of passerby, littering, or obstruction of any street, sidewalk or public way; or
- D. Violates any provision of the Hayward Municipal Code or condition imposed by a City issued permit, or violates any provision of any other local, state, regulation, or order, including those of state law or violates any condition imposed by permits or licenses issued in compliance with those laws.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add the following Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions) to read and provide as follows:

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

“Commercial Cannabis Business” means an entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

“Cannabis Delivery” means the commercial transfer of Cannabis or Cannabis Products to a customer, including Medical Cannabis or Cannabis Products, to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code. “Delivery” also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables clients or patients to arrange for or facilitate the commercial transfer by a permitted Commercial Cannabis Retail dispensary.

“Edible Cannabis Product” means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“Greenhouse” means a permanent enclosed structure for the propagation and growing of plants, constructed with a translucent roof and/or walls.

“Marijuana” See **“Cannabis”**.

“Medical Cannabis” or **“Medical Cannabis Product”** means cannabis or a cannabis product, respectfully, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medical cannabis patient in California who possesses a physician’s recommendation.

“Microbusiness” means a commercial cannabis business holding a license issued by the State Bureau of Cannabis Control for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer pursuant to Business and Professions Code sections 26050 and 26070.

“Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

“Commercial Cannabis Distribution” means the procurement, sale, and transport of medical and non-medical adult recreational use Cannabis and medical and non-medical adult recreational use Cannabis Products between Commercial Cannabis Businesses.

“Commercial Cannabis Manufacturing” means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Commercial Cannabis Manufacturing - Level 1” means the manufacturing of cannabis products using nonvolatile solvents, or no solvents. A Commercial Cannabis Manufacturing Level 1 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail facility.

“Commercial Cannabis Manufacturing - Level 2” means the manufacturing of cannabis products using volatile solvents. A Commercial Cannabis Manufacturing Level 2 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail dispensary. For purposes of this section, “volatile solvents” shall include ethanol and all solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, as such section may be amended.

“Medical Marijuana” See “Medical Cannabis”.

“Commercial Cannabis Operator” or “Operator” means the person or entity that is engaged in the conduct of any commercial medical or non-medical adult recreational Cannabis use.

“Commercial Cannabis Retail Dispensary” means a facility where Commercial Cannabis or Commercial Cannabis Products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical and non-medical adult recreational use Cannabis or medical and non-medical adult recreational use Cannabis Products as part of a retail sale.

“Commercial Cannabis Testing Laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held

the ___ day of, ___ 2017, by Council Member _____ .

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

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE: _____

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE No. 17-__

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 14 TO CHAPTER 6 OF THE HAYWARD MUNICIPAL CODE REGARDING COMMERCIAL CANNABIS BUSINESSES

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

Section 1. Article 14 is added to Chapter 6 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 14

COMMERCIAL CANNABIS BUSINESSES

SEC. 6-14.00 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- (a) In 2015 the state enacted a comprehensive regulatory framework (AB 243, AB 266, SB 643) for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. The legislation was collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA).
- (b) On November 8, 2016, the voters of the state adopted Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized adult cannabis use, possession and cultivation for non-medicinal purposes and created a regulatory framework for non-medicinal cannabis businesses.
- (c) The intent of MCRSA and AUMA was to establish a comprehensive regulatory system for cultivation, production and sale of cannabis and cannabis products, thereby weakening the illicit market for cannabis.
- (d) On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis.
- (e) On June 15, 2017 the state legislature enacted Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) which consolidated

- provisions of MCRSA into the regulatory framework of the AUMA, thereby creating a unified regulatory scheme for medicinal and adult use cannabis.
- (f) Under MAUCRSA, beginning on January 1, 2018 the state will issue licenses for businesses to engage in cultivation, manufacturing, testing, distribution and retail sale of cannabis and cannabis products.
- (g) MAUCRSA specifically authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to MAUCRSA.
- (h) It is the intent of the City Council to authorize and regulate specific types of cannabis businesses licensed pursuant to state law.
- (i) The purpose of this Article is to establish local regulations for permitting and operation of specified commercial cannabis businesses within the City of Hayward.
- (j) This ordinance is necessary to protect the public health, safety and welfare of the citizens of the City of Hayward.

SEC. 6-14.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

“Applicant” means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of a business entity, who applies to obtain a permit under this Article.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether

crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety code.

“Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

“Commercial Cannabis Business” includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as permitted by this Article.

“Cannabis Testing Laboratory” means a laboratory described in Section 26101 of the California Business and Professions Code holding a Type 8 license as described in Section 26050(a) of the California Business and Professions Code.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between state licensees.”

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products

either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medical/medicinal cannabis” or “Medical/medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Owner” means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance. (2) The chief executive officer of a nonprofit or other entity. (3) A member of the board of directors of a nonprofit. (4) An individual who will be participating in the direction, control, or management of the person applying for a permit.

“Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Sell,” “sale,” and “to sell” include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a state licensee to the state licensee from whom the cannabis or cannabis product was purchased.

“State Licensee” means a person or entity that has been issued a license pursuant to state law for commercial cannabis activity as defined by state law.

SEC. 6-14.11 PERMIT REQUIRED.

- (a) It is unlawful for any person to own, conduct, operate or maintain, any commercial cannabis business in the City of Hayward without a valid commercial cannabis permit issued pursuant to this Article.
- (b) The City Council may, by resolution, direct the City Manager to call for applications from any parties interested in obtaining a commercial cannabis permit.
- (c) The City Council may, by resolution, establish a limit on the number of permits to be issued pursuant to this Article.
- (d) A permit issued pursuant to this Article does not authorize the permittee to operate a commercial cannabis business until the permittee has obtained appropriate land use approvals pursuant to the Hayward Zoning Ordinance, obtained an appropriate cannabis license from the State, paid all applicable fees, charges, taxes and deposits, and complied with other applicable state and local laws and regulations.
- (e) A permit issued pursuant to this Article does not confer a property interest or vested right to receive a future permit pursuant to this Article.
- (f) A permit issued pursuant to this Article shall be valid for one (1) year from the date the permittee receives land use approval and shall be accompanied by the payment of an annual permit fee in an amount established by resolution of the City Council.
- (g) No permit issued pursuant to this Article shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a commercial cannabis business must submit a new application for a permit in accordance with this Article.
- (h) This Article does not apply to the individual use, possession or cultivation of

medical cannabis or cannabis for adult use as regulated by state law.

SEC. 6-14.12 REVIEW OF APPLICATIONS

- (a) The City Manager shall establish procedures for accepting and evaluating applications submitted pursuant to this Article. The evaluation process shall include a method for scoring and ranking each application.
- (b) Upon completing the evaluation of all applications, the City Manager shall prepare a report to the City Council and provide a recommendation regarding selection of permittees.
- (c) Applications shall include information required by the City Manager including, but not limited to the following:
 - (1) A detailed description of the type of commercial cannabis business that includes proposed hours of operation/shift scheduling; type of specialized equipment to be used for cultivation or manufacturing; whether hazardous materials, including volatile solvents or gases are proposed to be used as part of the operation; how industrial waste will be disposed of; anticipated gross annual revenue; list of State licensed transportation and distribution providers serving the facility, if known; anticipated frequency of deliveries serving the facility; other pertinent information involving the operation of the facility.
 - (2) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number, identification number or other form of government issued photo identification and Social Security number.
 - (3) The names and addresses of all persons financially interested in the business.
 - (4) The full, true name under which the business will be conducted.
 - (5) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name,

residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.

- (6) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one (1) or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one (1) of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within ninety (90) calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.
- (7) Proposed location(s) within the City where the business will be located including documentation showing that the property owner of the proposed location(s) consents to the operation of a commercial cannabis business at the location.
- (8) A security plan describing proposed security arrangements for the premises including, but not limited to: alarm systems; surveillance equipment; use of security personnel; lighting plans; plans for securing points of entry.
- (9) A summary of the applicant's relevant experience, if any, in operating permitted commercial cannabis businesses in other jurisdictions, with contact information for references in those

jurisdictions.

- (10) Category of state cannabis license(s) the applicant holds or intends to apply for.
- (11) A summary of any regulatory actions currently pending or taken against the applicant, including issuance of notices of violation, citations, suspension or revocation of licenses, or similar actions, related to any business owned or operated by the applicant related to air quality, water quality, storage or use of hazardous chemicals, building code violations, or public health and safety violations. The name and location of the jurisdiction or agency, which took the action shall also be included.
- (12) Written authorization for the city, its agents, and employees to conduct a background investigation of the applicant and the responsible managing officer/employee of the commercial cannabis business, including submission of fingerprints for criminal background investigation.
- (13) Community benefit proposals.
- (14) A conceptual site plan with proposed interior and exterior building designs and layouts.

(d) In addition to the information described in (c) above, each application shall be accompanied by a refundable deposit in an amount established by resolution of the City Council.

(e) The City Manager or his/her designee shall review the applications to determine compliance with subdivision (c) of this section. Upon written notice that an application is incomplete, the applicant may submit additional information as requested by the City. Failure to submit requested information may be deemed an abandonment of the application resulting in no further action being taken by the City.

(f) The City Manager or his/her designee shall investigate the truth of the statements set forth in the application to determine if an applicant is qualified to obtain a commercial cannabis permit. An application will be rejected if:

- (1) It is found to contain material misstatements or omissions;

- (2) The applicant is determined to be ineligible or prohibited from obtaining a state cannabis license pursuant to state law.
- (3) The applicant, or any of its officers, directors, or owners is found to have been convicted of any of the following offenses: A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code; A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code; A felony conviction involving fraud, deceit, or embezzlement; A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.
- (4) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.
- (5) The applicant, or any of its officers, directors, or owners, has been sanctioned by a state licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities.

SEC. 6-14.13 OPERATING AND PERFORMANCE STANDARDS.

Permittees shall operate in conformance with the following minimum standards, and such standards shall be incorporated into the conditions of approval for land use approval of the business pursuant to the Zoning Ordinance.

(a) Operations.

- (1) All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including

libraries, designated public open space areas and designated public parks that contain a children's playground(s) or similar use dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced following the issuance of a Conditional Use Permit from the Planning Commission if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

- (2) Cannabis or cannabis products, whether for medicinal or adult recreational use, shall only be sold to individuals authorized by state law to purchase such cannabis or cannabis products.
- (3) No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a permitted Commercial Cannabis Business.
- (4) Operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.
- (5) Permittees engaged in retail sales may operate between the hours of 8:00 a.m. and 8:00 p.m., up to seven (7) days per week or as approved as part of a Conditional Use Permit.
- (6) Retail sales of cannabis that violate state or local law are expressly prohibited.
- (7) No cannabis odors shall be detectable outside of the facility.
- (8) Permittees shall employ only persons at least 21 years of age at any permitted facility within the City of Hayward.
- (9) Subject to Section 10-1.3607 of this Code, consumption or ingestion of

cannabis or cannabis products on the premises of a permittee, including outdoor areas and parking lots, is prohibited.

- (10) Permittees shall provide the City Manager or his/her designee, and all residents, businesses and property owners within 100 feet of the permitted premises with the current name, phone number, secondary phone number and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the premises may be reported. This information shall be updated as necessary to keep it current.
- (11) Permittees shall have an on-site manager at each permitted facility within the City of Hayward who is responsible for overall operation during times that employees are conducting operations, and shall provide the City Manager or his/her designee with contact information for all such persons, including telephone number and email address. Permittees shall also provide the City with the name and contact information including phone number of at least one manager that can be reached 24-hours a day.
- (12) Permittees shall take all reasonable steps to discourage and correct conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding a permitted facility. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti. Graffiti must be removed from property and parking lots under the control of the permittee within 72 hours of discovery.

(b) Security.

- (1) Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward

Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.

- (2) A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.
- (3) All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.
- (4) Permittees shall utilize armed security officers possessing a valid Department of Consumer Affairs "Security Guard Card" during hours of operation
- (5) Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

SEC. 6-14.14 RECORDS AND INSPECTIONS.

- (a) Permittees shall maintain books, records, accounts and all data and information relevant to its operations and allow the City access to such records for purposes of conducting an audit or examination to determine compliance with this Article, the Hayward Municipal Code, and other local regulations, including compliance

with local tax obligations.

- (b) Permittees shall allow inspection by the City of any facility permitted pursuant to this Article to verify compliance with the requirements of this Article, the Hayward Municipal Code and the requirements of state law.

SEC. 6-14.15 PERMIT RENEWAL.

- (a) A commercial cannabis permit must be renewed annually. Permittees may apply for renewal in writing no later than sixty (60) days before the expiration of the current permit. The application for renewal shall include:
- (1) A statement updating information from the original permit application or certifying that the information contained in the original permit application is unchanged.
 - (2) Verification that the permittee has renewed or is in the process of renewing a previously issued state cannabis license and is otherwise in compliance with the requirements of state law.
 - (3) Authorization for updated criminal background checks.
 - (4) A renewal fee as established by the City Council.
- (b) As part of the renewal process permittees shall allow inspection of any permitted facility by the Building Official, Fire Marshall or their designees, and other City officials to verify compliance with applicable building and safety regulations. Any violations noted shall be corrected within a reasonable time as determined by City staff.
- (c) As a condition to renewal of the permit, the permittee must pay any fees, charges, taxes or deposits required by this Article and applicable provisions of the Hayward Municipal Code.
- (d) Failure to correct violations or pay applicable fees, charges, taxes or deposits may result in denial of a permit renewal request.
- (e) Permits shall be renewed for a period of one (1) year.

SEC. 6-14.16 ENFORCEMENT. A violation of this Article is declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances. Additionally, any violation of this Article may

be enforced subject to the provisions relating to administrative citations found in Chapter 1, Article 7.

SEC. 6-14.17 PERMIT SUSPENSION OR REVOCATION AND HEARING.

- (a) The City Manager may suspend or revoke a permit issued pursuant to this Article for failure to comply with any performance or operating standards set forth in this Article, or any other requirement of this Article or Code, or applicable local or state regulation. Such suspension or revocation shall only be made upon a hearing granted to the permit holder before an independent hearing officer upon no less than fourteen (14) days' written notice to the permit holder. The notice of suspension or revocation hearing shall generally state the grounds for the proposed action and the time and place of the hearing.
- (b) The hearing officer shall receive written and oral testimony and any other evidence he/she deems relevant to the issue of suspension or revocation. The hearing officer shall not be bound by the rules of evidence in conducting the hearing described herein. The hearing officer shall issue a written decision within 10 business days after the conclusion of the hearing. The decision of the independent hearing officer shall be final and conclusive.

SEC. 6-14.18 CITY MANAGER AUTHORITY. The City Manager may establish administrative regulations and policies to implement any provision of this Article.

SEC. 6-14.19 TAXES. The City Council may establish by resolution the tax rate to be imposed on all gross sales for all products associated with medical or adult use cannabis, from cultivation, distribution, manufacturing, and retailing of cannabis or cannabis products.

SEC. 6-14.20 FEES. The City Council may establish by resolution any fees that shall be charged for administration and implementation of this Article. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

SEC. 6-14.21 NON-CONFORMING USES. No use which purports to have engaged in cultivation, manufacturing, processing, distribution, testing, transportation, or sale of medical cannabis or adult use cannabis prior to the enactment of this Article shall be deemed to have been a legally established use pursuant to the provisions of the Hayward Municipal Code, Hayward Zoning Ordinance, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal non-conforming or other similar status.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

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

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

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

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ORDINANCE No. 17-__

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING ARTICLE
6 OF CHAPTER 5 OF THE HAYWARD MUNICIPAL CODE REGARDING
SMOKING POLLUTION CONTROL

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

Section 1. Article 6 of Chapter 5 of the Hayward Municipal Code and is hereby amended and enacted to read as follows:

SEC. 5-6.00 - TITLE.

This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 - FINDINGS AND PURPOSE.

The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that ~~tobacco~~ smoking is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of smoking tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those, who had to quit, to begin smoking again;
- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco or cannabis related products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.
- o. State law prohibits smoking or ingesting cannabis or cannabis products in a public place, except in accordance with Section 26200 of the Business and Professions Code.
- p. State law prohibits smoking or ingesting cannabis or cannabis products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.
- q. State law prohibits smoking or ingesting cannabis or cannabis products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with

Section 26200 of the Business and Professions Code and while no persons under 21 years of age are present.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco and cannabis use around non-tobacco and non-cannabis users; by protecting children from exposure to smoking ~~and~~ tobacco and cannabis while they play; by reducing the potential for children to associate smoking ~~and~~ tobacco and cannabis with a healthy lifestyle; by protecting the public from smoking ~~and~~ tobacco-related and cannabis-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 - DEFINITIONS.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;
- c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.
- d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.

- e. 'Public Place' means any place to which the public is invited or in which the public is permitted including, but not limited to, any rights-of-way, (which include but are not limited to sidewalks, streets, and medians), banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.
- f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.
- g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.
- h. 'Service line' means any place where one (1) or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.
- i. 'Smoke or Smoking' means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, ~~or~~ pipe, or device, or any other lighted or heated tobacco or plant product, or cannabis or cannabis product, intended for inhalation, in any manner or in any form, whether natural or synthetic. "Smoking" also includes the use of an electronic smoking device which creates a vapor or aerosol, in any manner or in any form.
- j. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
- k. 'Tobacco Product' or "Tobacco Products" means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled,

snorted, sniffed, or ingested by any other means. "Tobacco product" includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for that approved purpose.

- l. "Cannabis Product" or "Cannabis Products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- m. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the California Health and Safety code.

SEC. 5-6.03 - APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES.

Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward ~~or the Hayward Redevelopment Agency~~, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.04 - PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

- a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:
- (1) Elevators and restrooms;
 - (2) Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
 - (3) Service lines;
 - (4) The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
 - (5) Retail stores, except in areas in the stores not open to the public, and with respect to cannabis or cannabis products, except in accordance with Section 26200 of the California Business and Professions Code and as permitted by a Conditional Use Permit pursuant to Section 10-1.3600 et seq., of this Code, on the site of a permitted commercial cannabis retail dispensary by qualified patients.
 - (6) Within enclosed common areas for hotels and motels, as well as 35 percent (35%) of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
 - (7) Restaurants, dining areas, and bars, whether enclosed or unenclosed;
 - (8) Public areas of libraries and museums when open to the public;
 - (9) Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
 - (10) Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.

- (11) Sports arenas, recreational areas, parks, playgrounds, and greenways
 - (12) With respect to cannabis or cannabis products, within 1,000 feet of a school, day care center, or youth center while children are present at such a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of, or Chapter 3.5 (as it relates to Medical Cannabis Section) of Division 8 of, the California Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center while children are present.
 - (13) With respect to cannabis or cannabis products, any location where smoking tobacco is prohibited.
- b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.
 - c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.05 - REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

Note— (This section removed by Ordinance 10-13, adopted Oct. 26, 2010)

SEC. 5-6.06 - AREAS NOT SUBJECT TO SMOKING REGULATIONS.

- a. Private residences, except when used as a child care or a health care facility.
- b. Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than thirty-five percent (35%) of their guest rooms as non-smoking rooms and removes ashtrays from these rooms. Permanent "no smoking" signage shall be posted in nonsmoking rooms.
- c. With respect to cannabis or cannabis products, in accordance with Section 26200 of the California Business and Professions Code and as permitted by a Conditional Use Permit

pursuant to Section 10-1.3600 et seq., of this Code, on the site of a permitted commercial cannabis retail dispensary by qualified patients.

SEC. 5-6.07 - POSTING OF SIGNS.

a. "Smoke Free" or "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.

(1) Every theater owner, manager, or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.

(2) Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.08 - TOBACCO AND CANNABIS SAMPLES PROHIBITED.

No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes, tobacco, cannabis or cannabis products, or coupons for cigarettes or other tobacco, cannabis or cannabis products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store or cannabis dispensary licensed pursuant to state and local law.

SEC. 5-6.09 ~~TOBACCO~~ VENDING MACHINES RESTRICTED.

No cigarette or other tobacco product, including cannabis and cannabis products may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes, ~~except in a bar.~~

SEC. 5-6.10 - ENFORCEMENT OFFICER.

Enforcement shall be implemented by the City Manager or designee.

SEC. 5.6.11 - CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

- a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.
- b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.
- c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine established by resolution of the Hayward City Council. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.
- d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.
- f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three (3) times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.
- g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.12. - OTHER APPLICABLE LAWS.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

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

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

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

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

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

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE:

ATTEST: _ _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION AMENDING THE CITY OF HAYWARD 2018 FISCAL YEAR
MASTER FEE SCHEDULE FOR COMMERCIAL CANNABIS LICENSING
ASSOCIATED WITH AMENDMENTS TO CHAPTER 6, ARTICLE 14 AND
ZONING TEXT AMENDMENT TO CHAPTER 10 OF THE HAYWARD
MUNICIPAL CODE RELATED TO COMMERCIAL CANNABIS BUSINESSES.

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

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

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

WHEREAS, in November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) would allow for annual inspections to ensure safe and legal operation of commercial cannabis businesses in the City of Hayward, consistent with the appropriate findings and conditions established as part of the required land use entitlement process.

WHEREAS, the City of Hayward Commercial Cannabis Permit Program is intended to create a framework for regulating cannabis businesses within Hayward, monitor the responsible cultivation, manufacture, testing, distribution, and sales of cannabis products in Hayward and eliminate the sale or distribution of cannabis products to minors. The ordinance requires cannabis businesses to obtain a valid commercial cannabis permit issued by the City which requires the business to be inspected and regulated by the City to assure compliance with all applicable State, Federal, and local Cannabis related products

regulations, including but not limited to the sales of electronic smoking devices and Cannabis paraphernalia.

WHEREAS, prior to commencing operations within the City of Hayward, all new cannabis businesses must first obtain land use approval from either the Planning Division or the Planning Commission in the form of a use permit, to verify the use is permitted at the proposed location and must obtain a City Business License and Commercial Cannabis Permit, in addition to all State mandated licenses.

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 17, 2017.

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby amends the Fiscal Year 2018 Master Fee Schedule to include fees and penalties associated with Commercial Cannabis Permit Program, as reflected in attached Exhibit "A".

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 17-___) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA 17th of October 2017.

ADOPTED BY THE FOLLOWING VOTE:

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

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Fees and Penalties:

- 1. Annual Commercial Cannabis Permit Fee: \$10,000 (minimum of one inspection per year; includes up to four HPD decoy fees/inspections annually).

- 2. Program fees:
 - a. initial inspection, violation found: \$5,000
 - b. Initial inspection, no violation found: No charge
 - c. 2nd re-inspection, no violations: \$500 re-inspection fee
2nd re-inspection violations found: \$10,000 + \$500 re-inspection fee
 - d. 3rd & subsequent re-inspection, no violations: \$500 re-inspection fee
3rd & subsequent re-inspection violations found: \$15,000 + \$500 re-inspection fee
 - e. Subsequent Violations: \$10,000 + \$500 re-inspection fee
 - f. Subsequent re-inspections, no violations: \$500 re-inspection fee
Subsequent re-inspections, violations found: \$15,000 + \$500 re-inspection fee

- 3. Any required inspections after the initial inspection greater than three hours will be assessed an hourly code enforcement inspection fee: \$200 hr.

- 4. Request for Administrative Hearing Fee: \$946

- 5. Special Assessment/Lien Fee: \$1,811

Zoning District Summary – Cannabis Businesses

P	Permitted Use
AUP	Administrative Use Permit
CUP	Conditional Use Permit

Commercial Cannabis Cultivation

**Entitlement process depends on the size of the proposed cultivation operation*

AUP or CUP*	Industrial (I)
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Commercial Cannabis Retail Dispensaries

**Small retail component allowed, subject to provisions of Section 10-1.3606(H)*

CUP	Neighborhood Commercial (CN)
CUP	Neighborhood Commercial – Residential District (CN - R)
CUP	General Commercial (CG)
CUP	Central Business District (CB)
CUP	Central City – Commercial Subdistrict (CC-C)
CUP	Central City – Residential Subdistrict (CC-R)
CUP	Central City – Plaza Subdistrict (CC-P)
CUP	South Hayward/Mission FBC (T4 & T5 Zones)
CUP	Hayward Mission Blvd FBC (T4-1, T4-2 and T5 Zones)
CUP*	Industrial

Commercial Cannabis Distribution

AUP	Industrial (I)
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Commercial Cannabis Manufacturing (Level 1)

Level 2 Manufacturing (Using Volatile Substances) is prohibited

CUP	Industrial (I)
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Commercial Cannabis Testing Laboratory

For the purposes of land use classification, this land use is similar to other Medical/Dental Laboratories

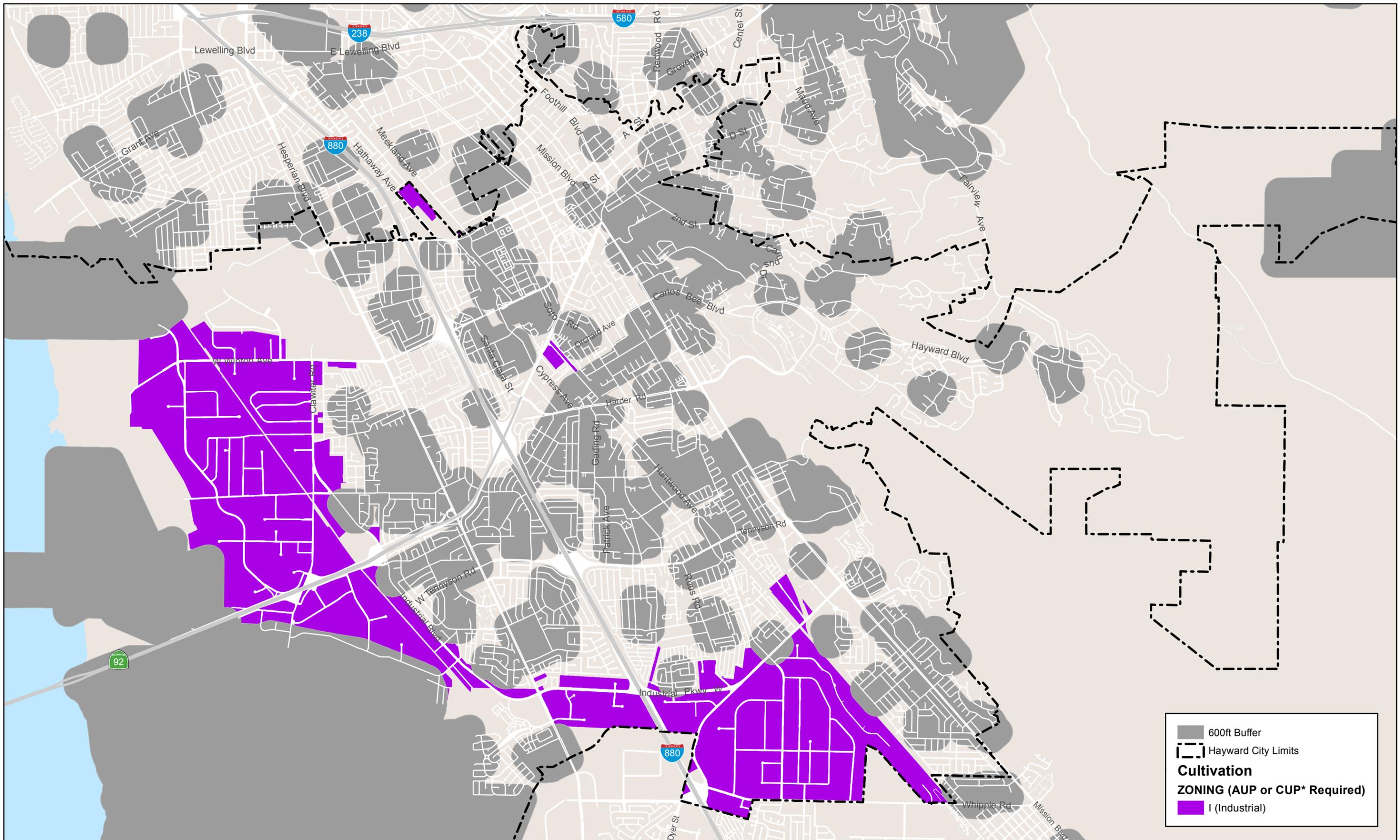
AUP	Neighborhood Commercial (CN)
AUP	Neighborhood Commercial – Residential District (CN - R)
AUP	General Commercial (CG)
AUP	Commercial Office (CO)
P	Industrial (I)
AUP	Light Manufacturing (LM)

Commercial Cannabis Delivery

For the purposes of land use classification, this land use is similar in nature to other Administrative and Professional Offices/Services

AUP	Neighborhood Commercial (CN)
AUP	Neighborhood Commercial – Residential District (CN - R)
AUP	General Commercial (CG)
AUP	Commercial Office (CO)
P	Industrial (I)
AUP	South Hayward/Mission FBC (T4 and T5 Zones)
AUP	Hayward Mission Blvd FBC (T4-1, T4-2 and T5 Zones)

HAYWARD Commercial Cannabis Cultivation – Zoning Districts

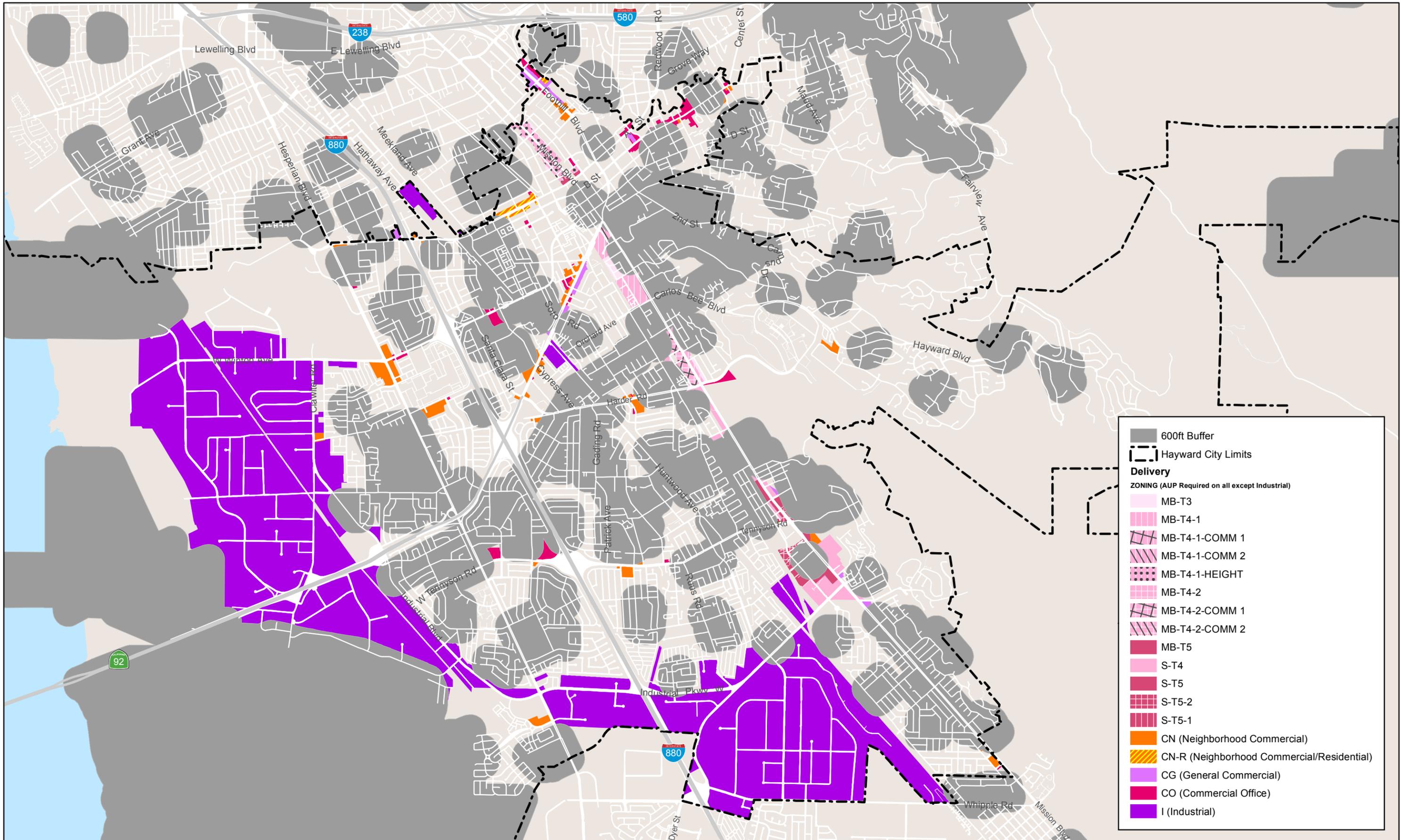


Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.

*Entitlement process depends on the size of the cultivation operation.

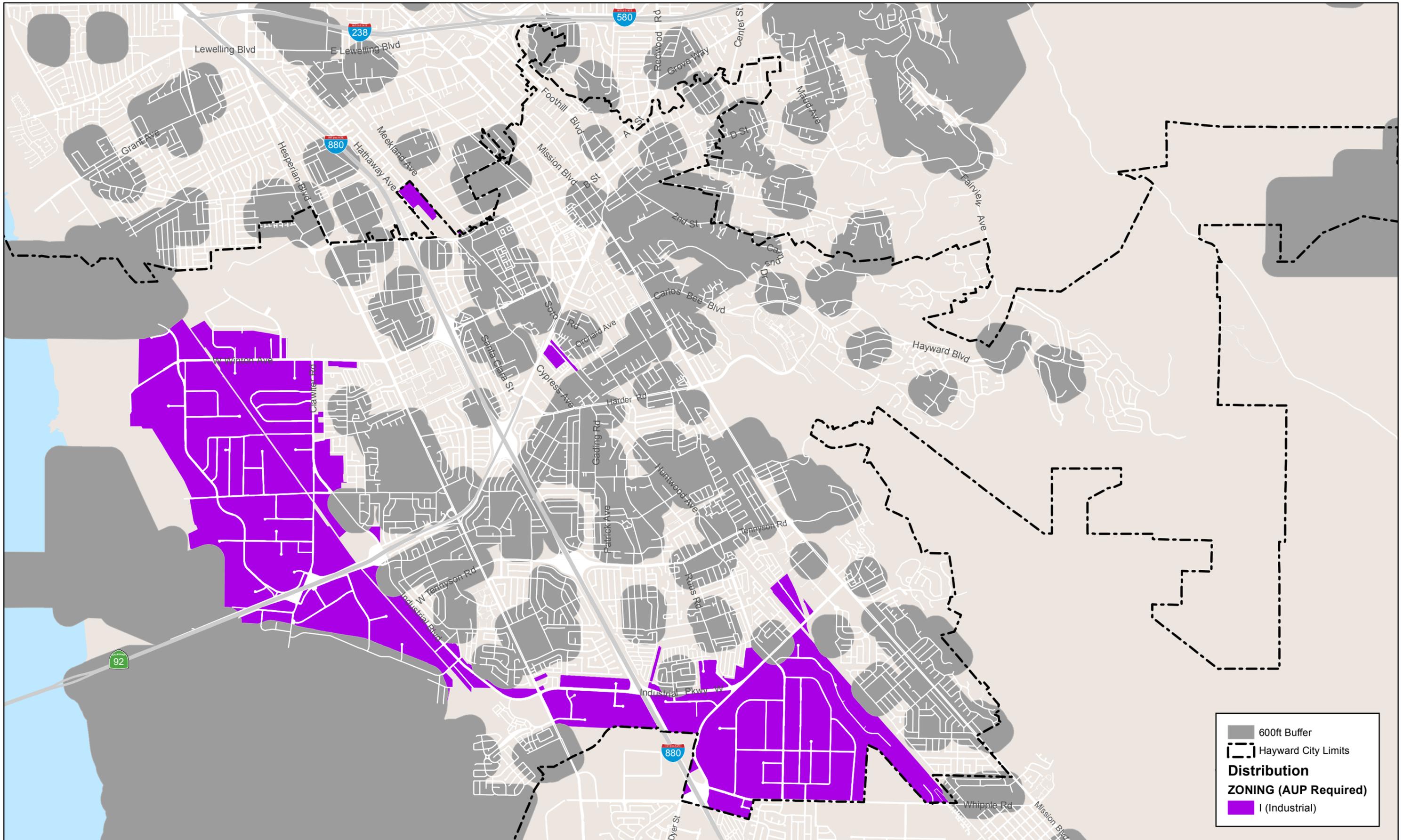


Commercial Cannabis Delivery – Zoning Districts



Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers. For the purposes of land use classification, this land use is similar in nature to other Administrative and Professional Offices/Services September 2017

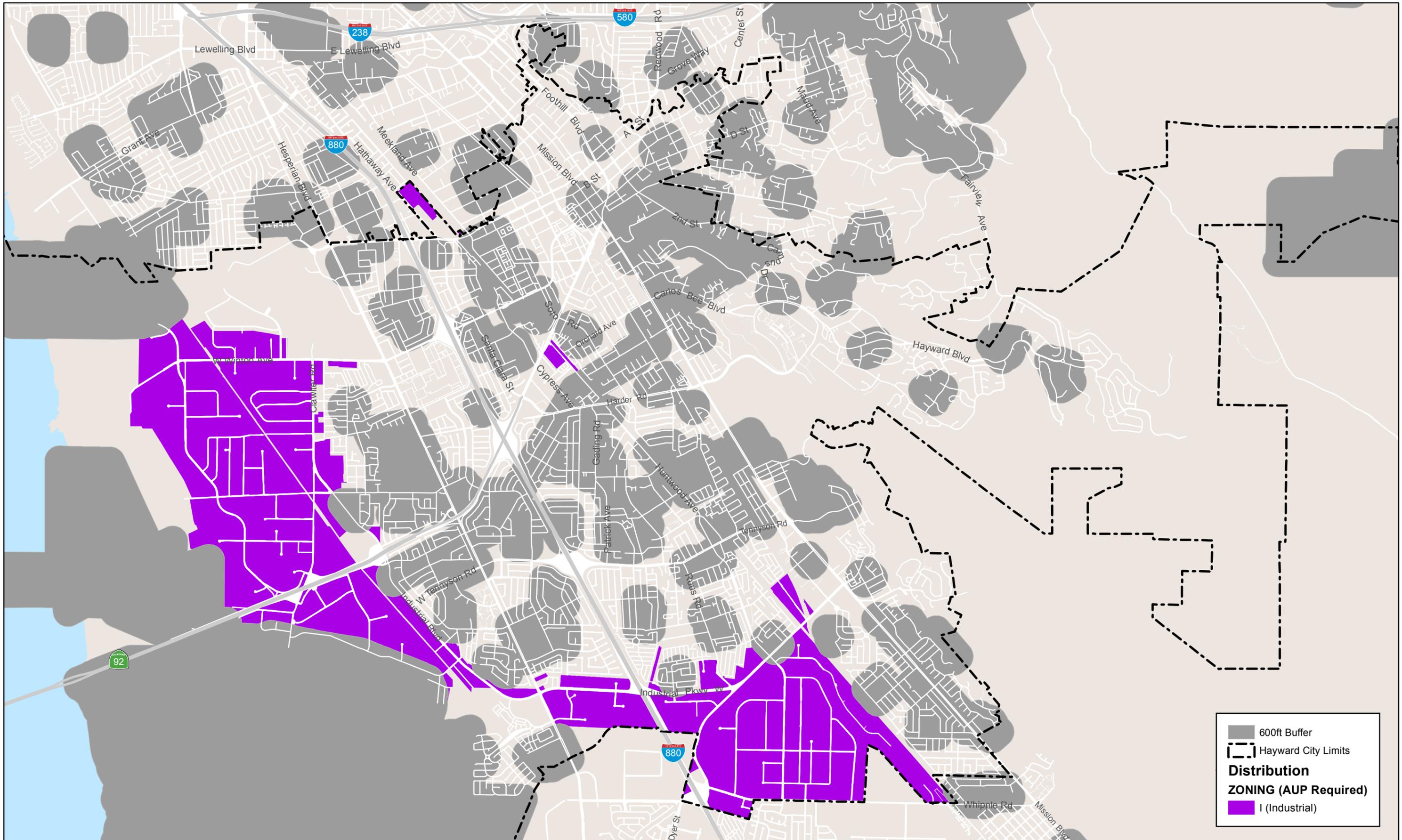
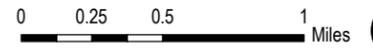
H HAYWARD **Commercial Cannabis Distribution – Zoning Districts**



Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.



Commercial Cannabis Manufacturing (Level 1*) – Zoning Districts

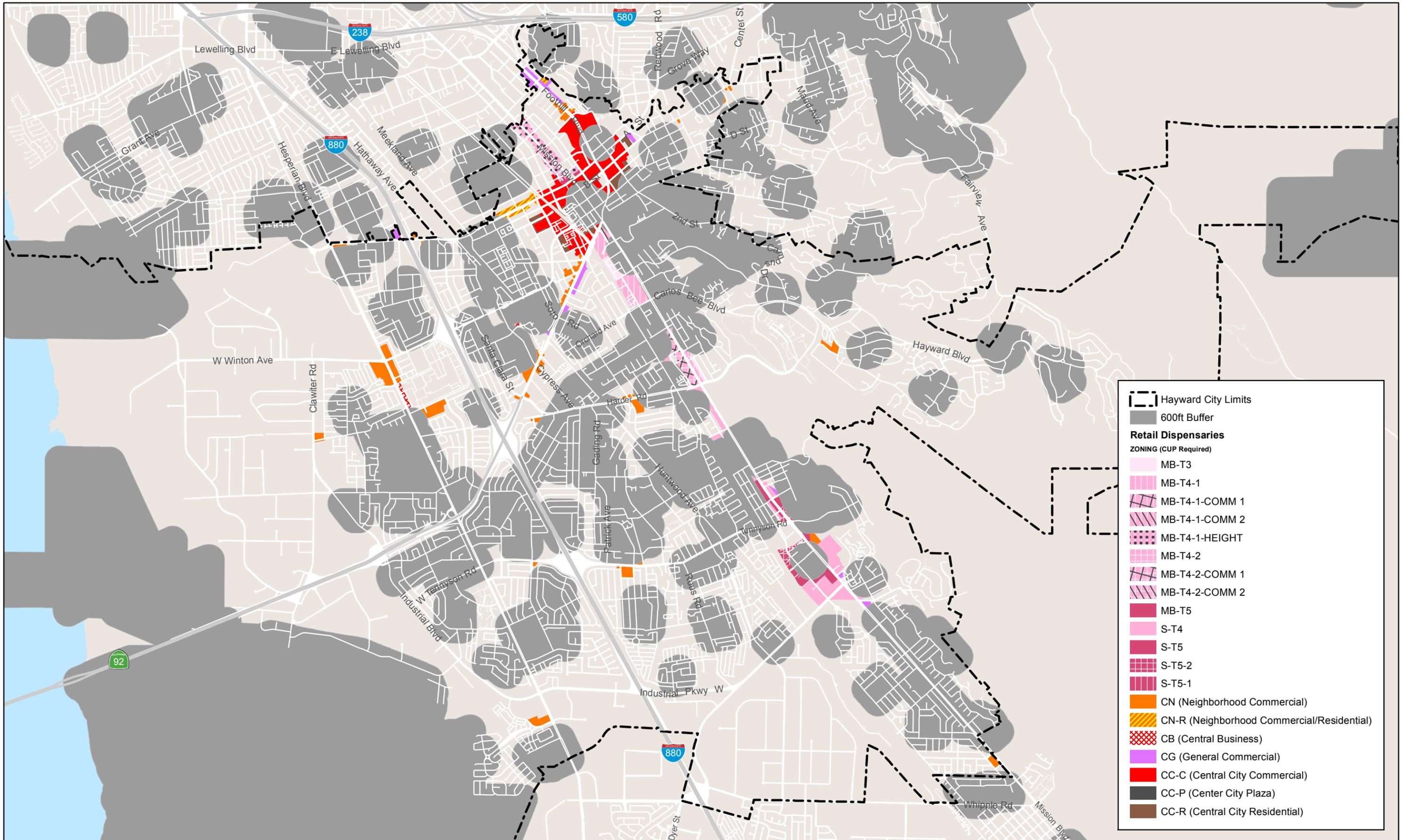
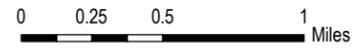


Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.

*Level 2 manufacturing (using volatile substances) is prohibited



Commercial Cannabis Retail Dispensaries – Zoning Districts

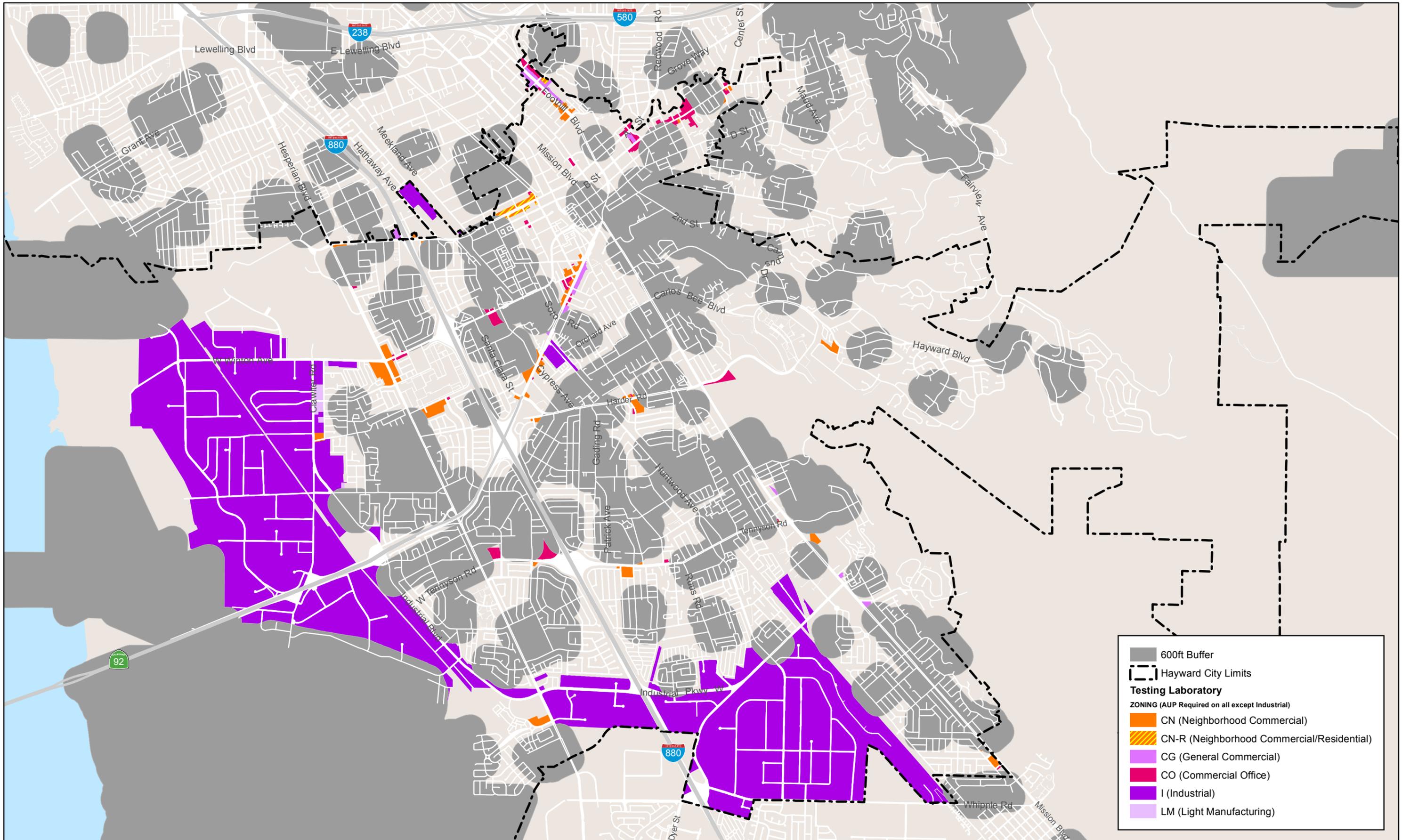


	Hayward City Limits
	600ft Buffer
Retail Dispensaries	
ZONING (CUP Required)	
	MB-T3
	MB-T4-1
	MB-T4-1-COMM 1
	MB-T4-1-COMM 2
	MB-T4-1-HEIGHT
	MB-T4-2
	MB-T4-2-COMM 1
	MB-T4-2-COMM 2
	MB-T5
	S-T4
	S-T5
	S-T5-2
	S-T5-1
	CN (Neighborhood Commercial)
	CN-R (Neighborhood Commercial/Residential)
	CB (Central Business)
	CG (General Commercial)
	CC-C (Central City Commercial)
	CC-P (Center City Plaza)
	CC-R (Central City Residential)

Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.



Commercial Cannabis Testing Laboratory – Zoning Districts



Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.

For the purposes of land use classification, this land use is similar to other Medical/Dental Laboratories September 2017



DRAFT MINUTES
MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 14, 2017, 7:00 p.m.

2. Proposed Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code and Proposed Adoption of New Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward

Principal Planner Lochirco provided a synopsis and PowerPoint of the staff report.

In response to Commissioner Willis Jr. question regarding the restrictions and the buffer areas, Principal Planner Lochirco said there is a 600-foot buffer from recreation centers, youth centers, schools and daycare centers and it is recommended that parks be included which is consistent with other sensitive land use and confirmed that there would be 1000 feet separation between retail dispensary locations. Mr. Lochirco said included in the proposed draft ordinance is a requirement for background checks for operators and staff looked at the requirements to have a good balance without over regulating. Mr. Lochirco said background and safety protocols are licensed by the State and added there is a separate dual licensing criteria that operators must satisfy. Mr. Lochirco said the operators will have to meet all the health and safety components that is typically required per the building code. Senior Assistant City Attorney Vigilia said the State has not fully published all the regulations yet and it is anticipated that the State will issue emergency regulations towards the end of year and will likely include certification of employees in different categories. In response to Mr. Willis' comments about HOAs being able prohibit cannabis cultivation and distribution, Mr. Vigilia this issue probably has not been addressed yes, but noted that State law makes cannabis cultivation a legal use of one's property. Mr. Willis made the following recommendations: that HOAs should be allowed to make their own conditions on cannabis within their community, in addition to age enforcement, place restrictions on persons with criminal backgrounds, and require education training and certification for persons handling the cannabis cultivation and products.

In response to Commissioner Faria's questions about the limit on number of businesses allowed in the City, Mr. Lochirco said Council discussed this topic but did not come to an agreement and staff will continue to have this discussion with Council. Mr. Lochirco said if a permitting limitation is included in the draft ordinance would fall under the business component that the City Attorney's office is currently working on. Mr. Lochirco said City staff has concerns about oversaturation for a new industry and there are regulations for the medical use but the adult use, impact and potential demand is still unknown. He said having a cautious approach is good method but ultimately it is a policy decision, through the Request for Proposal (RFP) process the City will be able to see what kind of interest is out there.



DRAFT MINUTES
MINUTES OF THE REGULAR MEETING OF THE
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Council Chambers
Thursday, September 14, 2017, 7:00 p.m.

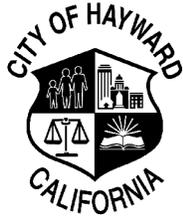
In response to Chair Enders' question about allowing cultivation on agriculturally zoned land, Principal Planner Lochirco indicated there was a public safety concern surrounding outdoor cultivation and the draft ordinance specifically requires indoor cultivation in the industrial area.

In response to Commissioner Goldstein's question about is it illegal to consume cannabis in public, Senior Assistant City Attorney Vigilia said as far as smoking this is still subject to the City's smoking ordinance and noted that State has not imposed a regulation. Principal Planner Lochirco responded to Mr. Goldstein that it is difficult to determine impaired judgment when it comes to edibles and the City's approach is to come to an equitable balance in the regulations and noted there is the medical component of persons who have prescriptions. Mr. Lochirco responded to Mr. Goldstein that signage is included in the retail regulations that the cannabis products cannot be consumed on site.

Senior Assistant City Attorney Vigilia responded to Commissioner McDermott that the State and local licensing can be done concurrently as the State will confirm with the cities if the applicant is in compliance with the City's regulations. Principal Planner Lochirco responded to Ms. McDermott that he conducted his research for other jurisdictions and listened to seminars about the pros and cons for cities of Portland and Denver, which has been an informative process to help the City craft a draft ordinance that would be the right size for Hayward. Ms. McDermott's expressed concern and prefers not to have commercial cultivation and that there should be a limit on the number of businesses as the City has had problems with massage parlors and vapor stores. Mr. Vigilia said that staff will propose to the City Council that they have the authority to place limits on the permit types and based on discussions with Council, they are reluctant to place limits without seeing what type of proposals will be received from applicants as Council wants to see the whole picture prior to placing limits and determine what those limits will be. He added that Council was not receptive to having staff place limitations on permits. Mr. Vigilia responded to Ms. McDermott that the applications will be reviewed on a case by case basis.

Chair Enders opened the public hearing at 9:35 p.m.

Mr. Chad Hagle, retail developer from Sherman Oaks, said his company is working with top operators in the cannabis retail industry to help them set up first rate establishments in municipalities. Mr. Hagle supports the merit based process, highlighting the need for a community benefits component, supports limits and the 1000-foot separation of dispensaries. Mr. Hagle will be working the Hayward Area Recreation and Park District (HARD) to define the word parks and open spaces as they are not all the same. Mr. Hagle said there would be areas now included in the park buffer that should not be but at the same time through his



DRAFT MINUTES
MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 14, 2017, 7:00 p.m.

work with HARD to ensure that areas where children and youth activities would be protected.

Mr. Dan Georgatos, Pleasanton land use and cannabis attorney, represents Julio Romero of Hayward, spoke about the commercial cannabis dispensaries and that the City needs to define how they will process the applications.

Ms. Elba Villasenor, Hayward resident, spoke about how they are planning to open a dispensary and are requesting that not all parks be part of the limitation buffer. Ms. Villasenor said their goal is to have a dispensary that will dignify the use of medical cannabis use.

Chair Enders closed the public hearing at 9:45 p.m.

Commissioner Willis Jr. reiterated his recommendations: that HOAs should be allowed to make their own conditions on cannabis within their community, in addition to age enforcement place restrictions on persons with criminal backgrounds, and require education training and certification for persons handling the cannabis cultivation and products.

Commissioner Goldstein supported giving the City Council and HARD the flexibility to define the child and youth recreation areas in order to not group all parks and open spaces together.

Chair Ender made the motion to approve the staff recommendation with further definition of the term “parks” in the ordinance, so that there is separation for open space uses utilized by children and families as opposed to other uses.

Commissioner McDermott seconded the motion.



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The motion passed with the following vote:

AYES: Commissioners Willis Jr., Goldstein, Schott, McDermott, Faria
Chair Enders
NOES: None
ABSENT: None
ABSTAIN: None
VACANCY: One

APPROVED:

Julius Willis, Jr. Secretary
Planning Commission

ATTEST:

Denise Chan, Senior Secretary
Office of the City Clerk



CITY OF HAYWARD

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

File #: PH 17-089

DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT

Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant).

RECOMMENDATION

That the City Council adopts an Ordinance (Attachment II) and Resolutions (Attachment III and IV) for the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code to update regulations for Accessory Dwelling Units and to establish a new review fee in the City's Master Fee Schedule.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Ordinance
Attachment III	Resolution of Findings and Environmental Review
Attachment IV	Resolution to Establish New Review Fee
Attachment V	Government Code Section 65852.2



DATE: October 17, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant).

RECOMMENDATION

That the City Council adopts an Ordinance (Attachment II) and Resolutions (Attachment III and IV) for the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code to update regulations for Accessory Dwelling Units and to establish a new review fee in the City's Master Fee Schedule.

SUMMARY

City staff is proposing amendments to Chapter 10, Planning, Zoning, Subdivisions, of the Hayward Municipal Code (HMC) to be consistent with recently enacted State legislation regarding the construction of Accessory Dwelling Units (ADUs). Additionally, City staff is proposing an amendment and update to the City's Master Fee Schedule for Zoning Conformance Permits to cover staff time review for ensuring all proposed ADUs comply with the proposed regulations.

BACKGROUND

The State of California, especially the San Francisco Bay Area, is currently experiencing a severe housing crisis with a substantially higher demand for housing than currently exists. This directly impacts housing affordability, including homeowners and renters alike. ADUs, commonly referred to as in-law units, granny flats, second dwellings, and/or cottages, assist to provide housing opportunities in a flexible manner to address the unmet demand for affordable housing for the community. These units typically provide housing for, but is not limited to, students, young professionals, small families, disabled individuals, extended family, senior citizens, etc., while also simultaneously assisting homeowners to offset the cost of homeownership and maintenance by renting out accessory units as an additional source of revenue.

On September 27, 2016, Governor Brown signed Assembly Bill 2299 (Bloom) and Senate Bill 1069 (Wieckowski) into law (Attachment V), requiring local agencies to revise and ease their restrictions on ADUs. This new set of legislation changed development standards and regulations to provide greater flexibility associated with the construction of ADUs, including, but not limited to, location criteria, unit sizes, minimum setbacks, parking requirements, owner occupancy, garage conversions, fire sprinkler requirements, utility fees, etc.

On January 1, 2017, new State regulations related to ADUs became effective requiring cities, counties, and utility agencies to relax restrictions placed on the construction of ADUs. State law mandates that any existing local ordinance that fails to fully meet the requirements of State law shall be deemed null and void, unless and until the local agency adopts an ordinance that complies with the provisions identified within the above-referenced laws.

Current Regulations. Given that the City's current local ordinance for the construction of ADUs is not in compliance with the provisions of State law, it is deemed null and void pursuant to Section 65852.2 of the Government Code. Therefore, until the City of Hayward develops and adopts a local ordinance for ADUs consistent with the provisions of State law, ADUs are subject to the standards of the State.

Previously, the regulations for ADUs (now void) were located within the Minimum Design and Performance Standards section within the underlying residential zoning district, as well as within specified transect zones within the Mission Boulevard Corridor and South Hayward BART Form Based Code areas. To maintain consistency between development standards and various permitted zoning districts for ADUs, a new section within the Hayward Zoning Ordinance will be codified for consolidation purposes.

City Council Work Session. On March 14, 2017, the City Council held a work session ([Staff Report](#) and [Minutes](#)) to examine recent State legislation that allows greater flexibility in development standards to promote the creation of ADUs, to review staff's recommendations on proposed regulations consistent with State law, and to discuss grey areas within State law that allow for local discretion on certain standards and provisions. Key issues that were identified between City Council and staff included:

- a) Conflict between the authority and provisions of State legislation and existing Conditions, Covenants, and Restrictions (CC&Rs) enforced by Homeowners Associations, as applicable;
- b) Additional on-street parking and traffic impacts in already congested residential neighborhoods within the community due to permitted garage conversions and relaxed parking requirements imposed by the State;
- c) Need to develop a notification method to adjacent property owners and/or tenants of proposed ADUs to be constructed nearby; and
- d) Prohibition of ADUs to be used as short-term rentals (e.g. AirBNB, VRBO, Homeaway, etc.) instead of long-term (greater than 30-day rental period) housing stock.

Planning Commission Public Hearing. On July 27, 2017, the Planning Commission held a public hearing ([Staff Report](#) and [Minutes](#)) to review staff's recommendations on the proposed regulations including, but not limited to ADUs within the City. Staff presented a synopsis of the proposed most significant changes from the City's current ADU standards (listed below) and received comments, questions, and suggestions from the commission and the general public. In summary, the Planning Commission voted 4-0-2 (two absent) to recommend approval of Zoning Text Amendment to the HMC and to establish a new review fee for ADUs to the City Council.

DISCUSSION

Staff recommends that Chapter 10 of the HMC be amended to include Section 10-1.2740 for the proposed regulations and development standards for ADUs within the City. The proposed amendments are included in Attachment II, Exhibit "A", with deletions shown in strikethrough and new text shown in underlined red text. The items below highlight the most significant changes from the existing regulations to the HMC.

Location Criteria. To ensure that all proposed ADUs are consistent with the goals and policies of the Hayward 2040 General Plan and the intent of appropriate zoning districts, City staff proposes permitting the construction of ADUs in the following zoning districts as accessory, secondary uses: Agricultural (A), Single-Family Residential (RS), Residential Nature Preserve (RNP), Medium-Density Residential (RM), and the Suburban (T3) transect zone within the Mission Boulevard Corridor Form Based Code area provided the property contains a singular existing, lawfully constructed single-family residence.

Additionally, based on the flexible development configurations granted for Planned Development (PD) rezones, staff concludes that ADUs would not be permitted in already developed PD zones due to conflicting CC&Rs, minimal parking availability, setbacks, and architectural consistency within the development. However, ADUs will be permitted to be constructed in new single-family residential PD projects at the time of development as an amenity to the development to encourage homeownership and flexible design, as well as to provide additional housing stock.

Design and Development Standards for All ADUs. All proposed ADUs, either attached, detached, or internal, shall conform to the design and development standards; however, ADUs proposed to be within an existing accessory structure (workshop, pool house, garage, etc.) shall also be subject to the additional provisions in Section 10-1.2745 of the HMC. New language has been proposed to limit the size of all proposed ADUs to a maximum of 50% of the existing habitable floor area of the primary residence, or 1,200 square-feet whichever is less to maintain an ADU that is subordinate and proportional to the primary dwelling. Habitable floor area shall not include patio covers, porches, garages, balconies, decks, etc.. In addition, regardless of ADU type, the unit shall not exceed two bedrooms and there shall be no more than one ADU per parcel.

Parking Requirements. The most significant deviation from the previous provisions are in relation to parking. State law provides immense flexibility with required parking for ADUs, with a maximum standard of one parking space per unit or bedroom. Previous HMC standards did not require any additional parking for ADUs, provided the primary structure maintained their parking requirement. As such, the proposed regulations will require one additional off-street parking space for a studio/one-bedroom unit, and two additional off-street parking spaces for a two-bedroom unit. The parking spaces will be permitted in a flexible configuration including covered, uncovered, and tandem on the parcel in which the ADU is proposed, including parking within the required front yard setback. In the event the parking requirement for the primary residence is converted (i.e. enclosed garage) for the purposes of creating an ADU, then replacement parking shall be required in the same amount and located on-site, but can also be provided in the flexible configurations listed above.

However, pursuant to State law, parking requirements shall be exempt if it meets the following standards: a) the unit is located within one-mile of public transit and bus stations, b) the unit is located within an architecturally and historically significant historic district, c) the unit is located is within the existing building envelope of the primary residence or accessory structure, and d) where there is designated car-share vehicle parking within one block of the unit. Staff will evaluate each ADU on a case-by-case basis to determine whether the listed parking exemptions would be applicable.

Owner Occupancy and Deed Restriction. The proposed regulations will require that the legal property owner of the parcel shall be required to reside in either the ADU or the principal residence located on the property similar to the City's previous standards. At no time, shall the property owner rent out the principal residence and the ADU separately while the property owner resides elsewhere. As such, the ADU and the principal residence shall not be permitted to be used as short-term rentals, with lease periods less than 30 days. In addition, the property owner will be required to submit proof of a recorded deed restriction with the County of Alameda County Clerk's Office for current and subsequent property owners as a disclosure acknowledging and binding conformance with the proposed regulations. This restriction will further the State objectives of creating additional permanent housing, while avoiding negative impacts of absentee landlords and the deleterious effects of the conversion of housing stock into commercial enterprises (AirBnB, short-term rentals, etc.). Rather, the deed restriction will be a mechanism to have current and prospective homeowners maintain investment in the property and the community while also increasing rental housing stock for all demographics and populations including senior citizens, expanding families, young professionals, etc.

Utility Impact Fees. ADUs, which can be as large as 1,200 square-feet, can, and in many cases will, have impacts on water and sewer systems similar to those of a townhouse or a dwelling unit within a multi-family development. Before the current state law regulating utility connections for ADUs, City regulations required all proposed ADUs, either attached, detached, or internal, to have a separate water connection and water meter, and subject to payment of facilities fees and installation fees for the new water connection. Additionally, while the ADU would be allowed to connect to the property's existing sanitary sewer lateral, it would be subject to a sewer connection fee. Separate utility connections allow for the tenants in each

dwelling unit to be responsible for their own water and sewer service costs as well as promote water conservation by providing tenants water consumption information for their own household, allowing them to make conscientious decisions about their water usage.

Pursuant to recently enacted State law, proposed ADUs constructed within the building envelope of the existing principal residence, garage, or accessory structure cannot be required to install a new or separate utility connection between the accessory dwelling unit and the utility nor may the local agency impose a related connection fee or capacity charge. These types of ADUs would be treated like a typical residential addition, with review by Utilities and Environmental Services staff to determine if the existing water meter is sufficiently sized to accommodate the additional water fixtures, such as a kitchen sink, bathroom sink, shower, etc. proposed within the ADU. If the additional water fixtures proposed would require that the existing water meter be upsized, a facilities fee (or connection fee as it is commonly referred) equal to the difference between facilities fees for the larger meter and the existing smaller meter, and a water meter installation fee, would be due. The most common example of this is a property that has an existing 5/8" water meter and with the addition of new water fixtures, requires a 3/4" water meter. The current cost for this would be \$3,446, which includes a facilities fee for a 3/4" water meter of \$9,730, less a facilities fee for the existing 5/8" water meter of \$6,484, plus an installation fee for the new 3/4" water meter of \$200.

For proposed ADUs constructed outside the building envelope of the existing principal residence, garage, or accessory structure, State law allows for a local agency to require a separate utility connection between the accessory dwelling unit and the utility, and to assess a connection fee or capacity charge proportionate to the burden of the proposed accessory dwelling unit upon the water or sewer system. These types of ADUs will be required to install a separate water connection and water meter and will be subject to facilities fees, installation fees, and sewer connection fees. Currently, the utilities fees for a new water connection for an ADU would be \$9,984, which includes a facilities fee of \$6,484 for a 5/8" water meter and a \$3,500 installation fee for equipment, materials, and City labor costs for the installation of the new water service line in the street and water meter. The proposed sewer connection fee for an ADU is equivalent to the fee for a dwelling unit within a multi-family development, which is \$6,853. This is less than what is the sewer connection for single family homes, which is currently \$7,700 per dwelling unit.

Permits Required. Under the proposed regulations, ADUs would be subject to the review and approval of a Zoning Conformance Permit (ZCP) prior to the submission of construction level drawings to the Building Division. The ZCP application is a non-discretionary, ministerial Planning permit that will be reviewed administratively by staff and shall be either disapproved or approved within 120 days of the submission of a complete application per State law; however, it is anticipated that review of a ZCP for an ADU will not exceed a week based on the project scope of work. Staff believes that the ZCP process is warranted to ensure all proposed ADUs comply with the underlying zoning district and adopted design and development standards. Further, a ZCP will assist in maintaining a current record of ADUs as rentable housing stock for the City's Regional Housing Needs Allocation (RHNA), and to ensure ongoing compliance with the City's Rental Housing Inspection Program monitored by the Code Enforcement Division.

However, a discretionary Site Plan Review application will be required for all accessory dwelling units to be proposed atop of existing, legally constructed detached garages that exceed the maximum height limitations for detached, accessory structures. To address concerns of privacy impacts on adjacent properties posed by minimal setback requirements permitted by the State, the Site Plan Review process will allow staff to notice proposed projects and determine whether any mitigation measures can be incorporated into two-story ADUs such as design features, landscaping buffers, or increased setbacks. In addition, this will also allow staff to ensure that the proposed detached, two story ADU remains architecturally subordinate and accessory to the primary residential structure.

ENVIRONMENTAL REVIEW

The proposed text amendment is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the Public Resources Code that exempts the adoption of an ordinance regarding accessory dwelling units in single-family and multi-family zones by cities and counties that implement the provisions of Section 65852.2 of the California Government Code. Therefore, no environmental review is necessary.

ECONOMIC IMPACT

The proposed regulations for ADUs will have a positive economic impact in the community as the updated regulations will provide greater flexibility to spur the development of additional rental housing stock. Such relaxed development standards will assist in removing constraints on housing development in accordance with the intent of State law which can help address housing needs in the City by expediting construction, and lowering development costs.

FISCAL IMPACT

The ZCP permit fee for ADUs is proposed to be a \$328 flat fee, which is the equivalent of two hours of planning staff time (Attachment IV). Similar to other ministerial permits, the proposed flat fee is based on the average amount of time spent processing an ADU request during the application in-take, plan review, verification of code compliance, issuance of the Zoning Conformance Permit, and the post-permit records management. Based on the existing fee structure of other ministerial permits issued by the City, staff believes the new fee amount for ADU's is appropriate, reasonable and necessary for full cost recovery and administrative efficiency. The proposed amendment to the City's Master Fee Schedule is referenced in Attachment IV, Exhibit "A" – Resolution to Establish New Fees.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all consistent with the objectives of the Hayward 2040 General Plan

with respect to the “Land Use and Community Character” and “Community Health and Quality of Life” Elements. Further, the item supports the following goals and objectives:

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

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

SUSTAINABILITY FEATURES

The adoption of the Zoning Text Amendment to relax restrictions and standards placed on the development of ADUs will allow for appropriate infill development in already established and existing residential neighborhoods. As such, with the increased development of ADUs, additional housing stock will be generated for the local and regional area to assist in alleviating the housing crisis in the Bay Area as mentioned earlier in this report and also potentially easing commute distances and times. Additionally, the construction of ADUs will allow for homeowners to make use of underutilized/excess land and/or square-footage on their property to create an additional dwelling unit and take advantage of existing utility infrastructure, such as water and sewer.

PUBLIC CONTACT

In April 2017, City staff implemented the Hayward Empathy Action Response Team (HEART) and visited nine different residential neighborhoods within City boundaries to gather a survey sample (in-person and electronically) from the community on the potential benefits and impacts associated with the new State legislation. Approximately seventy-five responses were collected identifying the interests, obstacles, motivators, and impacts from the potential construction of ADUs in their neighborhoods. Survey responses were collected, compiled, and incorporated into the creation of the proposed ADU regulations. In summary, the survey showed that while the public would support the construction of an ADU for additional income and/or for extended family, the biggest obstacle was project cost and unfamiliarity with the City’s permitting process for ADUs. Additionally, residents identified on- and off-street parking as their most significant concerns. As such, staff has incorporated and is recommending a minimum parking requirement within the proposed regulations, which are consistent with the provisions and intent of State law.

On October 6, 2017, notice of the public hearing related to the proposed Zoning Text Amendment and adjustment to the City’s Master Fee Schedule was published in The Daily Review, and around that date, notices were posted at City Hall and the Hayward Public Library for review by the general public. In addition, the notice and agenda was sent to an interested parties list via electronic mail.

On October 7, 2017, Planning Division staff received one public comment from a Hayward property owner stating opposition to the owner occupancy requirement. However, staff finds

that the owner occupancy requirement follows the provisions of State law, is consistent with the City's previous second dwelling unit ordinance, and warranted based on the reasons identified in "Owner Occupancy and Deed Restriction" section above.

NEXT STEPS

Should the City Council adopt the attached Resolutions (Attachments III and IV) and introduce the Ordinance (Attachment II), staff will bring back the Ordinance for adoption at the next City Council meeting scheduled on Monday, October 30, 2017. The Ordinance will then become effective 30 days after the adoption by City Council. Lastly, the Planning Division will submit a copy of the Ordinance to the California Department of Housing and Community Development (HCD) within 60 days as required by State law.

Prepared by: Marcus Martinez, Assistant Planner

Recommended by: Stacey Bristow, Interim Development Services Director

Approved by:



Kelly McAdoo, City Manager

ORDINANCE NO. 17-_____

AN ORDINANCE ADDING SECTION 10-1.2740 TO CHAPTER 10 (PLANNING, ZONING, AND SUBDIVISIONS) OF THE HAYWARD MUNICIPAL CODE TO REVISE AND UPDATE REGULATIONS RELATED TO THE DEVELOPMENT OF ACCESSORY DWELLING UNITS

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

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 17-__ approving the text changes to the Hayward Municipal Code requested in Zoning Text Amendment Application No. 201701087.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to the development of Accessory Dwelling Units (commonly referred to as in-law units, secondary dwellings, or granny flats), introduced herewith and as specifically shown in this Ordinance.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 17th day of October 2017, by Council Member _____.

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

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

CHAPTER 10 – PLANNING, ZONING, AND SUBDIVISIONS

ARTICLE 1 – ZONING ORDINANCE

SECTION 10-1.200 – SINGLE FAMILY RESIDENTIAL DISTRICT (RS)

SEC. 10-1.215 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the RS District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc., can be met for each dwelling).

SEC. 10-1.245 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

~~n. Second Dwelling Unit, Attached ("Granny or in-law unit"). An attached second dwelling unit ("Granny or in-law unit") may be constructed in accordance with the following standards:~~

- ~~(1) An attached second dwelling unit may only be added to an existing detached single family dwelling on a parcel containing no other dwellings, and which has at least two covered parking spaces, with at least one common wall between the attached second dwelling unit and the living or garage area of the existing dwelling.~~
- ~~(2) An attached second dwelling unit shall contain no more than one bedroom, shall be a minimum of 400 square feet in area and shall not exceed 640 square feet in area. No additional covered parking shall be provided.~~
- ~~(3) Any separate entry constructed for an attached second dwelling unit shall be located only in the side, side street (if approved by the Planning Director) or rear yard.~~
- ~~(4) An attached second dwelling unit shall be counted as part of the primary building coverage requirements and also shall conform to all required lot, yard, and height requirements.~~
- ~~(5) An attached second dwelling unit shall not be sold separately from the primary dwelling, but it may be rented.~~
- ~~(6) An attached second dwelling unit shall only be approved where the owner of the existing dwelling has applied for the building permit and where same owner resides in the primary dwelling at the time of application and occupancy of the attached second dwelling.~~

- ~~(7) Unless exempted, as determined by the Building Official, the primary or existing dwelling and the attached second dwelling unit shall conform to all applicable City code requirements; for example, building, fire, plumbing, electrical. A Certificate of Occupancy shall have been obtained for both units prior to occupancy of the attached second dwelling.~~
- ~~(8) An attached second dwelling unit shall not be located within the garage area or a converted garage area of the existing dwelling unless adequate substitute 2-car garage parking is provided outside required front, side, and side street yards.~~
- ~~(9) The exterior design of the attached second dwelling unit shall appear to constitute an integral part of the primary dwelling and not a separate dwelling unit.~~

SECTION 10-1.300 - RESIDENTIAL NATURAL PRESERVATION DISTRICT (RNP)

SEC. 10-1.315 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the RNP District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.

SECTION 10-1.400 - MEDIUM DENSITY RESIDENTIAL DISTRICT (RM)

SEC. 10-1.415 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RM District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc., can be met for each dwelling)

SECTION 10-1.500 - HIGH DENSITY RESIDENTIAL DISTRICT (RH)

SEC. 10-1.515 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RH District:

- (1) Residential Uses.

- (a) ~~Second dwelling unit attached to single family dwelling. (Also referred to as a "Granny Unit." See Section 10-1.545.g for criteria.)~~

SEC. 10-1.600 – RESIDENTIAL-OFFICE DISTRICT (RO)

SEC. 10-1.615 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RO District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245.n for criteria)~~
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc.) can be met for each dwelling.

SECTION. 10-1.2740 - ACCESSORY DWELLING UNITS

SEC. 10-1.2741 PURPOSE.

The ordinance codified in this section establishes regulations for the construction of accessory dwelling units subordinate to single-family dwellings. Accessory dwellings units provide housing opportunities in a flexible manner to address the unmet demand for affordable housing and achieve the goals, objectives, and policies of the Housing Element and General Plan to provide a diverse mix of housing options for the community.

SEC. 10-1.2742 DEFINITIONS.

- a. "Accessory dwelling unit(s)" shall be defined as an attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s).

SEC. 10-1.2743 LOCATION CRITERIA.

- a. Accessory dwelling units shall only be permitted as accessory uses in the Single-Family Residential (RS), Residential Nature Preservation (RNP), Medium-Density Residential (RM), Agricultural (A) zoning districts, and in the T-3 Suburban zoning district in the Mission Boulevard Corridor Form-Based Code area, where one legally constructed single-family dwelling exists as the primary structure on the parcel.

- b. Accessory dwellings units shall not be permitted in Planned Development (PD) zoning districts, unless otherwise constructed at the time of development as an amenity.

SEC. 10-1.744 DESIGN AND DEVELOPMENT STANDARDS.

All proposed accessory dwelling units shall comply with the following design and development standards:

- a. Quantity. On any one parcel of land, no more than one accessory dwelling unit shall be allowed regardless of the number of single-family dwellings located on the lot.
- b. Unit Size. All proposed accessory dwelling units shall not exceed 50-percent of the habitable floor area of the existing single-family residence or 1,200 square-feet, whichever is less. Habitable floor area calculation shall not include garages, detached accessory structures, patio covers, porches, covered and uncovered balconies, and decks as determined by the Planning Director.
- c. Maximum Number of Bedrooms. Accessory dwelling units shall not exceed a maximum of two bedrooms as sleeping quarters.
- d. Attached Units. Accessory dwelling units proposed to be attached from the primary residence shall comply with the development standards set forth by the underlying zoning for the primary structure including, but not limited to, setbacks, lot coverage, height, and architectural compatibility.
- e. Detached Units. Accessory dwelling units proposed to be detached from the primary residence shall comply with the minimum design and performance standards set forth by the underlying zoning district for detached, accessory and secondary structures including, but not limited to, setbacks, lot coverage, height, distance between structures, location and architectural compatibility.
- f. Setbacks. Accessory dwelling units proposed to be constructed atop of existing, legal detached garages shall provide a minimum five-foot setback from the interior side and rear property lines, unless a greater setback is required pursuant to Building and Fire standards or the property is a corner lot which shall comply with the minimum street-side setback requirements. Accessory dwelling units proposed to be attached or detached shall conform to the development standards and performance standards set forth in the underlying zoning district.
- g. Height Restrictions. Accessory dwelling units shall comply with the following height restrictions based on the proposed location of the unit:
 - (1) Accessory dwelling units attached to the primary structure shall comply with the height limitations of the underlying zoning district for the principal structure.

- (2) Accessory dwelling units to be detached from the primary structure shall be limited to the height restrictions set forth in the underlying zoning district for detached, accessory and secondary structures.
- (3) Accessory dwelling units proposed to be constructed atop of legally constructed detached garages shall be subject to the review and approval of a discretionary Site Plan Review application in accordance with Section 10-1.3000 of the Hayward Municipal Code. In order to deny a Site Plan Review application, the Planning Director shall find that the accessory dwelling unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors. In any instance, the accessory dwelling unit shall be limited to the maximum height restriction of the primary structure within the underlying zoning district
- h. Independent Exterior Access. Accessory dwelling units shall provide an independent exterior access separate from the primary residence. The separate entry constructed for the accessory dwelling unit shall not face the street or the public right-of-way.
- i. Owner Occupancy. The legal property owner of the lot shall be required to reside in either the primary residence or the accessory dwelling unit located on the parcel. At no time shall the property owner rent the primary dwelling and the accessory dwelling unit separately or allow the main house and the accessory dwelling unit to be sublet individually while the property owner resides elsewhere.
- j. The accessory dwelling unit shall not be sold separately from the principal residence. The rental and lease period for either unit shall be longer than a minimum of 30-days and shall not be utilized as a short-term rental.
- k. Fire Sprinklers. Accessory dwelling units shall not be required to be equipped with fire sprinklers unless fire sprinkler installation is required for the primary dwelling
- l. Park Dedication In-Lieu Fees. Each accessory dwelling unit whether detached, attached, or internal shall be required to pay the applicable Park-Dedication In-Lieu fee as set forth in Chapter 10, Article 16 of the Hayward Municipal Code (Property Developers – Obligations for Parks and Recreation) prior to the date of final inspection or the date the Certificate of Occupancy is issued for the development, whichever occurs first.
- m. Private Sewage System. If the accessory dwelling unit is proposed to incorporate or utilize a private sewage disposal system (e.g. septic tank or on-site wastewater treatment system), the applicant shall be required to provide documentation and proof by the Alameda County Department of Environmental Health at the time of application. No private sewage disposal shall be permitted where there is an available public sewer within 200-feet, measured along streets, alleys, or public right-of-way upon which a lot abuts pursuant to Chapter 11, Article 3 (Sanitary Sewer System) of the Hayward Municipal Code.

SEC. 10-1.2745 ADDITIONAL PROVISIONS FOR THE CONVERSION OF EXISTING STRUCTURES TO CREATE ACCESSORY DWELLING UNITS.

- a. Setbacks. No side or rear yard setback shall be required for an existing, legally constructed garage or accessory structure that is converted into an accessory dwelling unit provided it is sufficient for fire safety standards as determined by the Hayward Fire Department and Chief Building Official.
- b. Utility Connection Fees. Accessory dwelling units constructed within the building envelope of the existing principal residence, garage, or accessory structure shall not be required to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.
- c. Parking. No additional parking shall be required if the accessory dwelling unit is located is within the existing building envelope of the primary residence or accessory structure, unless it involves the conversion of a garage or reduction of the off-street parking requirement for the parcel.

SEC. 10-1.2746 PARKING.

Accessory dwelling units shall be required to provide parking in accordance with the following requirements:

- a. Parking Requirement for Primary Residence. In any instance, the property shall be required to meet the minimum parking requirement as set forth in Chapter 10, Article 2, Off-Street Parking Regulations for the principal residence prior or concurrent to the application for an accessory dwelling unit.
- b. New Units. Accessory dwelling units that are proposed with as a studio or one-bedroom shall be required to provide one additional parking space, and accessory dwelling units with two bedrooms shall be required to provide two parking spaces on the same lot as the unit in a covered, uncovered, or tandem configuration. Parking spaces may be located in the required setbacks provided the proposed location complies with the landscaping requirement in the front yard and minimum standards set forth within the Off-Street Parking Regulations for open parking spaces, unless otherwise approved by the Planning Director.
- c. Garage Conversions. Where garages are converted for the purpose of creating an accessory dwelling unit, replacement off-street parking shall be provided on the same lot as the unit in either a covered, uncovered, or tandem configuration provided the proposed location complies with the landscaping requirement in the front yard and the minimum standards set forth within the Off-Street Parking Regulations for open parking spaces, unless otherwise approved by the Planning Director.

- d. Parking Requirement Exemptions. Off-street parking shall not be required for accessory dwelling units if any of the following circumstances apply:
 - (1) The unit is located within one-mile of public transit and bus stations.
 - (2) The unit is located within an architecturally and historically significant historic district.
 - (3) Where there is designated car-share vehicle parking within one block of the unit.

SEC. 10-1.2747 PERMIT REQUIRED.

Unless otherwise noted in this Ordinance, the applicant shall be required to obtain the approval of a Zoning Conformance Permit by the Planning Division prior to the submittal of a building permit application to the Building Division. Zoning Conformance Permits shall either be disapproved or approved within 120 days of the submission of a complete application. Application submittal requirements for an Accessory Dwelling Unit shall include the following items, in addition to the required fees for each accessory dwelling unit proposed in accordance with the adopted Master Fee Schedule:

- a. Project Plans. The applicant shall be required to provide a site plan, floor plan, elevations, and cross sections of the proposed accessory dwelling unit drawn to scale. Plans shall include minimal project information, dimensions, and calculations including, but not limited to the proposed setbacks, lot coverage, height, distance between structures, square-footage, easements, materials, etc. as required by the Planning Director or his/her designee.
- b. Deed Restriction. Prior to the issuance of a building permit for the accessory dwelling unit, the property owner shall file with Alameda County Recorder a deed restriction approved by the City stating compliance with provisions of this Ordinance and Hayward Municipal Code and such deed is binding upon any successor in ownership of the property, and lack of compliance shall be grounds for Code Enforcement action and removal of the accessory dwelling unit.

SECTION 10-1.3500 – DEFINITIONS

SEC. 10-1.3510 - USES AND ACTIVITIES DEFINED.

DWELLING UNIT. One or more rooms with a single kitchen, arranged, designed, used, or intended to be used exclusively for living and sleeping purposes by one family as an independent housekeeping unit. Other definitions include the following:

- a. Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the

proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.

- b. Apartment/multiple family dwelling(s): Any building, group of buildings, or portion thereof which includes two or more dwelling units, and which are intended as ownership units, or in the case of apartments, rental or for lease units. Apartment/multiple family dwelling projects may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements.
- c. Condominium dwelling(s): Any building, group of buildings, or portion thereof which includes two or more dwelling units, and for which there is a final map or parcel map. Condominium dwelling projects are usually governed by a Homeowners Association (HOA) with Covenants, Codes and Restrictions (CC&R's), and may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements. Within a condominium, ownership consists of the airspace within a unit and the building(s) and all land within the development are under common ownership.
- d. Single-family dwelling: A detached building containing only one dwelling unit. See Section 10-1.200 for requirements.
- e. Second Single-family dwelling: A second single-family dwelling permitted on a parcel where there is one existing single-family dwelling already, provided minimum lot size and setbacks can be met for both dwellings separately. See Section 10-1.215.b.(1)(b) for requirements.
- ~~f. Second dwelling unit, Attached: A second dwelling unit attached to an existing owner-occupied single-family dwelling which may be rented and contains no more than 640 square feet and no more than one bedroom. Also referred to as a "granny or in-law unit." See Section 10-1.245.n for requirements.~~
- g. Townhouse dwelling(s): Any building, group of buildings, or portion thereof which includes two or more attached dwelling units, and for which there is a final map or parcel map. Townhouse dwelling projects are usually governed by a Homeowners Association (HOA) with Covenants, Codes and Restrictions (CC&R's), and may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements. Townhouse ownership includes the building, the land beneath the building and typically a patio or small yard adjacent to the structure. The remaining land within the development is under common ownership.

ARTICLE 2 – OFF-STREET PARKING REGULATIONS

SECTION 10-2.310 - RESIDENTIAL USES.

The number of off-street parking spaces required for residential shall be:

USES	PARKING SPACES REQUIRED
SINGLE-FAMILY DWELLINGS:	2.0 covered per dwelling unit
If a lot abuts a public or private street that has no parking lane on either side of the street or is posted for no parking on both sides of the street.	2.0 covered per dwelling unit plus 2.0 open per dwelling unit, which shall not block access to the covered parking
If a dwelling with a single car garage was built prior to March 24, 1959	1.0 covered per dwelling unit
MULTIPLE-FAMILY DWELLING(S):	
Studio	1.0 covered and 0.50 open per dwelling unit
One-bedroom	1.0 covered and 0.70 open per dwelling unit
Two or more bedrooms	1.0 covered and 1.10 open per dwelling unit
* Ten percent of the multiple family parking spaces required shall clearly be marked for visitor's parking, at least 70 percent of which shall accommodate standard size vehicles. Where less than 10 parking spaces are required, a minimum of one standard parking space shall clearly be marked for visitor's parking.	* Included in the rental cost, a minimum of one covered parking space shall be assigned to each studio and one-bedroom unit, and a minimum of one covered and one uncovered parking space shall be assigned to each two or more bedroom or more units. Assigned unused spaces may not be rented to any other party. Any uncovered space may be covered instead.
MOBILE HOMES	2.0 per mobile home space, plus 1.0 guest parking space per three mobile home spaces within a mobile home park
ATTACHED SECOND-FAMILY UNITS (Granny Units) Accessory Dwelling Unit(s)	No additional parking spaces are required for attached second-family units. <u>See Section 10-1.2740 for parking criteria and standards.</u>

ARTICLE 24 – SOUTH HAYWARD BART FORM BASED CODE

TABLE 9. SPECIFIC FUNCTION AND USE

	T4	T5	CS
a. Residential			
Multiple Family	P	P	-
Second Dwelling Unit	P -	P -	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-

(-) = Not Permitted, (P) = By Right, (AU) = Administrative Use Permit, (CU) = Conditional Use Permit

SEC. 10-24.230 BUILDING CONFIGURATION

a. General to T4 and T5 Zones

- i. Buildings on corner Lots shall have two Private Frontages as shown in Table 15. Prescriptions for the second and third Layers pertain only to the Principal Frontage. Prescriptions for the first Layer pertain to both Frontages.
- ii. All Facades shall be glazed with clear glass no less than 30% of the first Story.
- iii. Stories may not exceed 14 feet in height from finished floor to finished floor, except for a first floor Commercial Function, which shall be a minimum of 14 feet with a maximum of 25 feet. A single floor level exceeding 14 feet, or 25 feet at ground level, shall be counted as two (2) stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional Story.
- iv. In a Parking Structure or garage, each above-ground level counts as a single Story regardless of its relationship to habitable Stories.
- v. Height limits do not apply to masts or belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.
- vi. Attics shall not exceed 14 feet in height. Raised basements shall not exceed 3 feet in height up to the finished floor of the first story.

- vii. ~~The habitable area of a Second Dwelling Unit within a Principal Building or an Outbuilding shall not exceed 640 square feet, excluding the parking area.~~ an Accessory Dwelling Unit shall conform to the criteria and standards of Section 10-1.2740 of the Hayward Municipal Code.
- viii. Rooftop improvements shall be required to reduce visual impacts on future buildings that could impact views from existing buildings at higher elevations on the east side of Mission Boulevard, as determined by the Planning Director. Architectural features integral to the building design and solar energy systems should not be screened from view.

SEC. 10-24.500 – DEFINITIONS AND RULES OF INTERPRETATION

~~Second Dwelling Unit: a dwelling unit that is accessory, supplementary, and secondary to the principal dwelling, which may be constructed as an addition to the principal structure or as an accessory to the principal structure.~~ Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.

ARTICLE 25 – MISSION BOULEVARD CORRIDOR FORM BASED CODE

TABLE 9. ALLOWED FUNCTIONS

	T3	T4-1	T4-2	T5	CS
a. Residential					
Multiple Family	CU	P/CU	P/CU	P/CU	-
Second Dwelling Unit	P	P/CU -	P/CU -	P/CU -	-
Single Family	P	-	-	-	-
Live-Work	-	P/CU	P/CU	-	-
Emergency Homeless Shelter	-	P/CU	P/CU	-	-
Single-Room Occupancy (SRO)	-	-	-	CU	-

(-) = Not Permitted, (P) = By Right, (AU) = Administrative Use Permit, (CU) = Conditional Use Permit

SEC. 10-25.230 BUILDING CONFIGURATION

a. General to T3, T4-1, T4-2 and T5 Zones

- i. Buildings on corner Lots shall have two Private Frontages as shown in Table 15. Prescriptions for the second and third Layers pertain only to the Principal Frontage. Prescriptions for the first Layer pertain to both Frontages.
- ii. All Facades shall be glazed with clear glass no less than 30% of the first Story.
- iii. Stories may not exceed 14 feet in height from finished floor to finished floor, except for a first floor Commercial Function, which shall be a minimum of 14 feet with a maximum of 25 feet. A single floor level exceeding 14 feet, or 25 feet at ground level, shall be counted as two (2) stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional Story.
- iv. In a Parking Structure or garage, each above-ground level counts as a single Story regardless of its relationship to habitable Stories.
- v. Height limits do not apply to masts or belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.
- vi. Attics shall not exceed 14 feet in height. Raised basements shall not exceed 3 feet in height up to the finished floor of the first story.
- vii. ~~The habitable area of a Second Dwelling Unit within a Principal Building or an Outbuilding shall not exceed 640 square feet, excluding the parking area.~~ an Accessory Dwelling Unit shall conform to the criteria and standards of Section 10-1.2740 of the Hayward Municipal Code.
- viii. Rooftop improvements shall be required to reduce visual impacts on future buildings that could impact views from existing buildings at higher elevations on the east side of Mission Boulevard, as determined by the Planning Director. Architectural features integral to the building design and solar energy systems should not be screened from view.

SEC. 10-25.600 – DEFINITIONS AND RULES OF INTERPRETATION

~~Second Dwelling Unit: a dwelling unit that is accessory, supplementary, and secondary to the principal dwelling, which may be constructed as an addition to the principal structure or as an accessory to the principal structure.~~ Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION TO ADOPT A ZONING TEXT AMENDMENT TO CHAPTER 10
(PLANNING, ZONING, AND SUBDIVISIONS) OF THE HAYWARD MUNICIPAL
CODE RELATED TO THE DEVELOPMENT OF ACCESSORY DWELLING UNITS

WHEREAS, on September 27, 2016, Governor Brown signed Assembly Bill 2299 (Bloom) and Senate Bill 1069 (Wieckowski) into law, requiring local agencies to revise and ease restrictions on the development of Accessory Dwelling Units (ADUs);

WHEREAS, on January 1, 2017, Assembly Bill 2299 and Senate Bill 1069 became effective rendering any local ordinance that failed to fully meet the requirements of State law null and void, unless and until the local agency adopts an ordinance that complies with the provisions of the State;

WHEREAS, on March 14, 2017, the City Council held a work session to review State legislation related to the development of ADUs and to provide policy direction to City staff;

WHEREAS, the adoption of an ordinance regarding ADUs in single-family and multi-family zones by cities and counties is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the Public Resources Code;

WHEREAS, on July 27, 2017, the Planning Commission considered Zoning Text Amendment Application No. 201701087 at a public hearing, and voted (4-0-2), that the City Council approve the Zoning Text Amendment; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 17, 2017.

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

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- A. The proposed text amendment is statutorily exempt from the provisions of the CEQA pursuant to Section 15282(h) of the Public Resources Code that exempts the adoption of an ordinance regarding accessory dwelling units in single-family and multi-family zones by cities and counties that implement the provisions of Section 65852.2 of the California Government Code. Therefore, no environmental review is necessary.

FINDINGS FOR A ZONING TEXT AMENDMENT TO THE HAYWARD MUNICIPAL CODE

- A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by providing the flexibility to create a diverse type of housing options for students, young professionals, small families, disabled individuals, extended families, senior citizens, and residents to live, work, study, and play. Additionally, the State Legislature finds, as substantial proof, that ADUs are a valuable form of rental housing stock in California, homeowners benefit from the creation of ADUs as added income, ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character, and California is in a severe housing crisis. The owner occupancy deed restriction will also ensure that all ADUs are compatible with existing single-family neighborhoods they are to be located in. It will maintain accountability with the property owner to verify that all ADU rentals are compliant with health, safety, general welfare, and housing conditions for prospective tenants.

- B. The proposed change is in conformance with all applicable, officially adopted policies and plans;

The proposed Zoning Text Amendment will be consistent with the following goals, policies, and objectives of the Hayward 2040 General Plan and the Complete Communities Strategic Plan:

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

Diversity of Housing Types Policy H-3.1: The City shall implement land use policies that allow for a range of residential densities and housing types, prices, ownership, and size.

Flexible Development Standards Policy H-4.1: The City shall review and adjust as appropriate residential development standards, regulations, ordinances, departmental processing procedures, and residential fees that are determined to be a constraint on the development of housing.

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

- C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and

No properties are proposed to be reclassified with the proposed text amendment. The zoning districts in which ADUs will be permitted within the proposed regulations will remain consistent with the previous voided regulations. Therefore, streets and public facilities existing and proposed will be adequate to serve the potential development of ADUs as accessory, secondary uses.

- D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified with the proposed text amendment. A beneficial effect will be achieved with the proposed revision to the HMC, as it will allow for more flexible development standards than which previously existed and spur greater development of ADUs with infill development consistent with the existing neighborhood character and scale.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings in support of Zoning Text Amendment Application No. 201701087, subject to the adoption of the companion Ordinance.

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 17-___) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA 17th of October 2017.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION AMENDING THE CITY OF HAYWARD 2018 FISCAL YEAR MASTER FEE SCHEDULE FOR ZONING CONFORMANCE PERMITS ASSOCIATED WITH A ZONING TEXT AMENDMENT TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS

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

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

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

WHEREAS, in November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) to set a new fee to process simple, ministerial Planning permits is considered a Planning Permit fee pursuant to Exception 1 for Fees for Benefits and Privileges, Article XIII C, § 1(e)(1) of Proposition 26.

WHEREAS, the City's goal is to provide a ministerial Planning permit (Zoning Conformance Permit) to provide efficient, over-the-counter service to support applications for minor projects that are permitted as a matter of right, subject to fixed standards or objective measurements set forth in the Hayward Municipal Code, and to achieve cost recovery cost recovery for the staff time in implementing such a permit;

WHEREAS, the Zoning Conformance Permit (ZCP) will be utilized to review Accessory Dwelling Unit projects in a ministerial manner which will ensure cost recovery during the initial project intake, code compliance review, deed restriction review, issuance of permit and records management post-permit issuance; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 17, 2017.

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

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Fiscal Year 2018 Master Fee Schedule, as reflected in attached Exhibit "A".

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 17-__) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA 17th of October 2017.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

B. PLANNING

1. Pre-Application Meeting ¹		No Charge
2. Code Assistance Meeting ¹		No Charge
3. Annexation Proceedings		
Costs shall also include, but not be limited to, current annexation filing fees established by the Board of Equalization in manner provided by the State Government Code Section 54902.5.	\$	15,000 Time & Material; Initial Deposit ²
4. LAFCO Utility Service Agreement		
(Preparation and processing of documents in connection with utility service to property outside of the City limits)	\$	5,000 Time & Material; Initial Deposit ²
5. Environmental/Technical Analysis (Contract) Consultant	\$	5,000 Time & Material; Initial Deposit ²
6. General Plan Amendment ¹	\$	12,000 Time & Material; Initial Deposit ²
7. Text Change to Zoning Ordinance ¹	\$	12,000 Time & Material; Initial Deposit ²
8. Rezoning and Prezoning (Including New or Major Modification to a Planned Development) ¹	\$	12,000 Time & Material; Initial Deposit ²
9. Rezoning (Planned Development Precise Plan or Preliminary Plan Minor Modification)	\$	6,000 Time & Material; Initial Deposit ²
10. Conditional Use Permit ¹	\$	6,000 Time & Material; Initial Deposit ²
11. Administrative Use Permit ¹		
a. Livestock	\$	500 Per Application
b. Food Vendors	\$	700 Per Application
c. Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
d. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²

12. Site Plan Review¹		
a. Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
b. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
13. Variance/Warrants - Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
14. Variance/Warrants & Exceptions – Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
15. Modification of Approved Development Plan – Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
16. Modification of Approved Development Plan – Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
17. Extension of Approved Development Plan/Applications	\$	1,000 Time & Material; Initial Deposit ²
18. Designation of Historical or Architectural Significance¹	\$	6,000 Time & Material; Initial Deposit ²
19. Development Agreement		
a. Review of application, negotiation of agreements, processing through Planning Commission and City Council	\$	12,000 Time & Material; Initial Deposit ²
b. Amendment Processing	\$	6,000 Time & Material; Initial Deposit ²
c. Annual Review	\$	1,000 Time & Material; Initial Deposit ²
20. Written Verification of Zoning Designation or Similar Request	\$	500 Per Application
21. Research	\$	164 per hour after first 15 minutes

22. Zoning Conformance Permit

a Tier One: Apiaries, Unattended Collection Boxes	\$	210 Per Application
b Tier Two: Household Pets (when required)	\$	53 Per Application
c Tier Three: Accessory Dwelling Unit Application	\$	328 Per Unit

23. Sign Permits

a. Sign Permit (one business)	\$	327
b. Sign Permit (each additional business – same application)	\$	327
	\$	100 Fee Plus
c. Temporary Sign Permit (Banners, Flags, Streamers, Pennants, Bunting, Searchlights, Inflatable Signs, Human Signs)	\$	200 Deposit*

*Temporary sign deposits to be refunded upon removal of signage

d. Portable/A-Frame Signs	\$	50 Encroachment Permit
e. Mural Art	\$	50

Note: Revocable Encroachment Permit also applies to Human signs in the public right of way

24. Sign Program

\$ 817

25. Appeal Fee for Applicant

\$ 6,000 Time & Material;
Initial Deposit²

26. Appeal Fee Other Than Applicant

\$ 400

27. Tentative Tract or Tentative Parcel Map

a. Processed Administratively	\$	4,000 Time & Material; Initial Deposit ²
b. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²

28. Final Parcel Map

\$ 2,000 Time & Material;
Initial Deposit²

29. Final Tract Map

\$ 6,000 Time & Material;
Initial Deposit²

30. Lot Line Adjustment

\$ 4,000 Time & Material;
Initial Deposit²

31. Certificate of Merger or Certificate of Compliance

\$ 4,000 Time & Material;
Initial Deposit²

32. Grading Permit Application

\$ 4,000 Time & Material;
Initial Deposit²

33. Security Gate Application

\$ 1,635

34. Encroachment Permit – Street Events	\$	2,944
The Development Services Director or designee may reduce or waive this fee for certain events. (<i>See Fee Reduction, Waiver, and Sponsorship for Special Events Policy</i>)		
35. Encroachment Permit Application – Major Work (road closures, traffic control, more than 500 linear feet of work, etc.)	\$	4,000 Time &Material; Initial Deposit ²
36. Encroachment Permit Application – Minor Work (sewer laterals, driveway widening, etc.)	\$	327 Plus Public Works inspection fee
38. Tree Preservation		
a. Annual Pruning Certification	\$	817
b. Tree removal/pruning	\$	490
39. Mobilehome Park Closure/Change of Use	\$	9,814
40. Inspections - Planning and Landscape		
a. Code Enforcement Compliance Inspection Fee	\$	125
b. Landscape Inspection and/or re-inspection fee	\$	164 Per Hour
41. Policy Planning Fee		16% of Building Permit Fee

42. Park Dedication In Lieu Fees

a. Single-Family Detached	\$	11,953
b. Single-Family Attached	\$	11,395
c. Multi-Family (including accessory dwelling units)	\$	9,653

43. Affordable Housing Impact Fees

1. Ownership Residential Projects - 20 units or More		
a. Detached Dwelling Units	\$4.61/Square Foot of Habitable Space*	
b. Attached Dwelling Units	\$3.87/Square Foot of Habitable Space*	
2. Rental Residential Projects - 20 units or More		
a. Projects Receiving All Discretionary Approvals Prior to Dec. 31, 2015 and All Building Permits Prior to Dec. 31, 2017	No Fee	
b. All Other Projects	\$3.63/Square Foot of Habitable Space*	

*Note: Affordable housing impact fees shall be paid either prior to issuance of a building permit or prior to approval of a final inspection or issuance of an occupancy permit. Fees paid at occupancy shall be increased 10 percent, to \$5.06/sq. ft. of habitable space for detached dwelling units, to \$4.28/sq. ft. of habitable space for attached dwelling units, and to \$3.99/sq. ft. for rental units.

"Habitable Space" means floor area within a dwelling unit designed, used, or intended to be used exclusively for living and sleeping purposes and exclusive of vent shafts, eaves, overhangs, atriums, covered entries and courts and any portion of a structure above ground used for parking, parking aisles, loading areas, or accessory uses.

¹It is recommended that major projects be reviewed at a Pre-Application Meeting prior to submittal of a Development Review Application. A Code Assistance Meeting is also recommended involving project design professionals to address technical code questions.

²This is an initial deposit only. Hourly rate is \$163.58. If during the review of the project the Planning Director estimates that the charges will exceed the deposit, additional deposit(s) will be required. Also, the Planning Director may authorize a lesser initial deposit than shown if he/she determines that processing of an application will not entail need for the full initial deposit. Prompt payments of deposits or outstanding fees owed in association with the application will assure continued staff review of the project. Any surplus deposit remaining shall be refunded promptly upon project completion.



State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(Amended by Stats. 2016, Ch. 735, Sec. 1.5. (AB 2299) Effective January 1, 2017.)



CITY OF HAYWARD

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

File #: PH 17-090

DATE: October 17, 2017

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT

Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Financing of Airport Development Improvements by APP Properties, Inc.

RECOMMENDATION

That Council conducts a TEFRA hearing and adopts a resolution (Attachment II) approving the issuance, by the California Statewide Communities Development Authority (CSCDA), of Tax-Exempt Obligation Bonds to APP Properties, Inc. (APP) in an aggregate amount not-to-exceed \$750,000.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution



DATE: October 17, 2017

TO: Mayor and City Council

FROM: Director of Public Works

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BACKGROUND

On December 15, 2009, Council approved the purchase and lease assignment of the Volo Holdings LLC leasehold (previously Hayward Jet Center) to Hayward FBO, LLC, wholly owned by Airport Property Partners LLC, predecessor in interest to APP. This leasehold is now operating as APP Jet Center and has a term through December 15, 2053. Council has held three (3) TEFRA hearings for APP Jet Center as follows:

- In 2009, regarding the issuance by the California Statewide Communities Development Authority (CSCDA) of \$5 million of Airport Revenue Bonds;
- In 2010 relating to the issuance by the CSCDA of \$7 million of Airport Revenue Bonds for additional facilities at the APP Jet Center, and
- On January 26, 2016, relating to the issuance by the CSCDA of an additional \$6 million for further improvements on the leasehold at the Hayward Executive Airport.

APP is a Maryland Corporation that owns and operates Fixed Base Operations (FBO).¹ APP's FBO locations are in Manassas, Virginia; Fort Pierce, Florida; and Hayward, California. In addition, APP owns and operates an aircraft storage hangar at Centennial Airport in the Denver, Colorado area.

¹ An FBO is a business that sells aviation fuel and provides services and storage for private and business aviation customers.

The original company was formed in 2009 as Airport Property Partners, LLC, and was converted to APP, a corporation taxable as a Real Estate Investment Trust, in May 2014. Mr. Thom Harrow is the Chief Executive Officer of APP. APP's financial backing comes principally from Greenwich Investment Management (GIM), a Greenwich, Connecticut investment advisory firm. GIM manages more than \$350 million for its clients and has made numerous successful airport real estate-related investments, including in the air cargo sector, with locations at Ft. Lauderdale and Jacksonville, Florida and, more recently, in the FBO sector, including FBOs in Illinois, Connecticut, and Texas.

DISCUSSION

APP is requesting an additional approval of up to \$750,000 in tax-exempt bonds to finance cost overruns associated with the latest improvements completed at the Hayward Executive Airport during 2017. The project consisted of a new 20,000 square foot aircraft storage hangar and attached 3,000 square foot passenger terminal area on the company's leasehold. The project also included the renovation and upgrade of an existing 10,000 square foot aircraft storage hangar and associated 2,000 square feet of office space, along with the conversion of the company's existing passenger terminal into office space.

The project was completed in March 2017. APP's main hangar is now fully occupied and the renovated hangar is approximately half occupied. However, funding is needed to fully fund the project due to cost overruns in several areas. PG&E significantly changed the transformer requirements to power the complex after design work was completed. The general contractor had to remove more native soil than originally expected. Furthermore, continuous rain conditions for over a month during the winter delayed the project further. As a result, APP was unable to open on time and generate cash flow. They also incurred significant claims from the contractor for completion delays considered beyond their control. Finally, one of the new tenants required construction of new dedicated office and storage space in the hangar for aircraft maintenance. Had APP not put the space in, they would not have secured the tenant.

To secure the additional financing, APP is requesting that one final TEFRA public hearing be held as soon as possible as part of a regularly scheduled City Council meeting.

Financing and Required TEFRA Hearing: Typically, the CSCDA sets the not-to-exceed borrowing amount to cover costs of financing and to ensure another hearing is not required if initial estimates are exceeded. Because the CSCDA will be issuing these bonds through a private placement in increments of \$25,000, only the amount required and supportable by revenue projections will be sold. There is no risk to either the City or the Airport; the CSCDA is issuing the bonds and bears no responsibility for repayment. As with any other mortgage arrangement, in the event the borrower defaults on the bond payments, the trustee could foreclose on the leasehold interest and take over the operation of the FBO until a subsequent operator is secured. Because California Communities only sells the bonds to select high-worth investors, the investors are responsible for reviewing the financial analysis provided to California Communities; thus, default is not likely. The source of payment for the bonds is the projected revenue from the operation of all four FBOs owned by APP. For federal tax purposes, the City is considered the owner of the improvements on the leasehold (normally,

this occurs at the termination of the lease); however, the leaseholder is still responsible for possessory interest taxes and for all liabilities associated with the improvements, including the bond obligations.

The City has been a member of the CSCDA Joint Powers Authority since 1998. The issuance of tax-exempt bonds by the CSCDA requires that the City conduct a public Tax Equity and Fiscal Responsibility Act (TEFRA) hearing. Airport improvements are one of the specific categories that are eligible for tax-exempt financing under the CSCDA Program.

TEFRA hearings have taken place in the past when the City issued bonds, usually for affordable housing. The purpose of a TEFRA hearing is to allow public comment, either for or against issuance of tax exempt bonds.

STRATEGIC INITIATIVES

This agenda item pertains to the infrastructure and/or maintenance of various buildings located at the airport, is a routine operational item, and does not directly relate to one of the Council's Strategic Initiatives.

ECONOMIC IMPACT

An important factor in the success of an airport is having well maintained and operated FBO facilities. This action is one aspect of ensuring that each FBO at the Airport contributes to that success. In addition to the direct revenue to the Airport, staff anticipates that the facility upgrades will serve to attract new business. It is estimated that the new hangar occupants will purchase 170,000 to 200,000 additional gallons of aviation fuel annually.

FISCAL IMPACT

Because this action will not change the terms of the Hayward FBO, LLC leasehold, staff expects the fiscal impact to the Airport Fund to be minimal, although some increase in fuel flowage fees (as noted above) can be expected from the APP Jet Center improvements. The project will also generate additional tax revenues to the City through additional sales and real estate taxes. Furthermore, neither the City or the Airport will incur any responsibility for any of the indebtedness assumed by APP.

SUSTAINABILITY FEATURES

Staff ensures all projects and developments proposed at Hayward Executive Airport meet or exceed sustainability requirements of the City.

PUBLIC CONTACT

Public noticing requirements related to TEFRA public hearings were strictly adhered to and followed. Airport staff has also been in contact with CEO Harrow during this issue, and will continue to do so up to the point where the additional financing is secured.

Prepared by: Doug McNeeley, Airport Manager

Recommended by: Morad Fakhrai, Director of Public Works

Approved by:

A handwritten signature in black ink, appearing to read "K. McAdoo", is positioned above a horizontal line.

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION APPROVING THE ISSUANCE BY CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY OF TAX-EXEMPT OBLIGATIONS IN AN AGGREGATE PRINCIPAL AMOUNT NOT-TO-EXCEED \$750,000 FOR THE FACILITY (AS DEFINED BELOW) AND AUTHORIZING RELATED ACTIONS

WHEREAS, Hayward FBO LLC, a California limited liability company (the "Borrower"), the sole member of which is APP Properties, Inc., a Maryland corporation, desires to finance the further improvement of a full service fixed base of operations ("FBO") private and corporate jet aviation facility (the "Facility"), including completion of construction of a 20,000 square foot aircraft storage hangar and attached 3,000 square foot passenger terminal area at the Hayward Executive Airport currently under construction (the "Project"). In addition, the Project includes completing the renovation and upgrade of an existing 10,000 square foot aircraft storage hangar and associated 2,000 square feet of related office space, along with the conversion of the existing passenger terminal into approximately 2,000 square feet of related office space at the APP Jet Center, located at the west side of Skywest Drive between Sueirro Street and Hesperian Boulevard in Hayward, California; and

WHEREAS, the Facility is located on land owned by the City of Hayward (the "City") and leased to the Borrower pursuant to a ground lease and related agreements (collectively, the "Ground Lease"); and

WHEREAS, the Borrower wishes to complete the rehabilitation and improvement of the Facility in accordance with the provisions of the Ground Lease; and

WHEREAS, the Borrower desires to finance the Project through the issuance by the California Statewide Communities Development Authority (the "Authority") of tax-exempt obligations in an aggregate principal amount not to exceed \$750,000 (the "2017 Obligations"); and

WHEREAS, the parties intend that the City will be the federal tax owner of the Facility for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended, following the issuance of the 2017 Obligations; and

WHEREAS, the City has determined that there are significant public benefits in financing the rehabilitation and improvement of the Facility; and

WHEREAS, the Authority intends to assist the City in financing the rehabilitation and improvement of the Facility by issuing the 2017 Obligations; and

WHEREAS, all acts, things, and conditions required by the laws of the State of California and the City Charter to exist, to have happened and to have been performed precedent to and in connection with the issuance of the 2017 Obligations and the undertakings of the Authority and the City hereunder and thereunder exist, have happened and have been performed in regular and due time, form and manner as required by law.

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

Section 1. The foregoing recitals are true and correct and this City Council does hereby so find and determine.

Section 2. The issuance by the Authority of the 2017 Obligations in an aggregate principal amount not to exceed \$750,000 (the "Financing") is hereby approved, and this City Council hereby acknowledges and consents to the financing of the Project through the issuance of the 2017 Obligations, at one or more interest rates which are federally tax-exempt. This approval constitutes approval of the Financing by the applicable elected representative of the governmental unit having jurisdiction over the area in which the Facility is located for the purposes of Section 147(f) of the Internal Revenue Code of 1986 and is given in satisfaction of Section 9 of the Amended and Restated Joint Exercise of Powers Agreement Relating to the California Statewide Communities Development Authority, dated as of June 1, 1988, as amended, among certain local agencies, including the City.

Section 3. The City Manager, Director of Finance, City Treasurer, City Attorney, City Clerk and all other officers, agents and employees of the City are, and each of them is, hereby authorized and directed to take any and all actions and execute and deliver any and all documents necessary or convenient to assist the Authority in the issuance of the 2017 Obligations. This City Council hereby ratifies, confirms and approves all other documents and all actions heretofore taken by the officers and agents of the City Council or the City with respect to the Financing.

Section 4. This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify to the vote adopting this resolution.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward