



CITY OF HAYWARD
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(510) 583-4205 / www.hayward-ca.gov
LIVE BROADCAST – LOCAL CABLE CHANNEL 15

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

AGENDA
HAYWARD PLANNING COMMISSION
THURSDAY, APRIL 28, 2011, AT 7:00 PM
COUNCIL CHAMBERS

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

ACTION ITEMS: (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

PUBLIC HEARINGS: For agenda item No. 2 the Planning Commission may make a recommendation to the City Council.

1. Draft Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code

NON-ACTION ITEMS: (Work Session items are non-action items. Although the Commission 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).

WORK SESSION:

2. Telecommunications Facilities



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Debbie Summers 48 hours in advance of the meeting at (510) 583-4205, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

COMMISSION REPORTS:

3. Oral Report on Planning and Zoning Matters
4. Commissioners' Announcements, Referrals

APPROVAL OF MINUTES

5. March 10, 2011

ADJOURNMENT

PUBLIC COMMENT RULES: The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the Secretary at the meeting.

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has 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.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address.

DATE: April 28, 2011
TO: Planning Commission
FROM: Development Services Director
SUBJECT: Draft Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code

RECOMMENDATION

That Planning Commission reads and comments on this report and the draft Supplemental Environmental Impact Report (SEIR) for the South Hayward BART/Mission Boulevard Form-Based Code¹.

BACKGROUND

On July 28, 2008 and December 2, 2008, the City Council held work sessions to discuss whether to prepare a Form-Based Code for the area encompassed by the 2006 South Hayward BART/Mission Boulevard Concept Design Plan. The Council directed staff to present such an idea to the Planning Commission, which was done during a January 15, 2009 work session. The City Council ultimately authorized proceeding with development of a Form-Based Code for the South Hayward BART area on May 26, 2009. A public design charrette was held September 30 through October 4 in 2009, which provided the public an opportunity for input on the formation of the Form-Based Code contents. A draft Form-Based Code was presented during work sessions to City Council on April 27, 2010, and to the Planning Commission on May 13, 2010. Revisions to the draft South Hayward BART/Mission Boulevard Form-Based Code have been made since those work sessions that reflect input from the Council and Commission, and where applicable, input received on the draft Mission Boulevard Corridor Form-Based Code.

In July of 2010, the Redevelopment Agency Board authorized the Agency's Executive Director to enter into a contract for an amount not to exceed \$75,000 with Lamphier-Gregory to prepare a Supplemental Environmental Impact Report for the South Hayward BART/Mission Boulevard Form-Based Code project. A contract was subsequently executed and a draft SEIR has been prepared, which is the subject of this report and work session.

¹ The Draft SEIR and Form-Based Code are available on the South Hayward BART/Mission Boulevard Form-Based Code Project webpage at:<http://www.hayward-ca.gov/forums/SHBARTFBC/shbartfbcforum.shtm>.

The draft SEIR “tiers” off two EIRs previously certified by the City: the 2006 South Hayward BART/Mission Boulevard Concept Design Plan Program EIR² and the 2009 Route 238 Bypass Land Use Study Program EIR³.

In December of last year, the City prepared an Initial Study and issued a Notice of Preparation (NOP), indicating it was going to prepare a SEIR associated with the Form-Based Code, and asking for input as to what the SEIR should address (see Appendices A and B in the draft SEIR). Two comment letters were received in response to the NOP, from the State Department of Transportation (Caltrans) and Dr. Sherman Lewis of the Hayward Area Planning Association (see Appendix A in the draft SEIR). Each commenter spoke to transportation and circulation/parking issues, and preparation of the draft SEIR included consideration of those comments.

The draft SEIR was released for public review and comment on April 4, 2011. Copies are available on the City’s website, at the Permit Center on the first floor of City Hall, as well as at the two Hayward library locations. The public review/comment period on the draft SEIR runs through Friday, May 20, 2011. Interested parties are encouraged to submit comments on the draft SEIR during that time period.

DISCUSSION

Overview of the Form-Based Code – The Form-Based Code would replace the 2006 Concept Design Plan and the majority of existing Zoning Regulations that are applicable to the Concept Design Plan area, which entails an approximately 240-acre area along Mission Boulevard and centered on the South Hayward BART Station. Adoption of the Form-Based Code would also entail amendments to the General Plan Land Use Map and Zoning Map, as shown in Attachments I and II.

The South Hayward BART/Mission Boulevard Form-Based Code is consistent with the Smart Code template, and identifies “Transect” zones. Transect zones are based on the concept of the “Transect,” which is a system of ordering human habitats in a range from the most natural to the most urban. The Transect describes the physical character of place at any scale according to the density and intensity of land use and urbanism.

The South Hayward BART/Mission Boulevard Form-Based Code would establish a new Civic Space zone and two new “Transect” zones: T5 (Urban Center Zone: 35-55 units per net acre) and T4 (Urban General Zone: 17.5-35 units per net acre, similar to the existing High Density Residential Zoning District density). The T5 zone also includes two density overlay zones: Overlay Zone 1, which allows densities of 75-100 units per net acre, generally within one-quarter mile of the South Hayward BART station; and Overlay Zone 2, which allows densities of 40-65 units per net acre, generally within the area between one-quarter to one-half mile of the South

²The 2006 South Hayward BART/Mission Boulevard Concept Design Plan and related EIR are available on the City’s website at: <http://www.hayward-ca.gov/forums/SHBART/shbartforum.shtml>.

³The 2009 Route 238 Bypass Land Use Study information and related EIR are available on the City’s website at: <http://www.hayward-ca.gov/forums/rte-238blus/238blus.shtml>.

Hayward BART station. New roadways or “thoroughfares” are also envisioned, which would further help to promote pedestrian activity and increased access to the the South Hayward BART station and bus transfer facility, while also reducing reliance on the automobile. Attachment III shows the new Regulating Plan for the Form-Based Code that indicates where different zones are located along with their development densities, and Attachment IV includes tables that summarize new development standards for the two new transect zones.

The draft SEIR evaluates the environmental effects associated with future land use and development pursuant to implementation of the Form-Based Code. It is envisioned that development consistent with the Form-Based Code could result in 771 more housing units and 218,613 square feet of additional commercial space than would be expected per the Concept Design Plan that was analyzed in the Concept Design Plan EIR.

What is a "Supplemental" EIR?-Supplemental Environmental Impact Reports (SEIR) evaluate the potential environmental impacts that might reasonably be anticipated to result from modifications to previously approved projects. In short, the primary purpose of an SEIR is to address the impact difference between the previous and current projects. Another purpose of an SEIR is to evaluate potential environmental impacts based on new information that became available after certification of the previous California Environmental Quality Act (CEQA) Documents.

Prior to drafting the SEIR, a number of environmental topics were addressed in an Initial Study and determined to result in: (a) no new significant impact; and/or (b) no substantial increase in the severity of previously identified significant impacts. These topics included: Agricultural Resources; Biology; Cultural Resources; Geology/Soils; Hazards; Hydrology/Water Quality; Land Use/Planning; Mineral Resources; Noise; Population; Housing; Public Services; Recreation; and Utilities/Service. Pursuant to CEQA, those topics are not addressed further in the draft SEIR.

However, the Initial Study did reveal new potentially significant impacts and/or substantial increases in the severity of previously determined significant impacts under the remaining CEQA topics of: Air Quality; Aesthetics; Greenhouse Gas Emissions; and Transportation/Traffic. In the case of this draft SEIR, the following new information is addressed: (1) the CEQA Guidelines were amended to include requirements for addressing greenhouse gas emissions and global climate change; and (2) new thresholds and guidelines for determining air quality impacts were approved by the Bay Area Air Quality Management District (BAAQMD).

Summary of Draft Supplemental Environmental Impact Report—The draft SEIR is a programmatic EIR that assesses impacts at a general, versus project-specific, level. The 2006 Concept Design Plan EIR and 2009 Route 238 Bypass Land Use Study EIR were also programmatic EIRs. Following the first introductory chapter, Chapter 2 of the draft SEIR provides an Executive Summary and Impact Overview Table, and Chapter 3 contains a detailed project description. Chapters 4 through 7 include analyses and identify impacts and mitigation measures associated with the following four environmental impact topic areas: Aesthetics; Air Quality; Greenhouse Gas Emissions; and Traffic. The draft SEIR indicates, as explained in greater detail below, that implementation of the Form-Based Code would have no impact, a less than significant impact, or a less than significant impact after mitigation for these four environmental topic areas.

As reflected in Attachment V (Summary Table of the draft SEIR), the following five impacts are identified as potentially significant and requiring mitigation. The traffic impacts analysis assumes the Route 238 Corridor Improvement Project is completed, which is anticipated by the end of 2012. Other impacts identified in Chapters 4 through 7 are categorized as less than significant.

Impact Air-2: Siting of Sensitive Receptors Near Highway Emissions and Related Risks - Development anticipated per the Form-Based Code would bring additional uses involving sensitive receptors, which could include residences, schools, day care centers, playgrounds, and medical facilities, to sites exposed to increased health risks from vehicle emissions along Mission Boulevard (Highway 238). To mitigate these impacts, and in accordance with new guidelines of the Bay Area Air Quality Management District (BAAQMD), it is recommended that an overlay zone be established extending 500 feet from Mission Boulevard or a reduced distance if coordinated with BAAQMD. The mitigation measure would require: (a) shielded or buffered outdoor areas for sensitive receptors; (b) installation of compliant air filtration systems for buildings containing sensitive receptors; or (c) in lieu of items (a) and (b), demonstrate through a Health Risk Assessment that no threat to health exists. If this project's SEIR is ultimately certified by City Council, the Form-Based Code would need to be revised to reflect this mitigation measure.

Impact Traf-1: LOS at Dixon Street-East 12th Street/Tennyson Road - Adding traffic anticipated with development consistent with the Form-Based Code to the 2025 baseline would cause this intersection to operate at level of service (LOS) F in the AM peak-hour condition. To mitigate this impact to a less-than-significant level and improve LOS to LOS D in the AM peak-hour, the draft SEIR recommends that an exclusive right turn pocket and a shared through-left turn lane be created in the southbound direction on the East 12th Street approach. Other intersection improvements would entail that lane geometries in the northbound direction include an exclusive left-turn pocket and a shared through-right turn lane, signal phasing would be changed to split phasing in the northbound and southbound directions, with a southbound right-turn overlap during eastbound and westbound protected left turn phases, and U-turns in the eastbound direction would be prohibited to minimize conflicts with southbound right-turning vehicles.

Impact Traf-2: LOS at Mission Boulevard/Industrial Parkway - Adding additional traffic associated with development per the Form-Based Code to the 2025 Baseline would cause this intersection to operate at LOS E in the AM peak-hour. The draft SEIR indicates that an overlapping signal with the southbound left protected phase be added for the westbound right turn lane, which would reduce this impact to a less-than-significant level and improve the LOS at the intersection to LOS D in the AM peak-hour.

Impact Traf-3: LOS at Mission Boulevard/Tennyson Road - The previous EIRs did not identify impacts at this intersection as significant. With additional assumed traffic resulting from development consistent with the Form-Based Code, Mission Boulevard at Tennyson Road is projected to operate at LOS E in the AM peak-hour. Split phasing signal timing in the eastbound and westbound directions is already being constructed as part of the Route 238 Corridor Improvement Project. However, in addition to the split phasing, the following would need to be accomplished to reduce this impact to a less-than-significant level and improve the intersection to LOS D in the AM peak-hour: (a) convert the eastbound through lane to an

eastbound shared through-left lane; (b) stripe the westbound approach to a shared left-through lane and an exclusive right turn lane; (c) provide overlap phasing for westbound and eastbound right turns; and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.

Impact Traf-4: LOS at Mission Boulevard/Harder Road - The previous EIRs did not identify impacts at this intersection as significant. Adding additional traffic anticipated with implementation of the Form-Based Code to the Year 2025 baseline would cause the Mission Boulevard/Harder Road intersection to operate at LOS E in the PM peak-hour. To mitigate this impact to a less-than-significant level and improve the LOS at the intersection to LOS D in the PM peak-hour, the draft SEIR says to convert the signal phasing of this intersection to split phasing with right-turn overlap phasing in the eastbound and westbound directions during the northbound and southbound protected left-turn phase. In conjunction with the signal phasing changes, the following measures are also recommended: (a) convert one eastbound exclusive left turn lane into a shared left and through; (b) convert one eastbound through lane into an exclusive right; (c) provide overlap phasing for the westbound right turns and for the eastbound right turns, and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.

With the exception of the mitigation at Mission Boulevard/Harder Road, which would require right-of-way take, most of the intersection signal modifications are relatively minor. The traffic impact analysis did assume implementation of the Route 238 Corridor Improvement project and staff did evaluate whether those mitigations on Mission Boulevard should be implemented as changes to the Corridor Improvement project, but concluded such changes would not be appropriate at this time. This Program SEIR covers a long time period and it is possible regional traffic, as well as actual developments, may change from what is projected in the traffic impact analysis associated with the Form-Based Code implementation. Therefore, and due to such issues as possible unnecessary right-of-way take needed for mitigation at the Mission Boulevard/Harder Road intersection, such measures were not incorporated into the Route 238 Corridor Improvement Project. With regard to timing of these four traffic mitigations, standard City practice requires a traffic study for larger individual developments (over 100 new peak hour trips) and that process would be used to determine the timing of each mitigation, based on the specific impacts of new developments and evaluation by the City's Director of Public Works.

Chapter 8 of the draft SEIR identifies the previous three alternatives analyzed in the 2006 Concept Design Plan EIR and the three alternatives analyzed in the 2009 Route 238 Bypass Land Use Study EIR, as well as a "No Project" alternative that would essentially reflect development consistent with current land use/zoning regulations. Because the draft SEIR for the Form-Based Code identified one new potentially significant, but mitigatable impact related to the level of service at Mission Boulevard and Harder Road, the "No Project" alternative is identified as the environmentally superior alternative in Chapter 8. In cases where the "No Project" alternative is identified as the environmentally superior alternative, the CEQA requires that the second most environmentally superior alternative be identified. The Form-Based Code project would generally represent the next-best alternative in terms of the fewest impacts, and it would meet the City's objectives to the same extent as the projects evaluated in the previous EIRs.

Chapter 9 of the draft SEIR addresses growth inducement (not created by the project beyond what was previously analyzed), significant irreversible changes (none identified), significant and unavoidable impacts, and cumulative impacts (none identified, other than those identified in Chapter 4 through 7). Although no new significant and unavoidable impacts related to implementation of the Form-Based Code have been identified, four previously identified significant and unavoidable impacts identified in the previous two EIRs would still exist and require a re-adoption of statement of overriding considerations by the City Council. Those include: air quality impacts associated with inconsistency with the Regional Air Quality Plan (Concept Design Plan EIR Impact 4.2-1); cumulative air quality impacts (Concept Design Plan EIR Impact 4.2-2); and cumulative traffic impacts (Concept Deesign Plan EIR Impact 4.7-4 and Route 238 Bypass Land Use Study EIR Impact 411-1).

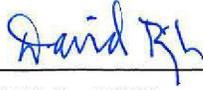
PUBLIC CONTACT

On April 1, 2011, notices of the availability of the Draft SEIR were sent to property owners and tenants in the Form-Based Code project area and to those within 300 feet of the project area, which amounted to over 2,300 notices. Also, notice of the availability of the Draft SEIR was published in *The Daily Review* newspaper on Saturday, April 2, two days before the start of the public review period for the draft SEIR. Finally, a notice of availability was filed with the Alameda County Recorder's Office on April 1, and fifteen copies of the Draft SEIR and a Notice of Completion were filed with the California State Clearinghouse office on April 4. As of the writing of this report, staff has not received any comments on the Draft SEIR.

NEXT STEPS

The City Council held a public meeting on Tuesday April 26, 2011, to take public testimony and provide comments to staff on the Draft SEIR. Following the close of the public comment period on May 20, 2011 any comments received on the Draft SEIR, including those from Council members and Planning Commissioners, will be addressed in the Final SEIR, along with any revisions to the Draft SEIR. It is anticipated that the Final SEIR, along with the Form-Based Code and related amendments to the City's General Plan and Zoning Ordinance, will be presented to the Planning Commission for consideration at a noticed public hearing in late June 2011. The Planning Commission recommendation will then be forwarded to the City Council for consideration and a final decision at a noticed public hearing, anticipated for late July 2011. The Form-Based Code would be effective 30 days after adoption.

Prepared and Recommended by:



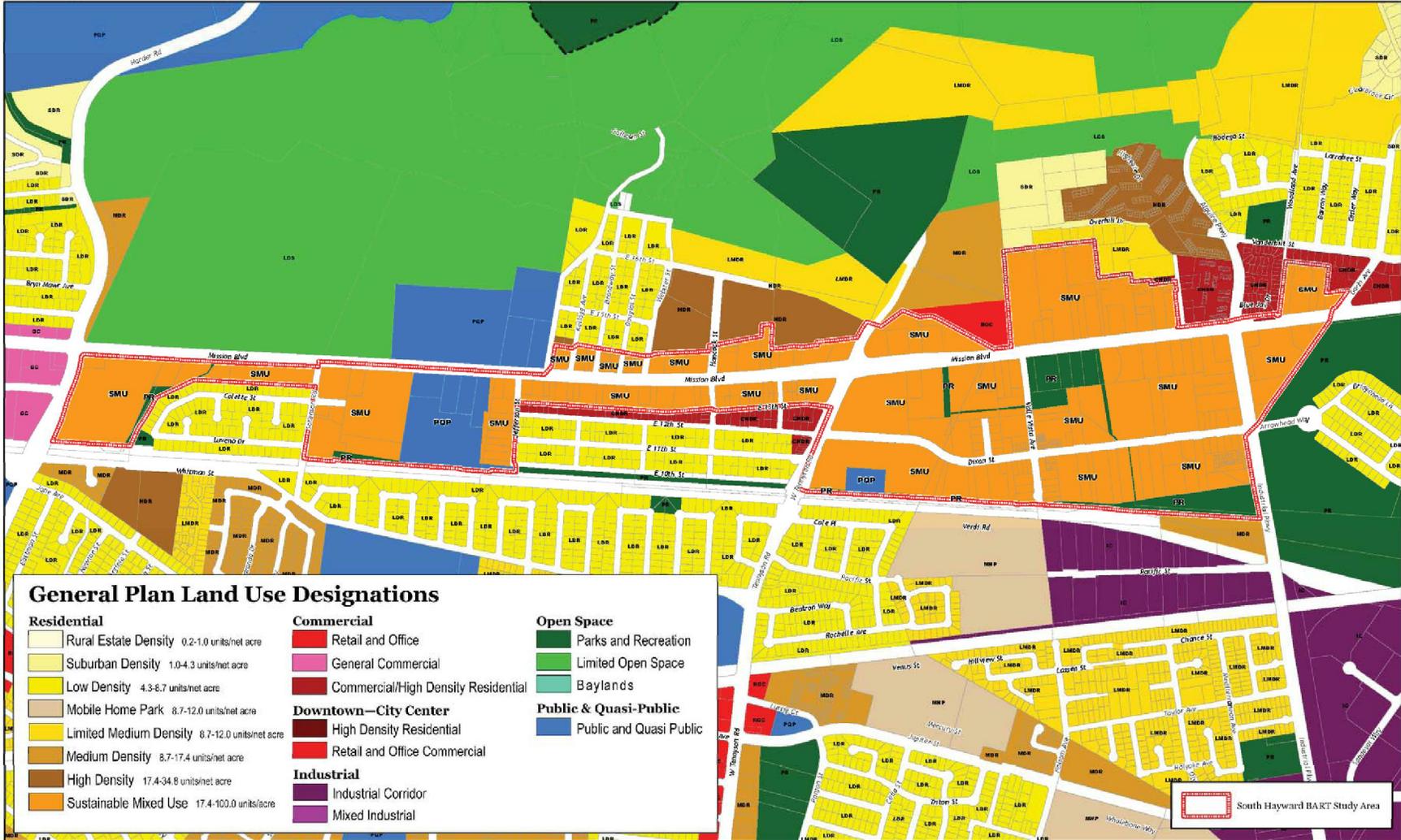
David Rizk, AICP
Development Services Director

Attachments:

- Attachment I: Proposed New General Plan Land Use Designations
- Attachment II: Proposed new Zoning Designations
- Attachment III: Regulating Plan of the Form-Based Code
- Attachment IV: Development Standards of Transect Zones T4 and T5
- Attachment V: Impacts/Mitigation Measures Summary Table (Table 2-1) of the draft SEIR



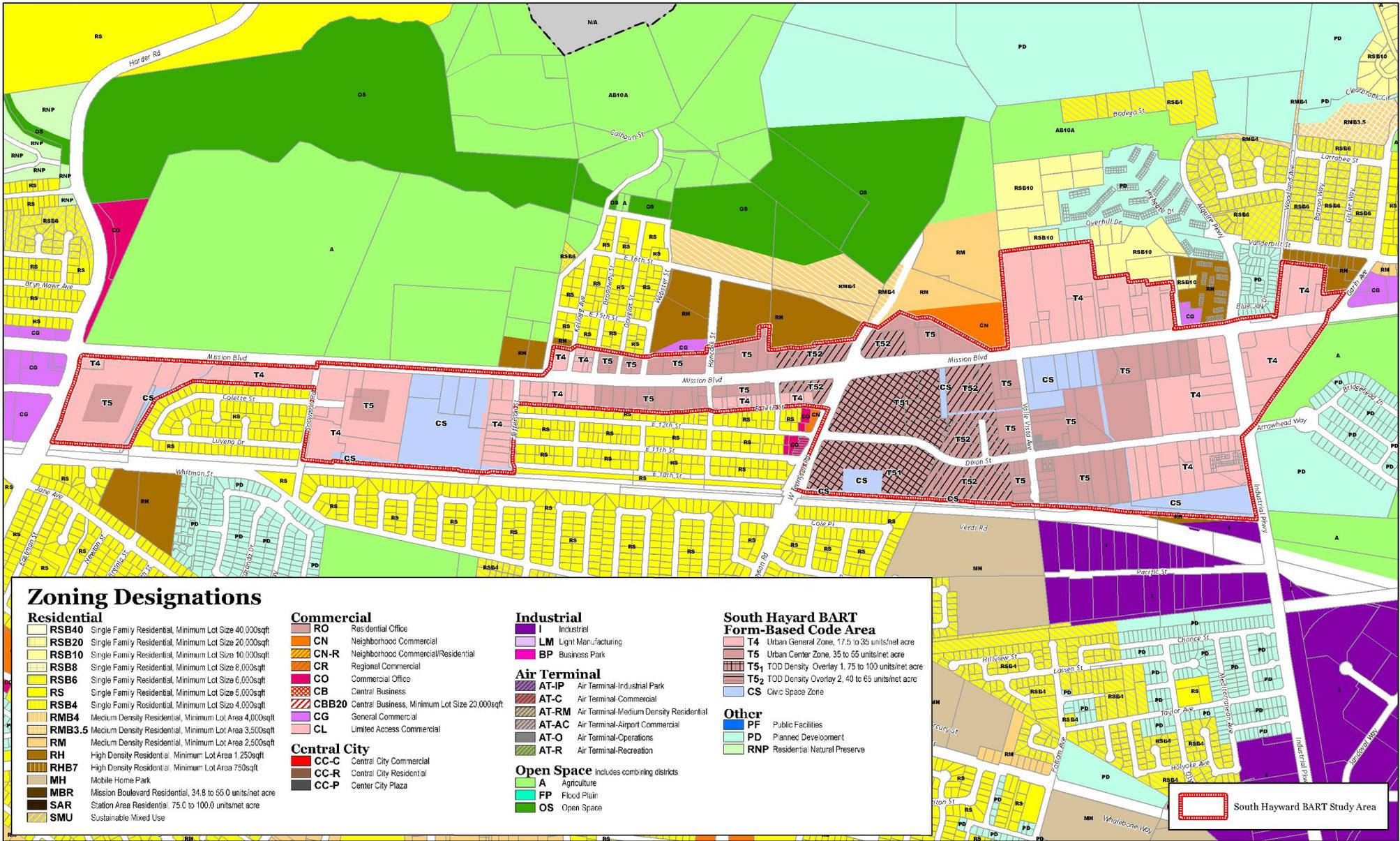
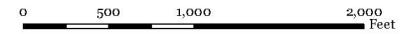
Figure 3-6: Proposed General Plan Designations



March, 2011



Figure 3-7: Proposed Form-Based Code Zoning Designations



Zoning Designations

Residential

- RSB40** Single Family Residential, Minimum Lot Size 40,000sqft
- RSB20** Single Family Residential, Minimum Lot Size 20,000sqft
- RSB10** Single Family Residential, Minimum Lot Size 10,000sqft
- RSB8** Single Family Residential, Minimum Lot Size 8,000sqft
- RSB6** Single Family Residential, Minimum Lot Size 6,000sqft
- RS** Single Family Residential, Minimum Lot Size 5,000sqft
- RSB4** Single Family Residential, Minimum Lot Size 4,000sqft
- RMB4** Medium Density Residential, Minimum Lot Area 4,000sqft
- RMB3.5** Medium Density Residential, Minimum Lot Area 3,500sqft
- RM** Medium Density Residential, Minimum Lot Area 2,500sqft
- RH** High Density Residential, Minimum Lot Area 1,250sqft
- RHB7** High Density Residential, Minimum Lot Area 750sqft
- MH** Mobile Home Park
- MBR** Mission Boulevard Residential, 34.8 to 55.0 units/net acre
- SAR** Station Area Residential, 75.0 to 100.0 units/net acre
- SMU** Sustainable Mixed Use

Commercial

- RO** Residential Office
- CN** Neighborhood Commercial
- CN-R** Neighborhood Commercial/Residential
- CR** Regional Commercial
- CO** Commercial Office
- CB** Central Business
- CBB20** Central Business, Minimum Lot Size 20,000sqft
- CG** General Commercial
- CL** Limited Access Commercial

Central City

- CC-C** Central City Commercial
- CC-R** Central City Residential
- CC-P** Central City Plaza

Industrial

- I** Industrial
- LM** Light Manufacturing
- BP** Business Park

Air Terminal

- AT-IP** Air Terminal-Industrial Park
- AT-C** Air Terminal-Commercial
- AT-RM** Air Terminal-Medium Density Residential
- AT-AC** Air Terminal-Airport Commercial
- AT-O** Air Terminal-Operations
- AT-R** Air Terminal-Recreation

Open Space

- Includes combining districts
- A** Agriculture
- FP** Flood Plain
- OS** Open Space

South Hayward BART Form-Based Code Area

- T4** Urban General Zone, 17.5 to 35 units/net acre
- T5** Urban Center Zone, 35 to 65 units/net acre
- T5₁** TOD Density Overlay 1, 75 to 100 units/net acre
- T5₂** TOD Density Overlay 2, 40 to 65 units/net acre
- CS** Civic Space Zone

Other

- PF** Public Facilities
- PD** Planned Development
- RNP** Residential Natural Preserve

South Hayward BART Study Area

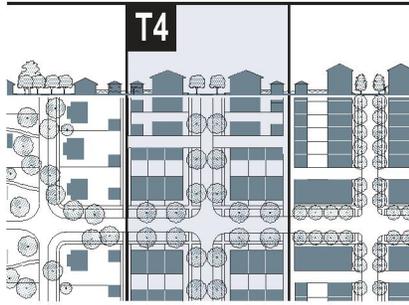


Legend

- Project Area
- Parcels
- ★ Terminated Vistas
- Mandatory Shopfront Overlay
- Recommended Shopfront Overlay
- T4 Urban General Zone: 17.5 DU/Acre min; 35 DU/acre max
- T5 Urban Center Zone: 35 DU/Acre min; 55 DU/acre
- TOD Density Overlay 1: 75 DU/acre min; 100 DU/acre max
- TOD Density Overlay 2: 40 DU/acre min; 65 DU/acre max
- Civic Space Zone
- Civic Buildings

- For illustrative purpose only:**
- Civic Spaces outside of the project area
 - 238 Bypass Trail Location
 - - - 5 Min/10 Min Walk (Pedestrian Shed)
 - Future pedestrian/bicycle bridge





(see Table 1)

j. BUILDING CONFIGURATION (see Table 7)

Principal Building	4 stories max, 2 min
Outbuilding	2 stories max.

e. LOT OCCUPATION (see Table 11e)

Lot Width	18 ft. min. 120 ft. max.
Lot Coverage	80% max

f. SETBACKS - PRINCIPAL BUILDING (see Table 11f)

(f.1) Front Setback Principal	6 ft. min. 24 ft. max.
(f.2) Front Setback Secondary	6 ft. min. 24 ft. max
(f.3) Side Setback	0 ft. min.
(f.4) Rear Setback	3 ft. min.*
Frontage Buildout	60% min at setback

g. SETBACKS - OUTBUILDING (see Table 11g)

(g.1) Front Setback	20 ft. min. + bldg. setback
(g.2) Side Setback	
(g.3) Rear Setback	3 ft. min.

h. BUILDING DISPOSITION (see Table 8)

Edgeyard	permitted
Sidyard	permitted
Rearyard	permitted
Courtyard	permitted

i. PRIVATE FRONTAGES (see Table 5)

Porch & Fence	permitted
Terrace or Lightwell	permitted
Forecourt	permitted
Stoop	permitted
Shopfront	permitted
Gallery	permitted
Arcade	not permitted

Refer to Summary Table 11

PARKING PROVISIONS (see Section 10-24.245)

Rental DU: 1.75 max per unit
For Sale DU/Residential Condominium: 2.0 max per unit
Non-residential Function: no min - no max

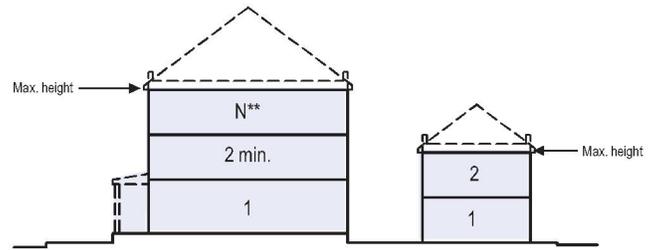
*or 15 ft. from center line of alley

***N" stands for any Stories above those shown, up to the maximum. Refer to metrics for exact minimums and maximums

Note: Letters on the Table (j. Building Configuration, e. Lot Occupation, etc) refer to the corresponding section in Summary Table 11.

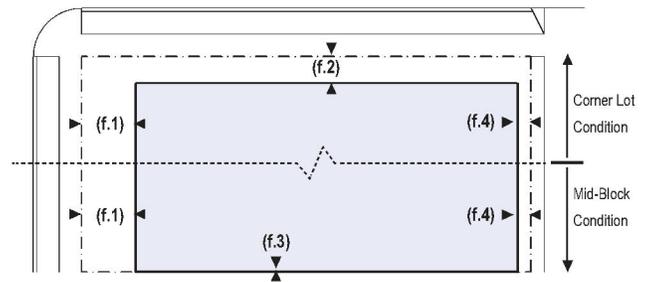
BUILDING CONFIGURATION

1. Building height shall be measured in number of Stories, excluding Attics and raised basements.
2. Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 11 ft with a maximum of 25 ft.
3. Height shall be measured to the eave or roof deck as specified on Table 7.



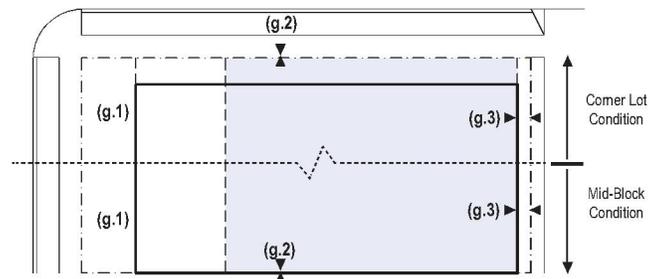
SETBACKS - PRINCIPAL BLDG

1. The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as shown.
2. Facades shall be built along the Principal Frontage to the minimum specified width in the table.



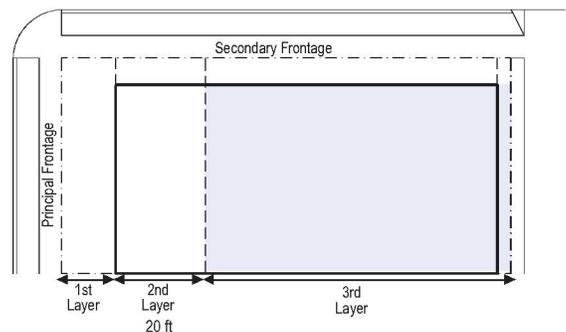
SETBACKS - OUTBUILDING

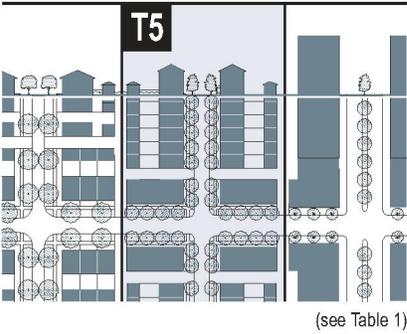
1. The Elevations of the Outbuilding shall be distanced from the Lot lines as shown.



PARKING PLACEMENT

1. Covered and uncovered parking spaces may be provided within the third Layer as shown in the diagram (see Table 15d).
2. Trash containers shall be stored within the third Layer.





j. BUILDING CONFIGURATION (see Table 7)

Principal Building	6 stories max. 3 min.
Outbuilding	2 stories max.

e. LOT OCCUPATION (see Table 11e)

Lot Width	18 ft min 250 ft max.
Lot Coverage	90% max

f. SETBACKS - PRINCIPAL BUILDING (see Table 11f)

(f.1) Front Setback Principal	2 ft. min. 12 ft. max.
(f.2) Front Setback Secondary	2 ft. min. 12 ft. max.
(f.3) Side Setback	0 ft. min. 24 ft. max.
(f.4) Rear Setback	3 ft. min.*
Frontage Buildout	80% min at setback

g. SETBACKS - OUTBUILDING (see Table 11g)

(g.1) Front Setback	40 ft. max. from rear prop.
(g.2) Side Setback	0 ft. min. or 2 ft at corner
(g.3) Rear Setback	3 ft. max.

h. BUILDING DISPOSITION (see Table 8)

Edgeyard	not permitted
Sidyard	permitted
Rearyard	permitted
Courtyard	permitted

i. PRIVATE FRONTAGES (see Table 5)

Porch & Fence	not permitted
Terrace or Lightwell	permitted
Forecourt	permitted
Stoop	permitted
Shopfront	permitted
Gallery	permitted
Arcade	permitted

Refer to Summary Table 11

PARKING PROVISIONS (see Section 10-24.245)

Rental DU:	1.5 max per unit
For Sale DU/Residential Condominium:	1.8 max. per unit
Non-residential Function:	no min. - no max.

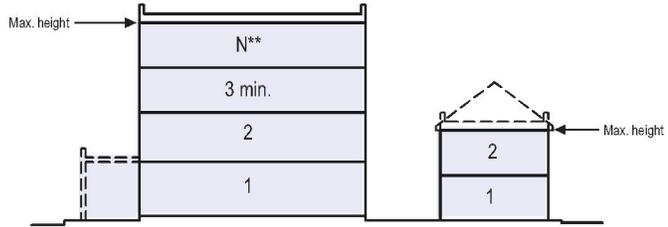
*or 15 ft. from center line of alley

***"N" stands for any Stories above those shown, up to the maximum. Refer to metrics for exact minimums and maximums

Note: Letters on the Table (j. Building Configuration, e. Lot Occupation, etc) refer to the corresponding section in Summary Table 11.

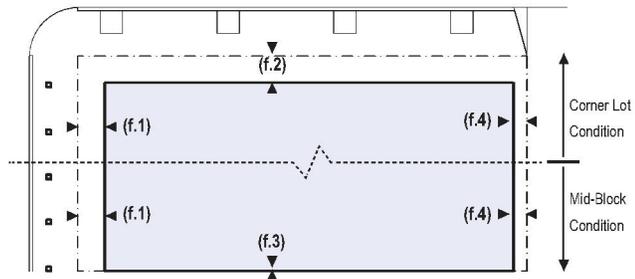
BUILDING CONFIGURATION

1. Building height shall be measured in number of Stories, excluding Attics and raised basements.
2. Stories may not exceed 14 feet in height from finished floor to finished ceiling, except for a first floor Commercial function which must be a minimum of 11 ft with a maximum of 25 ft.
3. Height shall be measured to the eave or roof deck as specified on Table 7.
4. Expression Lines shall be as shown on Table 7.



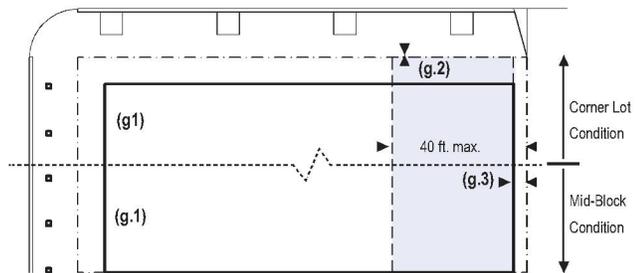
SETBACKS - PRINCIPAL BLDG

1. The Facades and Elevations of Principal Buildings shall be distanced from the Lot lines as shown.
2. Facades shall be built along the Principal Frontage to the minimum specified width in the table.



SETBACKS - OUTBUILDING

1. The Elevations of the Outbuilding shall be distanced from the Lot lines as shown.



PARKING PLACEMENT

1. Covered and uncovered parking spaces may be provided within the third Layer as shown in the diagram (see Table 15d).
2. Trash containers shall be stored within the third Layer.

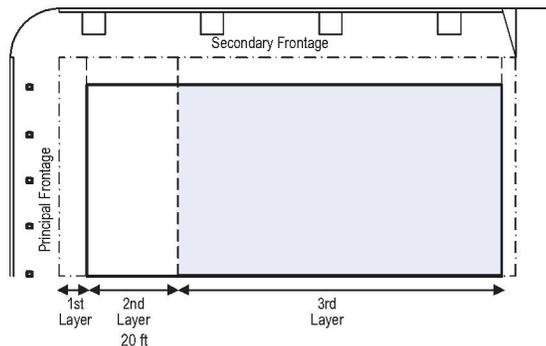


TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
Significant and Unavoidable Impacts		
N/A	N/A	N/A
Less than Significant Impacts After Mitigation		
<p>Air-2: Siting of Sensitive Receptors Near Highway Emissions and Related Risks. Development anticipated under the Project would bring additional sensitive uses (which could include residences, schools, day care centers, playgrounds, and medical facilities) to sites exposed to increased health risks from vehicle emissions from Mission Boulevard (Highway 238). Such exposure would represent a potentially significant impact.</p>	<p>Air-2: Highway Overlay Zone. The Project shall include an overlay zone extending 500 feet from Mission Boulevard or a reduced distance if coordinated with BAAQMD. This overlay zone shall include the following considerations and mitigation:</p> <p><u>Indoor Air Quality:</u></p> <p>In accordance with the recommendations of the California Air Resources Board (CARB) and the Bay Area Air Quality Management District, appropriate measures shall be incorporated into the project design in order to reduce the potential health risk due to exposure to diesel particulate matter to achieve an acceptable interior air quality level for sensitive receptors. The appropriate measures shall include one of the following methods:</p> <p>(a). Development project applicants shall implement all of the following features that have been found to reduce the air quality risk to sensitive receptors and shall be included in the project construction plans. These features shall be submitted to the Development Services Department for review and approval prior to the issuance of a demolition, grading, or building permit and shall be maintained on an ongoing basis during operation of the project.</p> <p>i. For sensitive uses (residences, schools, day care centers, playgrounds, and medical facilities) sited within the overlay zone from Mission Boulevard, the applicant shall install, operate and maintain in good working order a central heating and</p>	LTS

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
	<p>ventilation (HV) system or other air take system in the building, or in each individual unit, that meets or exceeds an efficiency standard of MERV 13. The HV system shall include the following features: Installation of a high efficiency filter and/or carbon filter to filter particulates and other chemical matter from entering the building. Either HEPA filters or ASHRAE 85% supply filters shall be used.</p> <p>Project applicants shall maintain, repair and/or replace HV system on an ongoing and as needed basis or shall prepare an operation and maintenance manual for the HV system and the filter. The manual shall include the operating instructions and the maintenance and replacement schedule. This manual shall be included in the CC&Rs for residential projects and/or distributed to the building maintenance staff. In addition, the applicant shall prepare a separate homeowners manual. The manual shall contain the operating instructions and the maintenance and replacement schedule for the HV system and the filters.</p> <p>(b) Alternative to (a) above, a project applicants proposing siting of sensitive uses (residences, schools, day care centers, playgrounds, and medical facilities) within the overlay zone around Mission Boulevard shall retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the CARB and the Office of Environmental Health and Hazard Assessment requirements to determine the exposure of project residents/occupants/users to air pollutants prior to issuance of a demolition, grading, or building permit. The HRA shall be submitted to the Development Services Department for review and approval. The applicant shall implement the approved HRA recommendations, if any. If the HRA</p>	

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
	<p>concludes that the air quality risks from nearby sources are at or below acceptable levels, then additional measures are not required.</p> <p><u>Exterior Air Quality:</u></p> <p>(c) To the maximum extent practicable, individual and common exterior open space proposed as a part of developments in the Project area, including playgrounds, patios, and decks, shall either be shielded from the source of air pollution by buildings or otherwise buffered to further reduce air pollution for project occupants.</p> <p>(d) Alternative to (c) above, an HRA could be prepared and implemented to take into account the risk specifics of the site, as more fully described in item (b) above.</p>	
<p>Traf-1: (Dixon Street-East 12th Street at Tennyson Road) Adding Project-generated traffic to the 2025 Baseline would cause this intersection to operate at LOS F in the AM peak-hour condition. This would be a potentially significant impact.</p>	<p>Traf-1: (LOS at Dixon Street/Tennyson Road) Create an exclusive right turn pocket and a shared through-left turn lane in the southbound direction (on the East 12th Street approach).</p> <p>Lane geometries in the northbound direction would include an exclusive left-turn pocket and a shared through-right turn lane.</p> <p>Signal phasing would be changed to split phasing in the northbound and southbound directions, with a southbound right-turn overlap during eastbound and westbound protected left turn phases.</p> <p>U-turns in the eastbound direction would be prohibited to minimize conflicts with southbound right-turning vehicles.</p>	<p>LTS</p>
<p>Traf-2: (LOS at Mission Boulevard/Industrial Parkway) Adding Project-generated traffic to the 2025 Baseline would cause this intersection to operate at LOS E in the AM peak-</p>	<p>Traf-2: (LOS at Mission Boulevard/Industrial Parkway) For the westbound right turn lane, provide an overlapping signal with the southbound left</p>	

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
hour. This would be a potentially significant impact.	protected phase.	
<p>Traf-3: (LOS at Mission Boulevard/Tennyson Road) Mission Boulevard at Tennyson Road is projected to operate at LOS E in the AM peak-hour under the current Project. This is considered a potentially significant impact.</p>	<p>Traf-3: (LOS at Mission Boulevard/Tennyson Road) Split phasing signal timing in the eastbound and westbound directions is already being constructed as part of the Route 238 Corridor Improvement Project. However, in addition to the split phasing, the following would need to be accomplished: (a) convert the eastbound through lane to an eastbound shared through-left lane, and (b) stripe the westbound approach to a shared left-through lane and an exclusive right turn lane, and (c) provide overlap phasing for westbound and eastbound right turns; and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.</p>	
<p>Traf-4: (LOS at Mission Boulevard/Harder Road) Adding Project-generated traffic to the Year 2025 Baseline would cause the Mission Boulevard/Harder Road intersection to operate at LOS E in the PM peak-hour. This would be considered a potentially significant impact.</p>	<p>Traf-4: (LOS at Mission Boulevard/Harder Road) Convert the signal phasing of this intersection to split phasing with right-turn overlap phasing in the eastbound and westbound directions during the northbound and southbound protected left-turn phase. In conjunction with the signal phasing changes, accomplish the following: (a) convert one eastbound exclusive left turn lane into a shared left and through; (b) convert one eastbound through lane into an exclusive right; and (c) provide overlap phasing for the westbound right turns and for the eastbound right turns, and (d) prohibit northbound and southbound U-turns to avoid conflicts with the right turn overlap phasing.</p>	
Less than Significant Impacts with No Mitigation Required		
<p>Aes-1: The Project would increase building heights at locations that may, depending upon the vantage point, impact scenic vistas of the Hayward</p>	<p>Replace Concept Design Plan EIR Mitigation Measure 4.1-2 with Form-Based Code's Site Plan Review process (Zoning Ordinance §10-1.3000).</p>	<p>LTS</p>

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
<p>Hills. However, the Project would require Site Plan Review for all proposed new developments and additions or alterations to existing development and, therefore, result in a less than significant impact.</p>		
<p>Air-1: Conflict with Clean Air Plan. Development anticipated as a result of the Project would increase development intensity beyond that assumed in the CAP, but would support the goals of the CAP, including applicable control measures. This would be a less-than-significant impact.</p>	<p>No mitigation warranted.</p>	<p>LTS</p>
<p>Traf-5: (Design Feature Hazard) The Project includes planned new thoroughfares connecting to existing thoroughfares. Detailed engineering safety studies of each planned new thoroughfare, including their intersection with existing thoroughfares, has not been accomplished to date. However, the Project would require a detailed examination of new thoroughfares through an existing "Precise Plan Lines for Streets" review process. Implementation of this review process would ensure that the design of these new roads does not result in a roadway design hazard. Thus, a less than significant would result under this criterion.</p>	<p>No mitigation warranted</p>	<p>LTS</p>
<p>GHG-1: Generation of Long-Term Operational GHG Emissions. The Project would generate long-term operational GHG emissions over its lifetime. However, the Project's GHG efficiency, which accounts for the population and employment of the Project area, would be below the</p>	<p>No mitigation warranted</p>	<p>LTS</p>

TABLE 2-1: SUMMARY OF PROJECT IMPACTS AND MITIGATION MEASURES

Potential Environmental Impacts	Recommended Mitigation Measures	Resulting Level of Significance
<p>BAAQMD’s GHG efficiency-based threshold. Therefore, the Project would not generate a level of GHG emissions that would have a significant impact on global climate change. As a result, this impact would be less than cumulatively considerable and less than significant.</p>		
<p>GHG-2: GHG reductions are addressed statewide by the AB 32 Scoping Plan, regionally by the Bay Area 2010 CAP, and locally through the Hayward Climate Action Plan (CAP) The proposed Project is consistent with the reduction strategies presented in these documents and therefore would result in no impact related to GHG reduction plan consistency.</p>	<p>No mitigation warranted</p>	<p>LTS</p>

DATE: April 28, 2011
TO: Planning Commission
FROM: Richard E. Patenaude, AICP, Planning Manager
SUBJECT: TELECOMMUNICATIONS FACILITIES

RECOMMENDATION

That the Commission reads and comments on this report.

BACKGROUND

Between June 2008 and December 2010, the Planning Division accepted 51 applications for telecommunications facilities (see Attachment I). Forty-four of those applications were processed as "Telecommunications Reviews" (similar to "Site Plan Review"), and seven were processed as "Administrative Use Permits." Forty-four of the applications were approved by Planning staff, one was approved by the Planning Commission (Verizon facility at Stonebrae), four were withdrawn by the applicant, and two were denied by staff.

Occasionally, Commissioners have expressed concern regarding the appearance of telecommunication facilities in the City. The Planning staff desires to hear comments from the Commission regarding the siting and appearance of telecommunications facilities, notification of Commissioners regarding application receipts and staff decisions, and other related matters of concern.

DISCUSSION

Antenna and Telecommunications Ordinance

Staff will present examples of various telecommunications facilities that have been approved or denied to engage discussion at the work session. In preparation, the following excerpts from the Antenna and Telecommunications Ordinance are provided.

The Antenna and Telecommunications Ordinance (Ordinance) establishes standards for the appropriate siting of telecommunications antenna and related facilities, including amateur radio installations. The standards are intended to:

- a. Protect against potentially adverse effects of telecommunications antenna and facility installation;

- b. Protect against visual blight;
- c. Protect environmental resources;
- d. Insure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided; and
- e. Create and preserve telecommunications facilities that will serve as an important and effective part of Hayward's emergency response network.

Antenna or telecommunications facilities must be accessory to the primary use of a property (not the sole use of an otherwise vacant parcel), except where located in an area zoned as an Industrial or Agricultural District. The combined radiation levels produced by all the antennas and related telecommunications facilities present on the parcel shall not exceed the radio frequency emission standards adopted by the Federal Communications Commission.

In addition, all telecommunications facilities where three or more carriers are co-located on the same structure or within 200 feet of another telecommunications facilities antenna must prepare and submit an annual RFR monitoring report. This report addresses the cumulative field measurements of radio frequency emissions of all antennas installed at the site or location. The report must quantify the radio frequency emissions and compare the results with either the most current American National Standards Institute (ANSI) standards, or other standards adopted by the FCC or CPUC. These reports are reviewed and approved by Planning staff for consistency with the accepted standards and filed. If the City finds that the facilities do not meet these standards, the service providers are required to bring the entire site into compliance with the standards, or be subject to review before the Planning Commission at a public hearing where the operation permit may be modified or revoked.

Exempt Facilities (Sec. 10-13.050) – The following telecommunications antenna and telecommunications facilities are exempt from the requirements of the Ordinance:

- (1) A single building-mounted, receive-only radio and/or television antenna (excluding any parabolic antenna), not exceeding a height of 15 feet above the structure, for the sole use of the tenant occupying parcel on which the antenna is located.
- (2) A single ground- or building-mounted receive-only radio or television satellite dish antenna, which does not exceed 36 inches in diameter, for the sole use of the occupant(s) of a parcel on which it is located, provided the height of the dish does not exceed the height of the roof ridge line of the structure on which it is installed or is screened from view from the public right-of-way.
- (3) All citizens band radio antenna or antenna operated by a federally-licensed amateur radio operator which legally existed as of the effective date of this ordinance.
- (4) Government-owned and -operated antennas, if the height does not exceed 60 feet.

Telecommunications Site Review (Sec. 10-13.070) – A Telecommunications Site Review (TSR) application must be approved by the Planning Director before the installation of the following antenna and telecommunications facilities.

- (1) A single building-mounted, receive-only radio and/or television antenna (excluding any parabolic antenna), with an antenna height greater than 15 feet above the structure but less

than 35 feet, for the sole use of the tenant occupying a parcel on which the radio or television antenna is located.

- (2) A ground- or building-mounted receive-only radio or television satellite dish antenna, which exceeds 36 inches in diameter but is not larger than 8 feet in diameter, provided the height of the dish does not exceed the height of the roof ridge line of the structure on which it is to be installed or is screened from view from the public right-of-way.
- (3) A ground-mounted satellite dish antenna, which exceeds 8 feet in diameter, located in the Industrial District, and utilized for public and/or quasi-public uses, provided the height of the dish is screened from view from the public right-of-way.
- (4) Government-owned and -operated antennas where the height exceeds 60 feet.
- (5) One or more building-mounted telecommunications facility antenna found to be unobtrusive or undetectable by way of design and/or placement on the building.
- (6) A facility located in the Industrial District less than 65 feet in height and set back a minimum of 300 feet from a residential zoned property.
- (7) A facility mounted on an existing monopole or tower support structure located in any zoning district, and utilized for public and/or quasi-public uses.
- (8) A facility located in the Air Terminal-Industrial District not greater than 50 feet in height and utilized for public and/or quasi-public uses.

All procedures for a Site Plan Review application shall apply except that A TSR application may be approved only if all of the following additional findings are made:

- (1) The proposed facility will be operated in a manner determined to be acceptable and compatible with surrounding structures and uses.
- (2) The proposed facility takes into consideration physical and environmental constraints.
- (3) The development complies with the intent of the Ordinance and other applicable City policies.

The Planning Director may refer a TSR application to the Planning Commission if the public interest would be furthered by having the Planning Commission review such application, or if the facility fails to meet one or more of the applicable standards.

Administrative Use Permit (Sec. 10-13.080) – An Administrative Use Permit (AUP) must be approved by the Planning Director before the installation, erection, or change in location of the following antenna or telecommunications facilities:

- (1) A facility in the Industrial District greater than 65 feet but not exceeding 80 feet in height and set back a minimum of 300 feet from a residential zoned property and utilized for public and/or quasi-public uses.
- (2) A facility located in the Air Terminal-Industrial District greater than 50 feet in height and utilized for public and/or quasi-public uses.
- (3) Any facility designed in a stealth structure which is greater than 15 feet above the existing roof ridge line located within a residential area.
- (4) A facility located in any commercial district which does not exceed 40 feet in height and utilized for public and/or quasi-public uses.
- (5) Any ground-mounted telecommunications facilities located in any residential district utilized for public and/or quasi-public uses.

- (6) A building- or tower-mounted citizens band radio antenna or antenna operated by federally licensed amateur radio operator as part of the Amateur Radio Service, if the overall height measured from grade is greater than 35 feet but does not exceed 65 feet.

The Planning Director may refer an AUP application to the Planning Commission if the public interest would be furthered by having the Planning Commission review such application, or any proposed facility fails to meet one or more of the applicable standards.

Use Permit (Sec. 1—13.090) – A Use Permit (UP) must be approved by the Planning Commission before the installation, erection, or change in location of the following antennas and telecommunications facilities:

- (1) A telecommunications antenna mounted on a monopole or tower and related facilities located in the Industrial District greater than 80 feet in height and set back a minimum of 400 feet from a residential zoned property and utilized for public and/or quasi-public uses.
- (2) An antenna mounted on either a monopole or tower support structures and related facilities greater than 40 feet in height located in any commercial or agricultural districts and utilized for public and/or quasi-public uses.
- (3) A building- or tower-mounted citizens band radio antenna or antenna operated by federally licensed amateur radio operator if the overall height measured from grade is greater than 65 feet.
- (4) Any radio or television broadcast antenna located in the Industrial District and set back at least 3,000 feet from any residential district.

General Requirements (Sec. 10-13.C1 – Appendix C) – The following requirements must be met for any telecommunications facility in any zoning district:

- a. A telecommunications antenna may not be situated between the primary building on a parcel and any public or private street adjoining the parcel. Where the property has frontage on more than one street, the Planning Director may approve facilities between the primary structure and the lesser street but not within a required yard setback area or within 20 feet of the street right-of-way. Equipment shelters, cabinets, or other support structures must be screened from view.
- b. The facility may not be located within any required yard setbacks specified in the zoning district in which the antenna is located and in no case closer than 20 feet to any front property line and no closer than 5 feet to a side or rear property line where the parcel abuts a residential district.
- c. Satellite dishes and parabolic antennas must be situated as close to the ground as possible to reduce visual impact without compromising their function.
- d. All utility lines to the facility from public or private streets shall be undergrounded.
- e. All wireless telecommunications facilities must provide, when deemed necessary by the Planning Director or Planning Commission, sufficient anti-climbing and security measures into the facility as needed to reduce the potential for unauthorized access, vandalism, or injury. The design of any fencing shall be subject to staff or Planning Commission review and approval.
- f. All telecommunications facilities shall be unlit except when personnel are actually present at night and when tower lighting is required under FAA regulation.

Design Criteria (Sec. 10-13.C2 – Appendix C) – The following design criteria shall apply to all antennas and telecommunications facilities:

a. Satellite Antennas.

(1) *Residential Districts*

- (i) No antenna may be placed within the required front yard, side street yard or within five feet of any side or rear property line.
- (ii) No antennas may have a diameter greater than eight feet.
- (iii) No ground-mounted antenna may have a height greater than seven feet.
- (iv) Ground-mounted antennas must be screened from all public and private streets and neighboring properties to the maximum extent permitted.
- (v) Residence-mounted antennas may not exceed three feet in diameter and in no case may it be higher than the structure's ridge line and must be located at the rear of the structure. A larger dish may be roof-mounted if the antenna can be screened from view from the public right-of-way and the screening material is compatible and consistent with the materials, color, and architectural character of the dwelling.
- (vi) Exceptions to location may be made by the Planning Director if it can be shown that substantial reception would be lost if satellite antennas are located in prohibited areas. In no case, however, may a ground-mounted antenna be allowed within the front yard or side street yard setbacks.

(2) *Commercial and Industrial Districts*

- (i) Antennas may not be placed within the required front yard or side street yard or within five feet of any side or rear property line where the parcel abuts a residential district.
- (ii) Antennas may not be placed between a building and any right-of-way unless totally screened from view. Ground-mounted antennas must be screened from public view by being located at the rear of a building. Antennas may not exceed a diameter of eight feet and a height of seven feet in a commercial district and may not exceed twelve feet in diameter or twelve feet high in the Industrial District unless approved otherwise by the Planning Director.
- (iii) Roof-mounted antennas may be located at the rear of the structure or the area that provides the greatest possible screening from the public right(s)-of-way and shall not extend over four feet above the height of the highest part of the roof.
- (iv) Exceptions to location may be made by the Planning Director if it can be shown that substantial reception would be lost if satellite antennas are located in prohibited areas.
- (v) All solid (non-mesh) satellite dish antennas that are not screened from view must be painted a color similar to the dominant color at the location where the satellite dish antenna is installed. If no dominant color can be determined, the satellite dish antenna shall be painted beige or other approved color determined by the Planning Director.
- (vi) Antennas may not have on them any signs or logos except those provided by the manufacture or those required for warning or certifications.

b. Roof-Mounted Telecommunications Facilities.

- (1) Facilities may be allowed in all zoning districts, but may not be located on sites zoned and used for residential purposes less than one-half acre.
- (2) Antennas may not be allowed on single-family residential dwellings. However, roof-mounted antennas that incorporate appropriate stealth techniques may be allowed on multi-family structures or on other non-residential buildings within residential districts.
- (3) Antennas shall not be allowed when they are placed in direct line of sight of significant view corridors or where they affect scenic vistas.
- (4) The height of roof-mounted antennas, may generally not exceed 10 feet above the parapet line of the existing building on which they are placed. Antennas that require additional height will be subject to an administrative use permit and may be required to provide additional screening.
- (5) All antennas must be located in an area of the roof where the visual impact is minimized from the street or from where there would be the greatest visual impact.
- (6) All facilities that are visible shall be painted a non-reflective matte finish, using an appropriate color that blends with the backdrop. The final choice of colors shall be determined by the Planning Director on a case-by-case basis.
- (7) Wherever possible, equipment must be located within the building. Equipment cabinets or shelters located outside the primary use must be placed as close to the building as possible and away from required yard setback areas or required group open space areas.
- (8) Equipment cabinets, if located on the rooftop of buildings, must be so located as to minimize visibility from public rights-of-way.

c. Facade-Mounted Telecommunications Facilities

- (1) Facilities may be allowed in all zoning districts, but shall not be located on sites zoned and used for residential purposes less than one-half acre.
- (2) Antennas on structures less than four stories must be camouflaged by incorporating the antennas as part of a design element of the building or shall be hidden behind a stealth wall panel or other element. Any added design element should be consistent throughout the building and should add visual interest to the structure. When antennas are used as a design element, dummy elements may be required to be installed in order to retain the architectural continuity of the building. Antennas on building four or more stories in height must be placed in such a manner to lessen their visual impact by painting and texturing them to match the building.
- (3) Antennas must generally not project beyond a maximum of 18 inches from the face of the building.
- (4) Wherever possible, equipment facilities shall be located within the building. Equipment cabinets or shelters located outside the primary use must be placed as close to the building as possible and away from required yard setback areas or open space areas.
- (5) Equipment cabinets, if located on the rooftop of buildings, must be so located as to minimize visibility from public rights-of-way.

d. Ground-Mounted Telecommunications Facilities

- (1) Antennas may be allowed in any zoning district, subject to an Administrative Use Permit. When located within a residential district, ground-mounted antennas will be subject to approval of a Conditional Use Permit.

- (2) Facilities shall be prohibited on or above the ridge line of any hill.
- (3) Antennas may be no taller than 14 feet.
- (4) Antennas must be setback at least 20 feet from any side or rear property line of any adjacent lot designated for and used as residential.
- (5) Facilities by different carriers may generally not be allowed within 500 feet of one another, unless the Planning Director determines that co-location on the same property or at a closer spacing would lessen the cumulative visual impact in the area.
- (6) In order to reduce any potential visual impacts and improve the appearance of "antenna array groups" in the hill area, no more than twelve antennas may be allowed per carrier. The Planning Director may allow additional antennas and/or restrict the number of carriers on a parcel depending upon site capacity.
- (7) All facilities must be located within easy reach of existing access roads to the extent feasible. In undeveloped hillside areas, telecommunications facilities carriers or providers shall work with subdividers or developers to provide integrated antenna sites that will require the least amount of grading and road extension possible.
- (8) In the hill area, all equipment shelters or cabinets shall be limited to a maximum height of three feet above the existing grade, unless other techniques are adopted to ensure minimal visual impact by using existing contours and level differences to maintain the three-foot height limit. On a case-by-case basis, the Planning Director may allow taller exposed structures if the design of the shelter is architecturally compatible with other immediately adjacent structures and if it can be found that the exposed structure would not impact the visual quality of the area.

e. Monopoles

- (1) Monopoles may not be located within any required yard setback area specified in the zoning district in which the antenna is located and in no case closer than 20 feet to any front property line in any district and no closer than 5 feet to a side or rear property line where the parcel abuts a residential district except within the Industrial District where monopoles shall be setback a minimum of 300 feet from an adjacent residential parcel.
- (2) The smallest available and least visible antennas that provide the coverage objective must be used when mounted on monopoles. The number of antennas shall represent the minimum number required to complete the telecommunications network.
- (3) Monopoles may not be located within residential areas unless they have been designed as stealth facilities and blend in with existing structures.
- (4) Monopoles proposed as the sole or primary use of the property shall not be allowed except within the Industrial or Agricultural Districts. Where feasible and aesthetically desirable, facilities are encouraged to co-locate with other facilities such as water tanks, light standards, and other utilities where the co-location is found to minimize the overall visual impact.
- (5) Co-location of telecommunications facilities on a single pole or support structure is encouraged. The use of monopoles for a single user is discouraged. Approval of a monopole for a single user will be conditioned to require the applicant's cooperation with other communications companies in co-locating additional antennas on the monopole.
- (6) Freestanding monopoles must be located and designed to minimize visual impacts. Monopoles in areas where adverse visual impacts cannot be avoided must incorporate

- "stealth" techniques to camouflage them as a pieces of art/sculpture, flag poles, light poles, or other interesting visual forms that would not be considered an adverse visual impact.
- (7) Free-standing monopoles may generally not be allowed within 1000 feet of each other, except in the Industrial District or except when the adverse visual impacts are not significant.
 - (8) Minor modifications to the communications equipment design, location, elevations, and other elements of the above exhibit may be allowed, subject to the approval of the Planning Director, if such modifications are in keeping with the architectural statement and layout design of the original approval.
 - (9) Monopoles that are developed as a primary use, where allowed, must be converted to roof-, facade- or ground-mounted facilities with the development of the site when physically and technically possible.

Notification

Whenever a new development application, including those for telecommunications facilities, is submitted to the Planning Division, a postcard announcing its receipt is sent to property owners and residents/tenants within 300 feet of the development project. While this notice is not required by law, it has been an asset to both the Planning staff and the project proponent in determining early whether there is any concern from those in the surrounding area.

When last discussed some time ago, the Planning Commissioners opted out of receiving submittal notices for minor projects, including telecommunication facilities. Recently though, once staff became aware of concerns from some Commissioners regarding certain facilities, staff began sending these notices to the Commissioners.

Prior to the sending of submittal notices, Commissioners were not aware of the receipt of telecommunication facilities applications until a notice of decision was sent; these notices have been sent to Commissioners for many years. While the Zoning Ordinance does allow for a private party to file an appeal of a decision by the Planning Director, no provision is made for a "call-up" by a Commissioner. The Zoning Ordinance does provide for "call up" by a Council Member however.

Prepared & Recommended by:



Richard Patenaude, AICP
Planning Manager

Attachments:

- Attachment I Telecommunications Facilities Applications
- Attachment II Antenna and Telecommunications Ordinance

TELECOMMUNICATION APPLICATIONS

Attachment I

Project	Project #	Date rec'd	Description	Applicant	Company	Project Location	Action Taken	Approved/ Denied Date	Canceled/ Withdrawn Date
AUP	PL-2008-0312	6/24/08	New T-Mobile Wireless facility designed as light standards at the church school baseball field.	T-Mobile	T-Mobile	26910 Patrick Avenue	Administratively and conditionally approved by the Planning Director	12/19/08	
AUP	PL-2008-0540	11/13/08	Installation of unmanned communications facility, new equipment shelter, new standby 60 kw diesel generator with 210 gallon fuel tank and 78 foot monopine with antennas.	Pamela Nobel	Verizon Wireless	24505-24549 Soto Road	Administratively and conditionally approved by the Planning Director	01/13/09	
AUP	PL-2009-0146	3/31/09	Install a telecommunication facility consisting of a 60-foot tall monopine with antennas and equipment shelter.	Clarence Chavis	Ridge Communications, Inc. for Verizon Wireless	27035 Whitman Street	Administratively and conditionally approved by the Planning Director	05/19/09	
AUP	PL-2009-0451	9/24/09	Request for a new co-located cellular facility including 3 microwave antennas, 3 panel antennas and one equipment cabinet to be co-located within Sprints' enclosure.	Michelle Weller	Clearwire c/o Cortel	1964 Sabre Street	Approved by the Planning Director	10/26/09	
AUP	PL-2009-0570	11/24/09	Verizon Wireless Request to install a 100-foot tall painted (stealth) monopole and associated equipment.	Pamela Nobel	Verizon Wireless	222 Country Club Drive	Approved by the Planning Commission	09/23/10	
AUP	PL-2009-0587	12/17/09	AT&T Mobility request to install a wireless telecommunication facility which includes 12 antennas and 2 microwave dishes mounted onto a 48-foot-tall artificial pine tree.	Matthew Yergovich	AT&T Mobility	3639 La Mesa Drive	Filed Closed by Planning Director		
AUP	PL-2010-0349	9/24/10	Request to install an 80-foot high monopole with six antennas and cabinets in chainlink enclosure.	Chris Coones	T-Mobile	2466 Whipple Road	Approved by the Planning Director	11/09/10	
CUP	PL-2009-0259	5/5/09	Request to modify the existing Use Permit 96-160-21 by adding 3 antennas to existing cell site monopole.	Jillian Faria	Verizon Wireless c/o Complete Wireless	25655 Dollar Street	Administratively and conditionally approved 5/28/09	05/28/09	
SPR	PL-2008-0175	4/2/08	Installation of one UHF antenna on an existing 317 foot high tower and two dish antennas and two GPS antennas installed on the exterior of an existing equipment building.	MediaFLO USA	MediaFLO USA	9570 Santos Ranch Road	Administratively and conditionally approved by the Planning Director 6/12/2008	06/12/08	
SPR	PL-2008-0213	4/24/08	Request to add broadcast antennas and other associated equipment to existing power pole.	Media Flo USA	Media Flo USA	9570 Santos Ranch Road	Withdrawn by Applicant 6/2/2008		06/02/08
SPR	PL-2008-0381	7/30/08	Telecommunications installed on top of an existing PG&E tower with four support cabinets.	Forza Telecom/Jacob Reeves	T-Mobile/Forza Telecom	21325 Cabot Blvd.	Administratively and conditionally approved by the Planning Director 11/20/2008	11/20/08	
SPR	PL-2008-0392	8/6/08	Request to remove and replace an existing 71' light standard with 6 antennas and corresponding equipment cabinets.	Shannon McDougall/AT&T	Shannon McDougall/AT&T	22100 Princeton Street	Approved by the Planning Director 9/10/08 Appealed Appeal Withdrawn Administratively and	03/26/09	
SPR	PL-2008-0435	8/27/08	Wireless telecommunications facility including a 60' monopole and 7 ground mounted radio cabinets.	Phillip Thomas	Black Dot Wireless for AT&T	29425 Ruus Road	Administratively and conditionally approved by the Planning Director 10/31/2008	10/31/08	
SPR	PL-2009-0258	5/5/09	Request to modify the Site Plan Review PL-2004-0044 to add two antennas to an existing cell site facility.	Jillian Faria	Verizon Wireless c/o Complete Wireless	2181 W. Winton Avenue	Administratively and conditionally approved by the Planning Director 5/28/2009	05/28/09	
SPR	PL-2009-0289	5/22/09	Request to modify an existing T-Mobile Cellular site. Replacing three panel antennas with four new panel antennas and replacing one dish with a new dish.	Kelly Pepper - Town Consulting	T-Mobile	4125 Breakwater Avenue	Approved by the Planning Director	07/15/09	

TELECOMMUNICATION APPLICATIONS

Project	Project #	Date rec'd	Description	Applicant	Company	Project Location	Action Taken	Approved/ Denied Date	Canceled/ Withdrawn Date
SPR	PL-2009-0298	6/2/09	Administrative Site Plan Review to modify the existing Verizon telecommunications facility by adding one additional antenna	Jillian Fana	Verizon Wireless c/o Complete Wireless	24301 Southland Drive	Approved by the Planning Director	07/29/09	
SPR	PL-2009-0310	6/4/09	Request modify a Site Plan Reveiw to add 2 panel antennas to existing monopole and the addition of 9 coax cables will be routed inside the pole.	Steve Christenson	Crown Castle USA	3880 Bay Center	Approved by the Planning Director	08/04/09	
SPR	PL-2009-0312	6/11/09	Request to allow a stealth chimney with 6 antennas on roof and a equipment shelter on the ground.	Chris Coones	T-Mobile	20777 Hesperian Boulevard	Approved by the Planning Director	07/17/09	
SPR	PL-2009-0331	6/24/09	Request to add six new wireless communications antennas and GPS, amplifier and microwave antennas on an existing Pacific, Gas and Electric tower. Ground level installation of four new equipment cabinets to be installed behind a 7-foot tall wood fence	Chris Coones	Forzatecom for T-Mobile	1603 Highland Boulevard	Approved by the Planning Director	08/27/09	
SPR	PL-2009-0335	6/30/09	Co-locate 4 antennas and 2 for future expansion on a PG&E Tower and to install equipment in an existing equipment cabinet. The tower is located at Stonebrae near the golf course.	Chris Coones	T-Mobile	Drummond Drive	Approved by the Planning Director	08/14/09	
SPR	PL-2009-0336	6/30/09	Co-locate 6 new an existing monopole and install equipment in an existing equipment enclosure at the base of the monopole. The cell site is located at a storage facility.	Chris Coones	T-Mobile	27911 Industrial Boulevard	Approved by the Planning Director	08/14/09	
SPR	PL-2009-0355	7/13/09	Request to add 3 antenna panels with 9 antennas on a 71-foot high stealth monopole within a pine tree structure and related equipment in an existing screened equipped area.	Pamela Nobel	Verizon Wireless	26325 Hesperian Boulevard	Approved by the Planning Director	08/27/09	
SPR	PL-2009-0459	9/29/09	Request to add three antennas and three microwaves on an existing pole and one BTS cabinet within the existing fence area.	Chad Christie	Clear Wireless, LLC	3871 Breakwater Avenue	Approved by the Planning Director	11/05/09	
SPR	PL-2009-0461	9/29/09	Request to install three antennas and three microwave antennas on an existing pole and a BTS cabinet.	Chad Christie	Clear Wireless, LLC	25920 Eden Landing Road	Approved by the Planning Director	11/05/09	
SPR	PL-2009-0460	9/29/09	Request to install three antennas and three microwaves on an existing telecommunications pole and to install a cabinet within the existing utility compound	Chad Christie	Clear Wireless, LLC	27911 Industrial Boulevard	Approved by the Planning Director	10/23/09	
SPR	PL-2009-0502	10/26/09	Request to add six antennas to an existing stealth monopole.	Chad Christie	Clear Wireless, LLC	586 West Tennyson Road	Withdrawn - selected a different site for antennas		12/23/09
SPR	PL-2009-0507	11/2/09	Request to add 3 antennas and 3 microwave dishes in stealth boxes to the roof top of St. Rose Hospital.	Chad Christie	Clear Wireless, LLC	27200 Calaroga Avenue	Approved by the Planning Director	11/12/09	
SPR	PL-2009-0530	11/10/09	T-Mobile West Corporation Request to relocate the telecommunications cabinets from the interior to the roof top.	T-Mobile West Corporation	T-Mobile West Corporation	3129 Corporate Place	Approved by the Planning Director	12/16/09	
SPR	PL-2009-0533	11/12/09	Request to relocate telecommunications cabinets from the interior of a warehouse building to the roof top.	Chad Christie	Clear Wireless, LLC	23411 Cabot Boulevard	Approved by the Planning Director	12/17/09	
SPR	PL-2009-0535	11/13/09	Request to replace 8 antennas with 9 panel antennas on an existing monopole	Michele Phippen	NSA Wireless for Verizon Wireless	27911 Industrial Boulevard	Approved by the Planning Director	12/17/09	
SPR	PL-2009-0559	11/19/09	Request to co-locate on the Hall of Justice. 3 new antennas and 4 new microwave dishes.	Chad Christie	Clear Wireless, LLC	24405 Amador Street	Approved by the Planning Director	03/02/10	

TELECOMMUNICATION APPLICATIONS

Project	Project #	Date rec'd	Description	Applicant	Company	Project Location	Action Taken	Approved/ Denied Date	Canceled/ Withdrawn Date
SPR	PL-2010-0042	2/23/10	Request for installation of wireless communications facility, including the installation of new equipment cabinets, 6 microwave antennas and 3 panel antennas on an existing tower.	Jordan Thompson	ClearWire	9570 Santos Ranch Road	Approved by the Planning Director	06/03/10	
SPR	PL-2010-0096	3/23/10	Request for the co-location of a wireless facility on an existing PG&E transmission tower, including three clusters of antennas.	Michelle Weller	Clearwire Legacy LLC	16 Navan Lane, off Drummond Drive	Approved by the Planning Director	04/29/10	
SPR	PL-2010-0103	3/26/10	Request to co-locate one microwave dish, five panel antennas and one equipment cabinet at an existing monopole in the Industrial Zoning District.	Chad Christie	Clear Wireless, LLC	795 Sandoval Way	Approved by the Planning Director	05/10/10	
SPR	PL-2010-0174	5/19/10	Request for a new ClearWireless telecommunications facility involving 4 microwave antennas, 3 panel antennas and one equipment cabinet to be roof mounted on an existing building at Chabot Community College.	Chad Christie	Clear Wireless, LLC	25555 Hesperian Boulevard	Approved by the Planning Director	07/14/10	
SPR	PL-2010-0196	6/2/10	Request to add 3 antennas and 3 tower mounted amplifiers to existing tower.	Dave Yocke	Trillium Telecom	4125 Breakwater Avenue	Approved by the Planning Director	09/08/10	
SPR	PL-2010-0211	6/10/10	Request to install 6 antennas on an existing light pole with 3 existing antennas.	Clearwire	NSA Wireless/Brad Head	22100 Princeton Street	Approved by the Planning Director	07/22/10	
SPR	PL-2010-0251	7/16/10	Request to install a wireless facility consisting of 3 panel antennas, 2 microwave antennas and one equipment cabinet on the roof of the existing office building.	Michelle Weller	Clearwire Legacy LLC	22455 Maple Court	Approved by Planning Director	10/20/10	
SPR	PL-2010-0250	7/16/10	Request to install a wireless facility consisting of 3 panel antennas, 3 microwave antennas and one equipment cabinet on the roof of the existing building.	Michelle Weller	Clearwire Legacy LLC	2286 Industrial Parkway West	Denied by the Planning Director	10/13/10	
SPR	PL-2010-0253	7/19/10	Request to install three panel antennas, three internet service exchange providers and one ground equipment cabinet.	James Elgee - Cortel	Clear Wireless LLC	1753 Addison Way	Withdrawn	07/23/10	
SPR	PL-2010-0260	7/22/10	Request to install 3 panel antennas and 3 microwave antennas on the roof of the existing building with equipment cabinet on the ground.	James Elgee - Cortel	Clear Wireless LLC	1100 W. Tennyson Road	Approved by the Planning Director	11/19/10	
SPR	PL-2010-0291	8/19/10	Request to install three new antennas to an existing cellular facility.	Paige Naves - ForzaTelecom, Inc.	AT&T Wireless	27911 Industrial Boulevard	Approved by the Planning Director	10/15/10	
SPR	PL-2010-0290	8/19/10	Request to install a roof-top wireless facility consisting of 3 panel antennas, 3 microwave antennas and one equipment cabinet.	James Elgee	Clearwire c/o Cortel	520 W. Tennyson Road			
SPR	PL-2010-0299	8/23/10	Request to add three facade mounted antennas to the Best Western Inn of Hayward where six antennas exist.	Zachary Carter	Forzatelecom Inc./AT&T	360 West A Street		10/20/10	
SPR	PL-2010-0305	8/26/10	Request to install three panel antennas, three microwave dishes and an equipment cabinet on the roof of an existing industrial building.	Michelle Weller	Clearwire	31123 San Clemente Street	Approved by the Planning Director	11/01/10	
SPR	PL-2010-0319	9/3/10	Request to install three panel antennas, one microwave antenna and one equipment cabinet.	Michelle Weller	Cortel on behalf of Clearwire	26905 Mission Boulevard	Approved by the Planning Director	12/03/10	
SPR	PL-2010-0333	9/13/10	Request to install 3 panel antennas and 3 dish antennas to the existing monopole with equipment cabinet on the ground.	Clear Wireless LLC	Clear Wireless LLC	30132 Industrial Parkway SW	Approved by the Planning Director	11/02/10	
SPR	PL-2010-0347	9/23/10	Request to add six telecommunications antennae to an existing monopole.	Jim Elgee	Clearwire Wireless	29425 Ruus Road	Approved by the Planning Director	11/01/10	

TELECOMMUNICATION APPLICATIONS

Project	Project #	Date rec'd	Description	Applicant	Company	Project Location	Action Taken	Approved/ Denied Date	Canceled/ Withdrawn Date
SPR	PL-2010-0354	9/29/10	Request to install twelve flat flush-mounted antennas on the side of the existing AT&T building.	Matthew Yergovich	AT&T Mobility	221 West Winton Avenue	Approved by the Planning Director	10/28/10	
SPR	PL-2011-0023	1/26/11	Request to install 3 new panel antennas and relocate 3 existing antenna on an existing PG&E tower and add 1 equipment cabinet.	Matthew Yergovich	AT&T Mobility	480 Berry Avenue			
VAR & SPR	PL-2009-0571 VAR & PL-2009- 0572 SPR	11/25/09	T-Mobile Request to allow intallation of telecommunications facility to allow a 50-foot monopole and associated equipment within the required set back from residential area located in Union City.	Chris Coones	T-Mobile	2408 Whipple Road	Denied by the Planning Director	04/02/10	

ARTICLE 13

ANTENNA AND TELECOMMUNICATIONS FACILITIES ORDINANCE

Section	Subject Matter
10-13.000	TITLE
10-13.010	PURPOSE
10-13.020	IMPLEMENTING REGULATIONS AND DEFINITIONS
10-13.030	GENERAL REQUIREMENTS
10-13.040	REGISTRATION BY TELECOMMUNICATIONS CARRIERS AND PROVIDERS
10-13.050	EXEMPT TELECOMMUNICATIONS ANTENNA AND RELATED FACILITIES
10-13.060	MINIMUM PERMIT APPLICATION REQUIREMENTS
10-13.070	CLASS 1 FACILITIES: TELECOMMUNICATIONS SITE REVIEW APPLICATION REQUIRED
10-13.080	CLASS 2 FACILITIES: ADMINISTRATIVE USE PERMIT REQUIRED
10-13.090	CLASS 3 FACILITIES: USE PERMIT REQUIRED
10-13.100	ADMINISTRATIVE USE PERMIT OR USE PERMIT REQUIRED FOR ANY EXCEPTION FROM REQUIREMENTS
10-13.110	RESERVED
10-13.120	CO-LOCATION AND MULTIPLE-USER TELECOMMUNICATIONS FACILITY REQUIREMENTS

Section	Subject Matter
10-13.130	ELECTROMAGNETIC RADIATION EMISSION REQUIREMENTS
10-13.140	RESERVED
10-13.150	NOTICE OF PERMIT PROCEEDINGS
10-13.160	APPEAL AND REVIEW PROCESS
10-13.170	ADMINISTRATIVE REFERRAL
10-13.180	PERMIT FINDINGS
10-13.190	EFFECTIVE DATE OF PERMIT DECISIONS
10-13.200	RIGHTS GRANTED
10-13.210	MODIFICATION OR REVOCATION OF PERMITS: LAPSE OF PERMITS
10-13.220	REMOVAL OF TELECOMMUNICATIONS FACILITIES
10-13.230	SEVERABILITY
	APPENDIX "B"
10-13.B	DEFINITIONS
	APPENDIX "C"
10-13.C1	GENERAL REQUIREMENTS
10-13.C2	DESIGN CRITERIA

ARTICLE 13

ANTENNA AND TELECOMMUNICATIONS FACILITIES ORDINANCE

SEC. 10-13.000 TITLE. This article shall be known and may be cited as the Telecommunications Antenna and Facilities Ordinance of the City of Hayward.

SEC. 10-13.010 PURPOSE. This article supplements the requirements of Article 1, Chapter 10, of the Hayward Municipal Code, the Zoning Ordinance, by establishing standards for the appropriate siting and change in location of any telecommunications antenna and a related facility, including but not limited to antennas for wireless telecommunications facilities and amateur radio installations. These standards are adopted to promote the following objectives:

- a. Protect against the potentially adverse effects of telecommunications antenna and facility installation;
- b. Protect against visual blight which may result from unregulated installation of antennas and other telecommunications facilities;
- c. Protect the environmental resources of Hayward;
- d. Insure that a competitive and broad range of telecommunications services and high quality telecommunications infrastructure are provided; and
- e. Create and preserve telecommunications facilities that will serve as an important and effective part of Hayward's emergency response network.

SEC. 10-13.020 IMPLEMENTING REGULATIONS AND DEFINITIONS. The City Manager or his or her designee is authorized to issue regulations which are consistent with and supplement the requirements of this article. Such regulations may include but are not limited to definitions of terms used in this article. Such regulations shall be incorporated by reference as an Appendix (A) to this Article 10-13, after they are approved by the City Manager or his or her designee.

SEC. 10-13.030 GENERAL REQUIREMENTS. The following requirements shall apply to the siting of any telecommunications antenna or related facility in the City of Hayward:

- a. Consistency with the General Plan and any other officially adopted land use plan, policy and guideline of the City of Hayward, including but not limited to requirements of the Hayward Zoning Ordinance.
- b. Consistency with the requirements of any other governmental agency with jurisdiction over the installation of a telecommunications antenna or related facility.
- c. Any telecommunications facilities antenna located within the Air Terminal subdistrict shall comply with Federal Aviation Administration regulations and permit requirements.
- d. Any applicable easements or similar restrictions on the subject property, including

adopted Planned Development conditions.

- e. The antenna or telecommunications facilities involved must be accessory to the primary use of a property (not the sole use of an otherwise vacant parcel), except where located in an area zoned as an Industrial or Agricultural District.
- f. The combined radiation levels produced by all the antennas and related telecommunications facilities present on the parcel shall not exceed the radio frequency emission standards adopted by the Federal Communications Commission.
- g. All telecommunications carriers and providers engaged in the business of transmitting, supplying, or furnishing of telecommunications originating or terminating in the City of Hayward shall register with the City pursuant to section 10-13.040 of this article.

SEC. 10-13.040 REGISTRATION BY TELECOMMUNICATIONS CARRIERS AND PROVIDERS.

- a. Registration Required. All telecommunications carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City of Hayward or outside the corporate limits from telecommunications facilities within the City, and any commercial business operating television or radio transmission antennas, shall register with the City pursuant to this article on forms to be provided by the Director of Community and Economic Development/Planning Director. The registration of all carriers applies to those businesses currently operating within the City as well as those who will require future siting of new antennas in the City. A revised registration statement shall also be filed no later than 30 days before the abandonment, removal, or change in location of any telecommunications antenna or related facility. Each registrant is required to inform the City, within 30 days of any material change of any information set forth in the registration statement.
- b. Purpose. The purpose of these registration requirements is to provide the City with accurate and current information concerning the wireless telecommunications carriers and providers who offer or provide wireless telecommunications services within the City, or who own or operate telecommunications facilities with the City and assist in enforcement of this article's requirements.
- c. Contents. The registration statement shall contain the following information and such other information which the Director of Community and Economic Development/Planning Director may reasonably require:
 - (1) The registrant's identity and registered status, and those of any affiliates, if the registration pertains to a co-located site.
 - (2) The name, address, and telephone number of the officer, agent, or employee responsible for the registration statement.
 - (3) A map and narrative description of registrant's existing and proposed telecommunications facilities within the City of Hayward.
 - (4) A description of the telecommunications services that the registrant intends to

offer or provide, or is currently offering or providing, to persons, firms, businesses, or institutions within the City.

- (5) Information sufficient to determine that the registrant has applied for and received any certificate of authority required by the California Public Utility Commission.
- (6) Information sufficient to determine that the registrant has applied for and received any construction permit, operating license, or other approvals required by the Federal Communications Commission (FCC).

SEC. 10-13.050 EXEMPT TELECOMMUNICATIONS ANTENNA AND RELATED FACILITIES

- a. Exempt Telecommunications Antenna and Related Facilities. The following telecommunications antenna and telecommunications facilities are exempt from the discretionary review requirements of this article if such proposed antenna or other related facility complies with section 10-13.030 and the minimum setback and height requirements set forth in subdivision b. of this section. In addition, the Director of Community and Economic Development/Planning Director may require the owner of the proposed telecommunications antenna or related facility, to verify compliance with the requirements of this article.
 - (1) A single building-mounted, receive-only radio and/or television antenna (excluding any parabolic antenna), for the sole use of the tenant occupying a residential parcel or occupant of a commercial or industrial parcel on which the radio or television antenna is located; with an antenna height not exceeding 15 feet above the structure, including any mast.
 - (2) A single ground- or building-mounted receive only radio or television satellite dish antenna including Direct Broadcast System (DBS) or Digital Satellite System (DSS) antenna, which does not exceed 36 inches in diameter, for the sole use of the occupant(s) of a residential, commercial, or industrial parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the roof ridge line of a structure on which it is to be installed or is screened from view from the public right-of-way.
 - (3) All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which legally existed as of the effective date of this ordinance.
 - (4) A mobile telecommunications facility operating on a temporary basis at various locations to provide public information coverage of news events.
 - (5) Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers, and similar devices as determined by the Director of Community and Economic Development/ Planning Director.
 - (6) Government-owned and -operated antennas, if the height does not exceed 60 feet.

b. Requirements for Exempt Facilities. Exempt telecommunications antenna and related facilities listed above may be installed, erected, maintained, and/or operated in any residential zoning district (including Planned Development, Mobile Home Park, and Agricultural Districts), and any commercial and industrial zoning district, so long as all the following conditions are met:

- (1) The antenna use involved shall be accessory to the primary use of the property if the primary use of the property is not an approved telecommunications facility.
- (2) Each exempt antenna shall be designed to blend into the surrounding environment to the greatest extent feasible and include appropriate public safety measures.
- (3) In a residential zone, no more than one support structure for a citizen band antenna or licensed amateur radio operator antenna and/or satellite dish 36 inches or less in diameter, is allowed on the parcel.
- (4) The antenna shall comply with the applicable setback requirements, including those set forth in the Zoning Ordinance.

SEC. 10-13.060 MINIMUM PERMIT APPLICATION REQUIREMENTS. In addition to the requirements of section 10-13.030, the following minimum criteria apply to any telecommunications facility classified as a Class 1, Class 2, or a Class 3 facility by this article, unless waived by the Director of Community and Economic Development/Planning Director:

- a. Provision of information required for an application to install or relocate a telecommunications facility, which may include, but shall not be limited to the following:
 - (1) Completed supplemental project information form, a specific maximum request gross cross-sectional area or silhouette of the facility, service area maps, network maps, alternative site analysis, visual impact demonstrations including mock-ups and/or photo-montages, visual impact analysis, electromagnetic radiation exposure studies, title reports, easements, or other instruments showing legal access, information regarding security measures, and facility design alternatives to the proposal.
 - (2) A list of other telecommunications facilities on which the registrant's telecommunications antenna and related facility could be co-located.
 - (3) A master plan for all related facilities within the city limits of Hayward and within one-quarter mile radius.
 - (4) The Director of Community and Economic Development/Planning Director may release an applicant from any otherwise required information upon a finding that, in the specific case involved, said information is not necessary to process or make a decision on the application being submitted.
- b. The Director of Community and Economic Development/Planning Director may also require the telecommunications facility provider to fund the cost of an independent expert to review any technical materials submitted including, but not limited to those

required by this article in those cases where a technical demonstration of unavoidable need or unavailability of alternatives is appropriate. The applicant shall pay all the costs of said review, including any administrative costs incurred by the City. Any proprietary information disclosed to the City or the expert hired shall remain confidential and shall be kept confidential from any third party to the extent allowed by law.

SEC. 10-13.070 CLASS 1 FACILITIES: TELECOMMUNICATIONS SITE REVIEW APPLICATION REQUIRED.

- a. A Telecommunications Site Review (sometimes "TSR") application must be approved by the Director of Community and Economic Development/Planning Director before the installation of any Class 1 facility described in this section, unless such requirement is waived. The findings required for approval of a TSR application are set forth in subdivision b. of this section. All procedures for a Site Plan Review contained in the Zoning Ordinance shall apply except for the findings required to approve a Site Plan Review. In addition, any necessary building permit shall also be issued before the erection or change in location of a Class 1 facility, unless such requirement is waived by the Director of Community and Economic Development/Planning Director.
 - (1) A single building-mounted, receive-only radio and/or television antenna (excluding any parabolic antenna), for the sole use of the tenant occupying a residential parcel or occupant of a commercial or industrial parcel on which the radio or television antenna is located; with an antenna height greater than 15 feet above the structure but less than 35 feet, including any mast.
 - (2) A ground- or building-mounted receive-only radio or television satellite dish antenna which exceeds 36 inches in diameter but is not larger than 8 feet in diameter, provided the height of said dish does not exceed the height of the roof ridge line of a structure on which it is to be installed or is screened from view from the public right-of-way.
 - (3) A ground-mounted telecommunications facility satellite dish antenna which exceeds 8 feet in diameter located in the Industrial District, and utilized for public and/or quasi-public uses where the satellite dish antenna is found to be compatible with the existing industrial use of the property; provided the height of said dish is screened from view from the public right-of-way.
 - (4) Government-owned and -operated antennas where the height exceeds 60 feet.
 - (5) One or more building-mounted telecommunications facility antenna found to be unobtrusive or undetectable by way of design and/or placement on the building.
 - (6) A telecommunications facility located in the Industrial District less than 65 feet in height and set back a minimum of 300 feet from a residential zoned property, and utilized for public and/or quasi-public uses where the facility is found to be compatible with the existing industrial uses of the property.
 - (7) A telecommunications facility mounted on an existing monopole or tower support structure located in any zoning district, and utilized for public and/or

quasi-public uses where the facility is found to be compatible with the existing land uses on and adjacent to the property.

- (8) A telecommunications facility located in the Air Terminal-Industrial District not greater than 50 feet in height, in compliance with the applicable sections of this article, and utilized for public and/or quasi-public uses where the facility is found to be compatible with the existing industrial uses on or adjacent to the property.

b. Findings for Approval of a Telecommunications Site Review Application. In addition to the requirements of this article, a TSR application may be approved only if all of the following additional findings are made:

- (1) The proposed Class 1 facility will be operated in a manner determined to be acceptable and compatible with surrounding structures and uses.
- (2) The proposed Class 1 facility takes into consideration physical and environmental constraints.
- (3) The development complies with the intent of this article and other applicable City of Hayward policies.

c. Referral of Certain Class 1 Facility Telecommunications Site Review Applications to the Planning Commission. The Director of Community and Economic Development/Planning Director may refer a TSR application filed for a telecommunications antenna or related facility to the Planning Commission as an application for a Use Permit if the public interest would be furthered by having the Planning Commission review such application, or if any proposed Class 1 facility fails to meet one or more of the applicable standards for a Class 1 facility.

SEC. 10-13.080 CLASS 2 FACILITIES: ADMINISTRATIVE USE PERMIT

REQUIRED.

a. An administrative use permit (sometimes "AUP") must be approved by the Director of Community and Economic Development/Planning Director in accordance with the requirements of this article, the procedures set forth in the Zoning Ordinance, and any necessary building permit issued before the installation, erection, or change in location of any antenna or telecommunications facility described in this section as a Class 2 facility, unless any such requirement is waived.

- (1) A telecommunications facility in the Industrial District greater than 65 feet but not exceeding 80 feet in height and set back a minimum of 300 feet from a residential zoned property utilized for public and/or quasi-public uses where it is found to be compatible with the existing industrial uses of the property.
- (2) A telecommunications facility located in the Air Terminal-Industrial District greater than 50 feet in height in compliance utilized for public and/or quasi-public uses where it is found to be compatible with the existing industrial uses of the property.
- (3) Any telecommunications facility designed in a stealth structure which is greater than 15 feet above the existing roof ridge line located within a

residential area, including Planned Development and Agricultural districts.

- (4) A telecommunications facility located in any commercial district which does not exceed 40 feet utilized for public and/or quasi-public uses where it is found to be compatible with the existing commercial uses on the property and with adjacent land uses.
 - (5) Any ground-mounted telecommunications facilities located in any residential district (including Planned Development Districts) utilized for public and/or quasi-public uses where it is found to be compatible with the existing residential uses on the property and with adjacent land uses.
 - (6) A building-or tower-mounted citizens band radio antenna or antenna operated by federally licensed amateur radio operator as part of the Amateur Radio Service, including any mast, if the overall height (post and antenna) measured from grade is greater than 35 feet but does not exceed 65 feet.
- b. Findings for Approval of an Administrative Use Permit Application. In addition to the other requirements of this article, an Administrative Use Permit may be approved only if the Administrative Use Permit findings required by section 10-1.3125 are made.
- c. Referral of Certain Class 2 Facility Administrative Use Permit Applications to the Planning Commission. The Director of Community and Economic Development/ Planning Director may refer an AUP application filed for a telecommunications antenna or related facility to the Planning Commission as an application for a Use Permit if the public interest would be furthered by having the Planning Commission review such application, or any proposed Class 2 facility fails to meet one or more of the applicable standards for a Class 2 facility.

SEC. 10-13.090 CLASS 3 FACILITIES: USE PERMIT REQUIRED.

- a. A Use Permit (sometimes "UP") must be approved by the Planning Commission in accordance with the requirements of this article and the procedures set forth in the Zoning Ordinance and any necessary building permit also approved before the installation, erection, or change in location of the antennas and telecommunications facilities hereafter described as Class 3 facilities, unless such requirements is waived by the Planning Commission.
- (1) A telecommunications antenna mounted on a monopole or tower and related facilities located in the Industrial District greater than 80 feet in height and set back a minimum of 400 feet from a residential zoned property utilized for public and/or quasi-public uses.
 - (2) An antenna mounted on either monopole or tower support structures and related facilities greater than 40 feet in height located in any commercial or Agricultural districts utilized for public and/or quasi-public uses.
 - (3) A building- or tower-mounted citizens band radio antenna or antenna operated by federally licensed amateur radio operator as part of the Amateur Radio Service, including any mast, if the overall height (post and antenna) measured

from grade is greater than 65 feet.

(4) Any radio or television broadcast antenna located in the Industrial District and set back at least 3,000 feet from any residential district (including Planned Development and Mobile Home Park Districts).

b. Findings for Approval of Use Permit Application. In addition to the other requirements of this article, a Use Permit may be approved only if the UP findings required by section 10-1.3225 are made.

SEC. 10-13.100 ADMINISTRATIVE USE PERMIT OR USE PERMIT
REQUIRED FOR ANY EXCEPTION FROM REQUIREMENTS.

a. Exceptions to the requirements specified within this article may be granted by the Planning Commission's approval of a Use Permit, based on the findings required for a Use Permit and the additional finding that failure to adhere to the standard under consideration in the specific instance will not increase the visibility of the facility or decrease public safety. A minor exception, as determined by the Director of Community and Economic Development/Planning Director, may be granted through issuance of an administrative use permit.

b. In addition to the other requirements of this article, the following additional requirements may apply to the approval of a Use Permit for an exception:

(1) An exception to any fire safety related requirement may only be granted upon written concurrence by the Fire Chief.

(2) An exception from tower setback requirements may be approved under any of the following circumstances:

(a) The facility is proposed to be co-located onto an existing, legally-established telecommunications tower; and

(b) Overall, the reduced setback enables further mitigation of adverse visual and other environmental impacts than would otherwise be possible.

SEC. 10-13.110 RESERVED

SEC. 10-13.120 CO-LOCATION AND MULTIPLE-USER
TELECOMMUNICATIONS FACILITY REQUIREMENTS.

a. Each telecommunications carrier applicant shall provide a letter to the Director of Community and Economic Development/Planning Director stating willingness to allow other carriers to co-locate on their facilities wherever feasible or a written explanation why the subject facility is not a candidate for co-location.

b. Whenever possible, telecommunications facilities should be located on existing buildings, existing poles, or other existing support structures.

c. Approval of the project is subject to the decision-making body making a finding that the proposed site results in fewer or less severe environmental impacts than any

feasible alternative site. The City may require independent verification of this analysis at the applicant's expense. When requested by the Director of Community and Economic Development/Planning Director, the applicant shall prepare or cause to be prepared an analysis of all reasonable, technically feasible, alternative locations and/or facilities which would provide the proposed telecommunications service. The intention of the alternatives analysis is to present alternative strategies which would minimize the number or size and adverse environmental impacts of facilities necessary to provide the needed services to the City and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives.

- d. All co-located and multiple-user telecommunications facilities shall be designed to promote facility and site sharing. To this end, telecommunications towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities, and equipment buildings shall be shared by site users when in the determination of the Director of Community and Economic Development/ Planning Director or Planning Commission, as appropriate, this will minimize overall visual impact to the community.
- e. In order to avoid an antenna array group which may be undesirable or have detrimental effects, a maximum of three sets of antennas from three different telecommunications carriers shall be placed on any single monopole, unless technological advances in the design of the antennas make them minimally visually obtrusive.
- f. Although co-location is encouraged, there may be cases where separate facilities may have less adverse visual impacts, and therefore preferred over a single co-located facility. The Director of Community and Economic Development/ Planning Director shall retain the authority to make such a determination.

SEC. 10-13.130 ELECTROMAGNETIC RADIATION EMISSION

REQUIREMENTS.

- a. General Requirements. No telecommunications antenna or related facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a potential threat to public health. To that end, any telecommunications antenna and related facilities operating alone or in conjunction with other telecommunications facilities shall not generate electromagnetic frequency (EMF) radiation in excess of the standards for permissible human exposure to EMF as adopted by the California Public Utility Commission (CPUC) General Order 159, the Federal Communications Act of 1996, and/or including any other standards adopted by the FCC that may come henceforth be adopted or amended.
- b. Data to Accompany Permit Application. A Radio Frequency Radiation (RFR) Report from a licensed Radio Frequency Engineer of said compliance shall be provided by the carrier which documents the proposed facility's anticipated RFR levels at the time any application required by this article is submitted to the Director of Community and Economic Development/ Planning Director.
- c. Cumulative EMR Emission Data. In addition, all broadcast radio and television

facilities and wireless telecommunications facilities where three or more telecommunications facilities carriers are co-located on the same structure or on a parcel or on a separate parcel of land within 200 feet of another telecommunications facilities antenna shall prepare and submit an annual RFR monitoring report. The report shall address the cumulative field measurements of radio frequency emissions of all antennas installed at the subject site or location. The report shall quantify the radio frequency emissions and compare the results with either the most current American National Standards Institute (ANSI) standards, or other standards adopted by the FCC or CPUC. Said report shall be subject to review and approval by the Director of Community and Economic Development/Planning Director for consistency with the accepted standards. If the City finds that the wireless telecommunications facilities service providers do not meet these standards, the service providers shall be required to bring the entire site into compliance with said standards, or be subject to review before the Planning Commission at a public hearing where the operation permit may be modified or revoked.

SEC. 10-13.140 RESERVED

SEC. 10-13.150 NOTICE OF PERMIT PROCEEDINGS. Notice of the filing of a permit application required by this article shall be given pursuant to section 10-1.2820. In addition to such public notice, a notice of consideration or a public hearing or notice of decision, as appropriate, of a Telecommunications Site Review, Administrative Use Permit or Use Permit regarding the establishment or modification of a telecommunications facility shall be provided by mail to the operators of all telecommunications facilities registered with the City of Hayward pursuant to section 10-13.040, with a facility located within one mile of the subject parcel.

SEC. 10-13.160 APPEAL AND REVIEW PROCESS. Any person who disagrees with a ruling or interpretation of the Director of Community and Economic Development/Planning Director regarding the application of the requirements of this article or action taken by the Planning Commission may appeal the matter in accordance with the provisions of the Zoning Ordinance and this section. For the purposes of this section, a ruling is a discretionary action on a permit application, and an interpretation refers to a determination regarding the application of any requirement imposed by this article.

- a. An appeal from a ruling or interpretation regarding a Telecommunications Site Review application shall follow the requirements of section 10-1.3045.
- b. An appeal from a ruling or interpretation regarding an Administrative Use Permit application shall follow the requirements of section 10-1.3145.
- c. An appeal from a ruling or interpretation regarding a Use Permit application shall follow the requirements of section 10-1.3245.
- d. On the filing of a timely appeal, the Planning Director shall transmit the application to the Planning Commission for consideration, or to the City Council in the case of an appeal from the Planning Commission's decision.
- e. Notwithstanding this section, an individual may file for an exception from the provisions of this article pursuant to section 10-13.120.

SEC. 10-13.170 ADMINISTRATIVE REFERRAL. When there is a question regarding the interpretation of this article, or its application to any specific case or situation, the

Director of Community and Economic Development/Planning Director may refer said question to the Planning Commission, according to the role and responsibilities of said Commission specified in article 2-3.

SEC. 10-13.180 PERMIT FINDINGS. All decisions granting or denying a permit required by this article shall be made in writing, based on the findings required by section 10-13.070 in the case of a Telecommunications Site Review application, or by the Zoning Ordinance for an Administrative Use Permit or Use Permit application.

SEC. 10-13.190 EFFECTIVE DATE OF PERMIT DECISIONS. The decision of the Director of Community and Economic Development/Planning Director or the Planning Commission or the City Council shall take effect in accordance with the provisions of section 10-1.2825.

SEC. 10-13.200 RIGHTS GRANTED. No approval granted under this article shall convey any right, title or interest in the public rights-of-way, but shall be deemed approved only to use and occupy the public rights-of-way for the limited purposes and term stated in the approval. Further, no approval shall be construed as any warranty of title.

SEC 10-13.210 MODIFICATION OR REVOCATION OF PERMITS; LAPSE OF PERMITS.

- a. Lapse of Approval. The approval of any Telecommunications Site Review, Administrative Use Permit, or Use Permit authorizing installation or change in location of a telecommunications antenna or related facility shall become void pursuant to section 10-1.3255, or other applicable provision of the Zoning Ordinance
- b. Permit Modification or Revocation. A Telecommunications Site Review, Administrative Use Permit, or Use Permit authorizing the installation or change in location of a telecommunications antenna or related facility may be modified or revoked pursuant to section 10-1.3260, or other applicable provision of the Zoning Ordinance
- c. Expiration or Abandonment of Permit. A Telecommunications Site Review, Administrative Use Permit or Use Permit shall automatically become null and void without notice or hearing upon the occurrence of any of the following events: termination or expiration of the lease or rental agreement pertaining to the property on which the telecommunications antenna and related facility is located, or abandonment or continuous cessation of use for more than 12 months.
- d. Removal of Improvements. Unless a new permit is issued within 180 days thereafter, all improvements installed including their foundations shall be removed from the property and the site restored to its natural pre-construction state within 180 days of permit expiration, revocation or abandonment. Any access road installed shall also be removed and the ground returned to its natural condition unless the property owner establishes to the satisfaction of the Director of Community and Economic Development/Planning Director that these sections of road are necessary to serve some other allowed use of the property that is permitted or is currently present or to provide access to adjoining parcels.

SEC. 10-13.220 REMOVAL OF TELECOMMUNICATIONS FACILITIES.

- a. The applicant shall provide notification to the Director of Community and Economic

Development/Planning Director upon cessation of operations on the site. The applicant shall remove all obsolete or unused facilities from the site within six months of termination of its lease, cessation of operations, or expiration of its permit, subject to the determination of the Director of Community and Economic Development/Planning Director that the use of the site has ceased for a period of six months. Should the owner fail to effect such removal, the property owner shall be responsible for the removal of the equipment.

- b. A new permit shall be required if the site is to be used again for the same purpose as permitted under the original permit, if a consecutive period of six months has lapsed since cessation of operations.
- c. Any FCC licensed telecommunications carrier that is buying, leasing, or considering a transfer of ownership of an already approved facility shall submit a letter of notification of intent to the Director of Community and Economic Development/Planning Director.

SEC. 10-13.230 SEVERABILITY. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Hayward hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

ANTENNA & TELECOMMUNICATIONS FACILITIES ORDINANCE

APPENDIX "B"

DEFINITIONS

SEC. 10-13.B DEFINITIONS. For the purpose of this article, the following words and phrases shall have the meaning respectively ascribed to them in this section:

- a. "Amateur (HAM) Antenna" means an antenna operated by a person holding a written authorization from the Federal Communications Commission to be the control operator of an amateur station.
- b. "Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves when such system is either external to or attached to the exterior of a structure. Antennas shall include devices having active elements extending in any direction, and directional beam-type array having elements carried by and disposed from a generally horizontal boom that may be mounted upon and rotated through a vertical mast or tower interconnecting the boom and antenna support, all of which elements are deemed to be a part of the antenna. Antennas shall include cellular on wheels (COWs) and cellular on light trucks (COLTs) facilities; as well as dispatch carriers for Specialized Mobile Radio (SMR) services and Enhanced SMR (ESMR).
 - (1) "Antenna - Building-Mounted" means any antenna, other than an antenna with its supports resting on the ground, directly attached or affixed to a building, tank, tower, building-mounted mast less than 10 feet tall above the roof ridge line and 6 inches in diameter, or structure other than a telecommunications tower.
 - (2) "Antenna - Directional" (also known as a "panel" antenna) transmits and/or receives radio frequency signals in a directional pattern of less than 360 degrees.
 - (3) "Antenna - Facade-Mounted" means an antenna that is directly attached or affixed to any facade of a building or other structure. Also known as a building-mounted antenna.
 - (4) "Antenna - Ground-Mounted" means an antenna with its support structure or base placed directly on the ground, the total height of which does not exceed 14 feet, including the height of the antennas.
 - (5) "Antenna - Omni-directional" (also known as stick, whip, or pipe antennas) means any antenna which transmits and/or receives radio frequency signals in a 360-degree horizontal pattern and a compressed vertical plane. For the purpose of this article, omni-directional antennas have diameters between 2 and 6 inches, and measures between 1 and 18 feet in height.

"Antenna - Panel" (see "Antenna - Directional")

- (6) "Antenna - Parabolic" (also known as a satellite dish antenna) means any device incorporating a reflective surface that is solid, open mesh, or bar-configured that is shallow dish, cone, horn, bowl, or cornucopia shaped and is used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern. This definition include, but is not limited to satellite earth stations, TVROs, and satellite microwave antennas.
- (7) "Antenna - Portable" means any device used to transmit and/or receive electromagnetic or radio frequency communication/signals in a specific directional pattern, located on a portable or moveable base designed to be placed either for temporary or long-term use at a given site.
- (8) "Antenna - Roof-Mounted" means an antenna directly attached or affixed to the roof, generally free-standing, of an existing building or structure other than a telecommunications tower.
- (9) "Antenna - Vertical" means a vertical type antenna without horizontal cross-sections greater than one-half inch in diameter.

"Antenna - Whip" (see "Antenna - Omni-directional")

- c. "Antenna Array" means a structure attached to a telecommunications tower that supports a telecommunications antenna or antennas.
- d. "Antenna Array Group" means more than two sets of antennas by different service providers placed on a monopole, tower, building, or other support structure or on multiple poles, towers, buildings, or other support structures on the same parcel of land or on different parcels where the antennas are located within 200 feet from each other (also known as an antenna farm).
- e. "Co-location" means a wireless telecommunications facility comprising a single telecommunications tower, monopole, or building supporting antennas owned or used by more than one telecommunications carrier. Co-location shall also include the location of wireless telecommunications facilities with other facilities such as water tanks, light standards, and other utility facilities and structures (see also Telecommunications Facility).
- f. "Commercial Use" means a use that involves the exchange of cash, goods, or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time.
- g. "Direct Broadcast Satellite Service" (DBS) is a system in which signals are transmitted directly from a satellite to a small home receiving dish which does not exceed 18 inches in diameter. The system is commonly marketed as Digital Satellite System (DSS). DBS or DSS competes with cable television.

- h. "Electromagnetic Radiation or EMR" means a type of non-ionizing electromagnetic radiation (radio frequency within the electromagnetic spectrum) which our bodies ordinarily cannot detect, including radio and TV signals and microwaves. Other forms of this radiation include ordinary light, which we can see, and infrared radiation, which we sense as heat.
- i. "Equipment building, shelter, or cabinet" means a cabinet or building at a facility site used to house equipment which supports a telecommunication system.

"Ham Amateur Antenna" (see "Amateur [HAM] Antenna")
- j. "Inhabited Area" means any residence, any other structure regularly occupied by people, or any outdoor area used by people on a regular basis.
- k. "Lattice Tower" means a self supporting support structure, erected on the ground, which consists of metal cross-strips or bars to support antennas and related equipment.
- l. "Maximum Credible Earthquake" means the maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.
- m. "Monopole" is a wireless communication facility which consists of a single-pole structure or spire, erected on the ground to support wireless communication antennas and appurtenances.
- n. "Public service use or facility" means a use operated or used by a public body or public utility in connection with any of the following services: water, waste water management, public education, parks and recreation, fire and police protection, solid waste management, transportation, or utilities.
- o. "Public-Right-of-Way" means and includes all public streets and utility easements, now and hereafter owned by the City, but only to the extent of the City's right, title, interest, or authority to grant a license to occupy and use such streets and easements for telecommunications facilities.
- p. "Quasi-Public Use" means a use serving the public at large, and operated by a private entity under a franchise or other similar governmental authorization, designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public.
- q. "Readily Visible" means an object that stands out as a prominent feature of the landscape.
- r. "Related Equipment" means all equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include but is not limited to cable, conduit, and connectors.

"Roof Ridge line" (see "Structure or Roof Ridge line")
- s. "Satellite Earth Station" means a telecommunications facility consisting of more than a single satellite dish smaller than 10 feet in diameter that transmits to and/or receives

signals from an orbiting satellite.

- t. "Silhouette" means a representation of the outline of the towers and antenna associated with a telecommunications facility, as seen from an elevation perspective.
- u. "Stealth Facility" means any communications facility which is designed to blend into the surrounding environment, and is visually unobtrusive. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted and treated as architectural elements to blend with the existing building. Also known as concealed telecommunications facilities.
- v. "Stealth Pole" means a monopole that is disguised or camouflaged using existing vegetation, as a flag pole, public art, light pole, clock tower, etc. A slim pole with antennas that are flush with the structure is not considered a stealth pole. The Director of Community and Economic Development/Planning Director shall make the determination of what constitutes a stealth pole.
- w. "Structure or Roof Ridge line" means the line along the top of a roof or top of a structure, if the structure has no raised roof.
- x. "Telecommunications Facility" means a wireless facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types equipment for the transmission or receipt of such signals, telecommunications towers, or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.
- y. "Telecommunications Tower" means a structure more than 10 feet tall, built primarily to support one or more telecommunications antennas.

ANTENNA & TELECOMMUNICATIONS FACILITIES ORDINANCE

APPENDIX “C”

GENERAL REQUIREMENTS, DESIGN GUIDELINES, OTHER REGULATIONS

SEC. 10-13.C1 GENERAL REQUIREMENTS. The following requirements shall be met for any Telecommunications Facility in any zoning district:

- a. A telecommunications antenna and related facilities shall not be situated between the primary building on the parcel and any public or private street adjoining the parcel. Where the property has frontage on more than one street or access way, the Director of Community and Economic Development/Planning Director or approval authority may approve facilities between the primary structure and the lesser street or access way but not within a required yard setback area or within 20 feet of the street right-of-way. Equipment shelters, cabinets, or other support structures shall be screened from view.
- b. The antenna and related facility or support structure shall not be located within any required yard setbacks specified in the zoning district in which the antenna is to be located and in no case closer than 20 feet to any front property line in any district and no closer than 5 feet to a side or rear property line where the parcel abuts a residential district unless a greater setback is specified elsewhere within this chapter;
- c. None of the guy wires employed shall be anchored within the area in front of the building on the parcel and the public right-of-way;
- d. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their function;
- e. The height of the facility shall include the height of any structure upon which it is placed, unless otherwise defined with this article;
- f. All utility lines to the facility from public or private streets shall be under grounded;
- g. All wireless telecommunications facilities shall provide, when deemed necessary by the Director of Community and Economic Development/Planning Director or Planning Commission, sufficient anti-climbing and security measures into the facility as needed to reduce potential for unauthorized access, vandalism, or injury. The design of any fencing shall be subject to staff or Planning Commission review and approval.
- h. All telecommunications facilities shall be unlit except when personnel are actually present at night and when tower lighting is required under FAA regulation; and
- i. Any telecommunications facility located in the hill area, except exempt antennas as listed in section 10-13.060, shall be served by the minimum roads and parking areas necessary. Access roads shall meet the width and structural requirements of the Fire

Chief and Director of Public Works.

SEC. 10-13.C2 DESIGN CRITERIA. The following design criteria shall apply to all antennas and telecommunications facilities as specified within this Chapter:

a. Design Criteria for Satellite Antennas.

(1) Residential Districts

- (i) No satellite dish antennas shall be placed within the required front yard, side street yard or within five feet of any side or rear property line of any lot within a residential district.
- (ii) All satellite dish antennas shall have a maximum diameter of eight feet.
- (iii) All ground-mounted satellite dish antennas shall have a maximum height of seven feet.
- (iv) All ground-mounted satellite dish antennas shall be screened from all public and private streets and neighboring properties to the maximum extent permitted by the regulations of the Zoning Ordinance.
- (v) When a satellite dish antenna is attached to a residence, it shall not exceed three feet in diameter and in no case shall it be higher than the structure ridge line of the building on which it is mounted and shall be located at the rear of the structure. A larger satellite dish may be roof-mounted if the antenna can be screened from view from the public right-of-way and the screening material is compatible and consistent with the materials, color, and architectural character of the dwelling.
- (vi) Transmitting satellite dish antennas shall not be allowed in conjunction with residential land uses; however, transmitting satellite dish antennas operated by federally licensed amateur radio operators shall be exempt from this provision.
- (vii) A building permit and compliance with all applicable provisions of the Uniform Building Code shall be required, when so designated, prior to the installation of any satellite dish antenna.
- (viii) Exceptions to location may be made by the Director of Community and Economic Development/Planning Director if it can be shown that substantial reception would be lost if satellite antennas are located in prohibited areas. In no case, however, shall a ground-mounted antenna be allowed within the front yard or side street yard setbacks.

(2) Commercial and Industrial Districts

- (i) Satellite dish antennas shall not be placed within the required front yard or side street yard or within five feet of any side or rear property

line where the parcel abuts a residential district (including residential Planned Development and Mobile Home Park Districts) of any lot in any commercial or Industrial zoning districts.

- (ii) Satellite dish antennas located in commercial, Industrial or the Air Terminal-Industrial districts shall not be placed between a building and any right-of-way unless totally screened from view. Ground-mounted antennas shall be screen from public view by being located at the rear of a building. Antennas shall not exceed a diameter of eight feet and a height of seven feet in a commercial district and shall not exceed twelve feet in diameter or twelve feet high in the Industrial District unless approved otherwise by the Director of Community and Economic Development/Planning Director.
 - (iii) In a commercial or industrial district, roof-mounted satellite dish antennas shall be located at the rear of the structure or the area that provides the greatest possible screening from the public right(s)-of-way and shall not extend over four feet above the height the highest part of the roof.
 - (iv) Exceptions to location may be made by the Director of Community and Economic Development/Planning Director if it can be shown that substantial reception would be lost if satellite antennas are located in prohibited areas.
 - (v) All solid (non-mesh) satellite dish antennas that are not screened from view shall be painted a color similar to the dominant color at the location where the satellite dish antenna is installed. If no dominant color can be determined, the satellite dish antenna shall be painted beige or other approved color determined by the Director of Community and Economic Development/Planning Director.
 - (vi) Satellite dish antennas shall not have on them any added type of signs or logos except those provided by the manufacture or those required for warning or certification seals or stamps.
- (3) Existing Antennas. This section shall not apply to any satellite dish antenna or any licensed amateur radio station antenna lawfully installed prior to the effective date of this ordinance. Such antennas shall be allowed to remain as originally installed and shall not be considered nonconforming structures, but any relocation or increase in the size or height thereof shall be subject to the provisions of this section. Any person claiming an exemption shall have the burden of proving that the antenna was lawfully installed prior to the applicable date specified herein.

b. Design Criteria for Roof-Mounted Telecommunications Facilities.

- (1) Roof-mounted telecommunications facilities shall be allowed in all zoning districts. Roof-mounted facilities shall not be located on sites zoned and used for residential purposes less than one-half acre.

- (2) Roof-mounted telecommunications facilities antennas shall not be allowed on single-family residential dwellings. However, roof-mounted antennas that incorporate appropriate stealth techniques may be allowed on multi-family structures or on other non-residential buildings within residential districts.
- (3) Roof-mounted telecommunications facilities antennas shall not be allowed when they are placed in direct line of sight of significant view corridors or where they affect scenic vistas, unless such facilities incorporate appropriate stealth techniques.
- (4) The height of roof-mounted antennas including the support structure, shall generally not exceed 10 feet above the parapet line of the existing building on which they are placed. Antennas that require additional height shall be subject to an administrative use permit and may be required to provide additional screening as determined appropriate by the approving authority.
- (5) All roof-mounted antennas shall be located in an area of the roof where the visual impact is minimized from the street or from where there would be the greatest visual impact.
- (6) All roof-mounted facilities that are visible shall be painted a non-reflective matte finish, using an appropriate color that blends with the backdrop. The final choice of colors shall be determined by the Director of Community and Economic Development/Planning Director on-site on a case-by-case basis.
- (7) Wherever possible, equipment facilities shall be located within the building. Equipment cabinets or shelters located outside the primary use shall be placed as close to the building as possible and away from required yard setback areas or required project group open space areas.
- (8) Equipment cabinets, if located on the rooftop of buildings, shall be so located as to be minimize visibility from public rights-of-way. If any portion of the equipment cabinet is visible, it shall be subject to the same screening requirements as other roof top mechanical equipment.

c. Design Criteria for Facade-Mounted Telecommunications Facilities.

- (1) Facade-mounted telecommunications facilities shall be allowed in all zoning districts. Facade-mounted facilities shall not be located on sites zoned and used for residential purposes less than one-half acre.
- (2) Facade-mounted telecommunications facilities antennas on structures less than four stories shall be camouflaged by incorporating the antennas as part of a design element of the building or shall be hidden behind a stealth wall panel or other element. Any added design element should be consistent throughout the building and should add visual interest to the structure. When antennas are used as a design element, dummy elements may be required to be installed in order to retain the architectural continuity of the building. Facade-mounted antennas on building four or more stories in height shall be placed in such a manner to lessen their visual impact by painting and texturing them to match the building.

- (3) Antennas and the associated mountings shall generally not project beyond a maximum of 18 inches from the face of the building.
- (4) Wherever possible, equipment facilities shall be located within the building. Equipment cabinets or shelters located outside the primary use shall be placed as close to the building as possible and away from required yard setback areas or project open space areas.
- (5) Equipment cabinets, if located on the rooftop of buildings, shall be so located as to be minimize visibility from public rights-of-way. If any portion of the equipment cabinet is visible, it shall be subject to the same screening requirements as other roof top mechanical equipment.

d. Design Criteria for Ground-Mounted Telecommunications Facilities.

- (1) Ground-mounted antennas may be allowed in any zoning district and subject to an Administrative Use Permit. When located within a residential district or residential Planned Development District, ground-mounted antennas shall be subject to approval of a conditional Use Permit.
- (2) Ground-mounted telecommunications facilities shall be prohibited on or above the ridge line of any hill.
- (3) Ground-mounted telecommunications facilities antennas shall be no taller than 14 feet, including the height of the antennas.
- (4) Ground-mounted telecommunications facilities located in the hill area shall comply with the City of Hayward Hillside Design and Urban/Wildland Interface Guidelines.
- (5) Ground-mounted telecommunications facilities antennas shall be setback at least 20 feet, measured horizontally, from any side or rear property line of any adjacent lot designated for residential use and used as residential.
- (6) Ground-mounted telecommunications facilities by different carriers shall generally not be allowed within 500 feet of one another, unless the Director of Community and Economic Development/Planning Director determines that co-location on the same property or at a closer spacing would lessen the cumulative visual impact in the area.
- (7) In order to reduce any potential visual impacts and improve the appearance of "antenna array groups" in the hill area, no more than twelve antennas shall be allowed per carrier. The Director of Community and Economic Development/Planning Director may allow additional antennas and/or restrict the number of carriers on a parcel depending upon site capacity.
- (8) All proposed ground-mounted telecommunications facilities shall be located within easy reach of existing access roads to the extent feasible. In undeveloped hillside areas, telecommunications facilities carriers or providers shall work with subdividers or developers to provide integrated antenna sites

that will require the least amount of grading and road extension possible.

- (9) In the hill area east of Mission Boulevard, all associated equipment shelters or cabinets for ground-mounted telecommunications facilities shall be limited to a maximum height of three feet above the existing grade, unless other techniques are adopted to ensure minimal visual impact by use existing contours and level differences to maintain the three-foot height limit. On a case-by-case basis, the Director of Community and Economic Development/ Planning Director may allow taller exposed structures if the design of the shelter is architecturally compatible with other immediately adjacent structures and if it can be found that the exposed structure would not impact the visual quality of the area.

e. Design Criteria for Monopoles.

- (1) Monopoles and their antenna array may not be located within any required yard setback area specified in the zoning district in which the antenna is to be located and in no case closer than 20 feet to any front property line in any district and no closer than 5 feet to a side or rear property line where the parcel abuts a residential district except within the Industrial District where monopoles shall be setback a minimum of 300 feet from an adjacent residential zoned parcel or mobile home park;
- (2) The smallest available and least visible antennas that provide the coverage objective shall be used when mounted on monopoles. The number of antennas shall represent the minimum number required to complete the telecommunications network.
- (3) Monopoles shall not be located within the residential areas of the City unless they have been designed as stealth facilities and blend in with existing structures.
- (4) Monopoles proposed as the sole or primary use of the property shall not be allowed except within the Industrial or Agricultural Districts. Monopoles should be designed as an accessory use on a property. Where feasible and aesthetically desirable, facilities are encouraged to co-locate with other facilities such as water tanks, light standards, and other utilities where the co-location is found to minimize the overall visual impact.
- (5) Co-location of telecommunications facilities on a single pole or support structure is encouraged. The use of monopoles for a single user shall be discouraged. Approval of a monopole for a single user will be conditioned to require the applicant's cooperation with other communications companies in co-locating additional antennas on the monopole/structure and the applicant may be required to design a pole or tower facility that will accommodate more than one carrier. This exercise of good faith in the co-location of facilities is encouraged to the extent that such shared use does not give rise to a substantial technical level- or quality-of-service impairment of the permitted use (as opposed to a competitive conflict or financial burden).
- (6) Freestanding monopoles shall be located and designed to minimize visual

impacts. Monopoles in areas where adverse visual impacts cannot be avoided (as in some commercial areas) shall incorporate "stealth" techniques to camouflage them as a pieces of art/sculpture, flag poles, light poles, or other interesting visual forms that would not be considered an adverse visual impact.

- (7) Free-standing monopoles shall generally not be allowed within 1000 feet of each other, except in the Industrial District or except when the adverse visual impacts are not significant.
- (8) Minor modifications to the communications equipment design, location, elevations, and other elements of the above exhibit may be allowed, subject to the approval of the Director of Community and Economic Development/ Planning Director, if such modifications are in keeping with the architectural statement and layout design of the original approval.
- (9) Monopoles that are developed as a primary use, where allowed, shall be converted to roof-, facade- or ground-mounted facilities with the development of the site when physically and technically possible.

f. Basic Tower, Building Design, and Public Safety. To this end all the following measures shall be implemented:

- (1) Telecommunications towers shall be constructed out of metal or other non-flammable material, unless specifically conditioned by the City to be otherwise.
- (2) Satellite dishes located in non-Industrial District zones other than microwave dishes and DBS and DSS antennas shall be of mesh construction, except where technical evidence is acceptable to the Director of Community and Economic Development/Planning Director or Planning Commission, as appropriate, is submitted showing that this is infeasible.
- (3) Telecommunications support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of non-reflective materials (visible exterior surfaces only) and shall be located within a building, placed partially underground in sensitive areas (e.g. hill area) or sited in a manner to lessen its visual impact.
- (4) Telecommunications equipment or storage facilities shall be no taller than one story (14 feet) in height and shall be treated to look like a building or facility typically found in the area. The design, color and materials shall be consistent with the primary use on the property and shall consider the design of other structures in the immediate area.
- (5) The equipment cabinets/structures shall be placed in areas so they are least visible from public rights-of-way, and have minimal visual impacts. Any visible portion of the equipment cabinet shall be screened, where necessary, using appropriate techniques (i.e. landscaping, berms, decorative walls, etc.)
- (6) All buildings, poles, towers, antenna supports, antennas, and other

components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a non-reflective matte finish, using an appropriate color that blends with the backdrop. The color selected shall be determined by the Director of Community and Economic Development/ Planning Director on site on a case-by-case basis.

- (7) The City shall have the authority to require special design of the telecommunications facilities where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features).
- (8) All security fencing/walls, if used, shall be designed to be graffiti-resistant. The applicant shall be responsible for graffiti-free maintenance of all telecommunications facilities, and shall remove any graffiti within seven days of occurrence of City notification.
- (9) The applicant shall provide signage as required by the permitting authority, including phone numbers of the utility provider for use in case of an emergency for monopole, towers, and ground-mounted antennas. The signs shall be posted at the communications equipment/structure.

g. Other Regulations. The following regulations shall apply to all antennas and telecommunications facilities as specified within this Chapter:

- (1) Critical Disaster Response Facilities. All radio, television, and voice communication facilities providing service to government or the general public shall be designed to survive a natural disaster without interruption in operation. To this end all the following measures shall be implemented:
 - (i) Non-flammable exterior wall and roof covering shall be used in the construction of all buildings;
 - (ii) Openings in all buildings shall be protected against penetration by fire and windblown embers;
 - (iii) The telecommunications tower when fully loaded with antennas, transmitters, other equipment, and camouflaging shall be designed to withstand the forces expected during the "maximum credible earthquake." All equipment mounting racks and equipment used shall be anchored in such a manner that such a quake will not tip them over, throw the equipment off its shelves, or otherwise act to damage it;
 - (iv) All connections between various components of the facility and with necessary power and telephone lines shall be protected against damage by fire, flooding, and earthquake; and
 - (v) Measures shall be taken to keep the facility in operation in the event of disaster.
- (2) Height Determination. The height of a telecommunications tower shall be measured from the natural undisturbed ground surface below the center of the

base of said tower to the top of the tower itself or, if higher, to the tip of the highest antenna or piece of equipment attached thereto. In the case of building-mounted towers the height of the tower includes the height of the portion of the building on which it is mounted. In the case of "crank-up" or other similar towers whose height can be adjusted, the height of the tower shall be the maximum height to which it is capable of being raised.

- (3) Visual. All telecommunications facilities, except exempt antennas as listed in Section 10-13.050, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented:
- (i) All proposed telecommunications facilities shall be located so as to minimize their visibility.
 - (ii) The order of preference for telecommunications facility mountings, based on their potential adverse impacts, is facade mounts, roof mounts, ground mounts, and free standing monopoles. In order to use any mounting, the applicant will be required to specify why mounting types with a less adverse visual impact cannot be used.
 - (iii) Applicants are encouraged to consider providing architectural treatments and using "stealth techniques" to reduce potential visual impacts for all telecommunications facilities, and especially for those proposed in areas easily visible from a major traffic corridor, commercial center, or in a residential district.
 - (iv) In addition to the photo simulations showing before and after scenarios, applicants may be required to do additional visual analysis, including sectional drawings showing height of proposed facility as viewed from public rights-of-way.
 - (v) Applicants may be required to construct a partial scale "mock-up" of a proposed facility using materials and colors that resemble the actual facility for proposed ground mounted facilities and if required, roof-mounted facilities, if the Director of Community and Economic Development/Planning Director deems it necessary.
 - (vi) All buildings, poles, towers, antenna supports, antennas, and other components of each telecommunications site shall be initially painted and thereafter repainted as necessary with a non-reflective matte finish, using an appropriate color that blends with the backdrop. The color selected shall be determined by the Director of Community and Economic Development/Planning Director on site on a case-by-case basis.
 - (vii) Landscaping shall be used as screening wherever appropriate to reduce the visual impacts of wireless telecommunications services. Any proposed landscaping shall be visually compatible with existing vegetation in the vicinity. Landscaping shall be subject to review and approval of the City's Landscape Architect.

(viii) The equipment cabinets/structures, if located where visible from a public right-of-way, shall be treated architecturally to match any existing building or topography on the site.

(4) Vegetation Protection and Facility Screening. All telecommunications facilities shall be installed in such a manner so as to maintain and enhance existing vegetation and to install suitable landscaping to screen the facility, where necessary. To this end all the following measures shall be implemented for all telecommunications facilities, except antennas as listed in section 10-13.050.

(i) When required by the Director of Community and Economic Development/ Planning Director, applications for wireless telecommunications facilities shall be accompanied by a landscape plan that shows existing vegetation, indicates any vegetation proposed for removal or trimming, and identifies proposed plantings by type, size, and location. Existing vegetation shall be identified on the landscape plan with indication of species type, diameter of trees four inches or greater [measured at four and one-half feet high], and whether it is to be retained or removed or trimmed with project development. The emphasis of the landscape plan should be to visually screen the proposed facility and stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant species, compatible with the predominant natural setting of the project area unless non-native material is found to be more appropriate by the City Landscape Architect.

(ii) Existing trees and other screening vegetation in the vicinity of the facility and along the access roads and power/telecommunications line routes involved shall be protected from damage, both during the construction period and thereafter. To this end, the following measures shall be implemented:

a. On a case-by-case basis and when required by the City Landscape Architect, a Tree Protection Plan shall be submitted with the building permit or improvement plan. This plan shall be prepared by a certified arborist and give specific measures to protect trees during project construction.

b. Grading, cutting/filling, and the storage/parking of equipment/ vehicles shall be prohibited in landscape areas to be protected and the drip line of any trees required to be preserved. Such areas shall be fenced to the satisfaction of the City Landscape Architect, as appropriate. Trash, debris, or spoils shall not be placed within these fences nor shall the fences henceforth be opened or moved until the project is complete and authorization is granted by the City Landscape Architect.

c. All underground lines shall be routed such that a minimum amount of damage is done to tree root systems.

- (iii) All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.
- (iv) No vegetation shall be removed subsequent to project completion except to comply with local fire safety regulations or to prevent safety hazards to people and property.
- (v) Where appropriate, the carrier may be required to enter into a landscape performance and maintenance agreement with the City of Hayward to ensure the installation and establishment of required landscaping. The duration of any required landscape maintenance agreement shall be for a minimum period of no less than one year.
- (vi) Any existing trees or significant vegetation on the facilities site or along the affected access area that die shall be replaced with native or other approved landscape material.
- (vii) The applicant shall be required to provide proof of availability of required irrigation facilities for all landscaping used for screening the telecommunications facilities, especially in the hill area, prior to approval.
- (viii) No actions shall be taken subsequent to project completion with respect to the vegetation present that would increase the visibility of the facility itself or the access road and power/ telecommunications lines serving it.

(5) Fire Prevention.

- (i) All telecommunications facilities shall be designed and operated in such a manner so as to minimize the risk of igniting a fire or intensifying one that otherwise occurs. To this end all of the following measures shall be implemented for all telecommunications facilities, when determined necessary by the Fire Chief, except exempt antennas as listed in section 10-13.050.
 - a. At least one-hour fire resistant interior surfaces shall be used in the construction of all buildings;
 - b. Monitored automatic fire extinguishing systems approved by the Fire Chief shall be installed in all equipment buildings and enclosures;
 - c. Rapid entry (KNOX) systems shall be installed as required by the Fire Chief;
 - d. Type and location of vegetation and other materials within ten feet of the facility and all new structures, including telecommunications towers, shall have review of fire safety

purposes by the Fire Chief. Requirements established by the Fire Chief shall be followed; and

- e. All tree trimmings and trash generated by construction of the facility shall be removed from the property and properly disposed of prior to building permit finalization or commencement of operation, whichever comes first.
 - (ii) Demonstration of compliance with requirements of this section shall be evidenced by a certificate signed by the Fire Chief on the building plans submitted when so required.
- (6) Environmental Resource Protection. All telecommunications facilities shall be sited so as to minimize the effect on environmental resources. To that end the following measures shall be implemented for all telecommunications facilities, except exempt antennas as listed in section 10-13.030.
- (i) No telecommunications facility or related improvements including but not limited to access roads and power lines shall be sited so as to create a significant threat to the health or survival of rare, threatened, or endangered plant or animal species;
 - (ii) No telecommunications facility or related improvements shall be sited such that their construction will damage an archaeological site or have an adverse effect on the historic character of a historic feature or site;
 - (iii) The facility shall comply with all applicable City regulations and standards pertaining to applicable City Floodplain, Storm Drainage and Erosion Control regulations.
 - (iv) Potential adverse visual impacts which might result from project related grading or road construction shall be minimized;
 - (v) Potential adverse visual impacts upon nearby public use areas such as parks or trails shall be minimized; and
 - (vi) Drainage, erosion, and sediment controls shall be required as necessary to abate soil erosion and sedimentation of waterways. Structures and roads on slopes of 20 percent or greater shall be avoided. Erosion control measures shall be incorporated for any proposed facility which involves grading or construction near a waterway or on lands with slopes over 20 percent. Natural vegetation and topography shall be retained to the extent feasible.
- (7) Noise and Traffic. All telecommunications facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to the residents of nearby homes and the users of nearby recreational areas such as public parks and trails. Noise and traffic reduction shall be accomplished through the following measures:
- (i) The construction and operation of wireless telecommunications

facilities shall be in compliance with the noise exposure standards of the Hayward Municipal Code.

- (ii) Normal testing and maintenance activities shall occur between the hours of 8:00 a.m. and 5:00 p.m., weekdays (Monday through Friday, non-holiday) excluding emergency repairs. Normal testing and maintenance activities which do not involve the use or operation of telecommunications and maintenance equipment that is audible from residences and other nearby sensitive receptors may occur at all other times.
- (iii) Backup generators shall only be operated during power outages, emergency occurrences, or for testing and maintenance in accordance with item (2) above. If the facility is located within 100 feet of a residential dwelling unit, noise attenuation measures shall be included to reduce noise levels to an exterior noise level of at least a Ldn of 60 dB at the property line and an interior noise level of a Ldn of 45 dB.
- (iv) Traffic resulting from the operation and maintenance of a telecommunications facility must be kept to a minimum. Conditions of project approval shall specify a maximum number of trips on a case-by-case basis based upon the carrier's maintenance and testing schedule and the location of the facility when in close proximity to residential units.
- (v) When requested by the Director of Community and Economic Development/Planning Director, applications for telecommunications facilities shall include a copy of a title report or other legal instrument demonstrating legal access to the proposed facilities site.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 10, 2011, 7:00 p.m.
777 B Street, Hayward, CA 94541**

MEETING

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Loché.

ROLL CALL

Present: COMMISSIONERS: Mendall, Márquez, Lamnin, McDermott, Lavelle
CHAIRPERSON: Loché
Absent: COMMISSIONER: Faria

Commissioner Mendall led in the Pledge of Allegiance.

Staff Members Present: Conneely, Emura, Patenaude, Philis

General Public Present: 9

PUBLIC COMMENTS

None

ACTION ITEMS

PUBLIC HEARING

1. Conditional Use Permit No. PL-2010-0046 - Modification of Use Permit No. 90-59 - Raj Chabra and Noam Garfinkel, Chalk It Up (Applicant) / Raj Chabra (Owner) - Request to Allow the Sale of Beer Within an Existing Billiard Parlor and to Raise the Maximum Occupancy From 100 to 250 Persons - The Project Is Located at 22540 Foothill Boulevard, Between A and B Streets

Associate Planner Carl Emura gave a brief synopsis of the report noting that a letter was received from COMMPRE (Community Prevention of Alcohol-Related Problems) expressing concern that this was a high-crime area, and that minor access to alcohol could be difficult to monitor because of the layout of the establishment. Mr. Emura indicated that letters were also received from Ted and Sharon Crowton in opposition to the application because of the elimination of an entertainment venue for youth under 21 years of age, the request to sale alcohol, and the over concentration of liquor outlets in that area.

Commissioner Márquez asked for clarification between an ABC (State Department of Alcoholic Beverage Control) liquor license Type 40 versus Type 42 and if the alcohol must be consumed on-site. Associate Planner Emura explained that Type 40 is the sale of beer only and consumption can be on or off-site, however, a condition of approval prohibits the alcohol from taken out of the establishment.

Commissioner Márquez then asked where surveillance cameras would be located in the parking lot. Mr. Emura said the applicant will be working with Hayward Police Department on camera locations. Commissioner Márquez asked where a third exit would be located if the increased capacity was approved and Mr. Emura said the design of the building makes a third exit unfeasible. The applicant requested that requirement be dropped, he said, but the Fire Department determined that in lieu of a third exit, the applicant would need to install fire sprinklers for the entire building. Finally, Commissioner Márquez asked about handicap accessibility and Mr. Emura said the facility is not handicap accessible. Planning Manager Patenaude said the applicant would have to propose significant improvements to trigger a full accessibility requirement.

Regarding condition of approval number six, Commissioner Mendall confirmed with staff that in one year the use permit would come back to the Planning Commission for review and if the club was found to be out of compliance with the conditions of approval, the permit could be revoked.

Commissioner Mendall said condition eight mentions the removal of illegal signs and asked for more information. Associate Planner Emura said Chalk It Up currently had a total of six signs where only two are allowed. Commissioner Mendall said he didn't even know Chalk It Up existed until two years ago and pointed out that the current signs are visible from across the street but not as you drive by. Planning Manager Patenaude said the City has been encouraging downtown business owners to use blade signs that can be seen from the side and can be up to eight square feet without a permit. For example, Mr. Patenaude said, The Pizza House owner initially resisted a blade sign, but as soon as it went up, business improved by 30 percent.

Commissioner Mendall requested that language regarding solar collectors be removed from condition of approval number 14 indicating there was a societal benefit to solar collectors that outweighed an attractive roof. Regarding condition 21, Commissioner Mendall asked that a representative from the Hayward Police Department define what type of call for service would be "a demand on police resources." Commissioner Mendall said condition 24 appeared to have been copied from a previous application, especially subset L, and he asked if the billiard hall would be required to have a security guard in the back parking lot during all business hours. Associate Planner Emura said that could be changed to require a guard check the parking lot periodically and Commission Mendall said that made more sense.

Under the same condition, subset P regarding surveillance cameras, Commissioner Mendall asked that "on all floors" be deleted since Chalk It Up only utilizes the basement. He agreed with cameras monitoring the entrance, exits and parking lot. Commissioner Mendall corrected a typo in condition 30, to read "a second uniformed contract security guard shall be provided from 6:00 pm *until* a half hour after closing."

Commissioner Mendall asked staff to explain condition 32 which reads in part, "In addition beer may not be purchased for another individual to drink on days minors are present." Associate Planner Emura explained that after he visited a bowling alley in Castro Valley he got the idea to limit the purchase of beer to one per person so an adult could not buy beer for a minor. Commissioner Mendall asked why allow beer sales with minors present Sunday through Thursday but not Friday and Saturday. Mr. Emura said the owner has indicated that Friday and Saturday are their busiest days and they wanted to save those days for an older crowd. Chair Loché asked that the applicant address the question later. Commissioner Mendall disclosed that he visited the establishment before the meeting.



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Commissioner Lavelle noted for Commissioner Márquez that condition 42 explicitly states that alcohol consumption off premises is strictly prohibited. Commissioner Lavelle asked staff for more information regarding fire department requirements regarding the entrance and exits, saying that two exits did not seem like enough to accommodate the increased capacity. Associate Planner Emura confirmed that capacity cannot exceed 100 until fire sprinklers are added to the rest of the building. Sprinklers already exist in the basement, where the billiard hall is located, he said, and once sprinklers are installed on the ground and second floor, capacity can increase to 250 persons. Commissioner Lavelle asked staff what feedback he had received from the owner regarding that requirement and Mr. Emura deferred the question to the owner.

Commissioner Lavelle said she also visited the facility before the meeting and really liked that smoking was not allowed. Visibility across the hall was good, she said, and the proposed improved lighting will also help. Commissioner Lavelle pointed out that when people drink they might want to smoke and she asked where they would gather to smoke now that the City has a no smoking ordinance that prohibits smoking within 20 feet of an entrance. Associate Planner Emura said during the three or four times he visited the site, he didn't observe anyone smoking and referred the question to the owner. Commissioner Lavelle asked if anyone has expressed concern about people smoking around the back entrance. Planning Manager Patenaude noted that there are entry doors and windows to other businesses near the rear entrance so there really isn't any location where people could congregate to smoke. Commissioner Lavelle asked for confirmation that smokers using the back parking lot would have to stand at least 20 feet away from any of those entrances. After speaking to legal counsel, Mr. Patenaude said the ordinance was amended to delete the 20 foot minimum and he deferred the question to police representative Lieutenant Reid Lindblom. Commissioner Lavelle said she envisions patrons gathering in the back lot and expressed concern that security guards, police, and video cameras might have a difficult time monitoring what goes on.

Commissioner Lavelle expressed concern about the lack of training the current staff has received regarding running a bar or restaurant and she asked staff if they felt comfortable with the training programs proposed. Associate Planner Emura said the owner will be hiring a consultant to help train staff in the proper procedures. Training will last three or four months or until staff has been adequately trained, he said, and condition 40 requires that all employees complete the ABC's LEAD training prior to the opening of the bar. Commissioner Lavelle asked if the City would be monitoring for compliance. Planning Manager Patenaude said yes noting that the Planning Commission will review the use permit in one year for compliance. He added that the City has a restaurant consultant that has been working with downtown businesses.

Commissioner Lavelle asked if Lt. Lindblom could address what is meant by "undue demand" on police services in one of the conditions when he addresses the Commission.

Commissioner McDermott asked if available parking will be adequate if the number of patrons is allowed to increase and the establishment consistently has a full house. Planning Manager Patenaude said the 11 parking spaces in the back lot will fill immediately, but noted that when the theater project

was reviewed the developer requested a parking study of downtown and that analysis of parking that included all downtown venues determined that there was adequate parking. He pointed out that the parking may not be located adjacent to the establishment, but would be within walking distance. Planning Manager Patenaude noted that large parking garages have not been provided so visitors have to walk by, and hopefully patronize, other businesses on the way to or from their destination.

Commissioner Márquez said she wanted to disclose that she visited the establishment the night before and spoke with the owner last fall.

Commissioner Lamnin said a couple of years ago she worked for an agency that co-sponsored a fundraiser with Chalk It Up and she thanked the owner for his past community work. She asked staff what the reasoning was behind conditions 34 and 35, regarding outside sponsored events and the prohibition of dancing, bands, or DJs without a permit. Associate Planner Emura said Club ME had a radio station DJ come to their facility and that drew crowds from surrounding areas that created problems. Commissioner Lamnin asked what kind of problems and Mr. Emura asked Lt. Lindblom to go into more detail. Planning Manager Patenaude explained that with outside promotions the owner turns over control of the event to the promoter and that makes it difficult to plan for the number of people attending.

Commissioner Lamnin asked why pay phones were prohibited on the premises under condition 13. Planning Manager Patenaude said the absence of pay phones curtails any illegal activities at the establishment. Commissioner Lamnin said she agreed with Commissioner Mendall to strike the language prohibiting solar collectors in condition 14. She asked staff if it was possible to maintain aisle widths if the capacity is increased to 250 persons and Mr. Patenaude said the fire department had not expressed any concern. Commissioner Lamnin asked if the existing sprinkler system is sufficient for the current capacity and Mr. Emura said yes and that they are inspected annually. Finally, she confirmed with staff that no beer is sold on-site now.

Chair Loché asked staff to comment on a contradictory remark in the report by the Buxton Company, which conducted a Retail Site Assessment in 2009, that says downtown is “underserved by full-service restaurants and drinking places in spite of ABC’s over concentration determination.” Planning Manager Patenaude said ABC determines the concentration of liquor licenses based on population in a census tract. Because downtown population is small, the threshold of allowable licenses is lower, he said. Mr. Patenaude said the City’s policy for the downtown has always been to encourage a lively entertainment area and in working with the consultant, has found the best way to enliven downtown is to provide a mix of food and entertainment uses. He said the Downtown Plan encourages alcohol sales to a greater degree than elsewhere in the City and that is further supported by City ordinance with reduced distances allowed between establishments selling alcohol in the downtown area.

Chair Loché opened the Public Hearing at 7:42 p.m.

Jesse Garrett, prevention specialist with COMMPRE and author of the letter submitted protesting the application, thanked staff for the thorough report noting the number of conditions required for the use permit and that each of the points in his letter was addressed. Mr. Garrett asked the Commission what their vision was for downtown. He said what COMMPRE has noticed in the last year and a half is an amendment to the City’s conditional use permit for alcohol in the downtown area eliminating any distance requirement for these types of establishments and giving



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION**

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carte blanche to new alcohol-fueled businesses. Mr. Garrett said he read the 2009 Buxton report and the only restriction set on alcohol-selling businesses on B Street and Main Street is there can only be two per block, or potentially 20 alcohol-selling establishments in the six to eight block area. He said if the Commissioner's vision for downtown is to be an alcohol-fueled corridor, he asked if the City is putting ordinances and policies in place to deal with problems once they occur. He pointed out that there is no deemed-approved ordinance and several establishments downtown that have been grandfathered out of the conditional use permit process. The City couldn't shut them down, he said, and the City can't put conditions on their use permit and they are problem, nuisance bars that are straining an overworked police department. Mr. Garrett said there are already 29 establishments, with two on the way, including a 60,000 foot nightclub in the old antique shop on B Street. He concluded by asking again what the Commissioner's vision for downtown and when is the discussion going to be initiated about putting policies in place that not only allow the City to "build it and have them come, but build it, have them come, and be able to keep them there and keep the community safe."

Lt. Reid Lindblom, representing the Hayward Police Department, was introduced by Chair Loché and invited to approach the podium.

Commissioner Mendall asked the lieutenant to define what is meant by "demand on police resources" as stated in condition 21. Lt. Lindblom explained that Hayward Police Department (HPD) is concerned about service load. All establishments have a service load, he said, but when a liquor license is added, that tends to increase the load. Regarding the amendment to condition of approval 17, Lt. Lindblom explained that a critical incident is "out of the ordinary" and would require five or more police officers to handle, so HPD wants to reserve the right to go back on a case by case basis and bill the ownership for police time. He said after reviewing past critical incidence, he has found that it comes down to how a place is managed. Commissioner Mendall said he appreciates the clarification because he doesn't want the owner to hesitate to call police. Lt. Lindblom confirmed that "proactive is always better than reactive."

Commissioner Mendall said it appeared that the police department is not in support of the application and asked if any additional conditions could be added to gain HPD support. Lt. Lindblom said HPD is not opposed to the application per se, but does consider the number of liquor licenses issued downtown and HPD's ability to respond to calls especially Friday and Saturday nights. Lt. Lindblom said a conditional use permit needs to be in place that would allow police to revoke Chalk It Up's ability to serve liquor if the establishment is mismanaged and PD receives too many calls. Commissioner Mendall confirmed with the lieutenant that there are a couple dozen restaurants and bars downtown that can sell liquor, and asked for further confirmation that 80-90% of calls are coming from a few establishments that do not have strict conditions of approval associated with their permit. Lt. Lindblom said he didn't think the percentage was that high, but confirmed that a large portion of calls are from mismanaged establishments. Commissioner Mendall asked if having conditions of approval associated with a use permit make it easier to enforce compliance and Lt. Lindblom said, "Absolutely."

Commissioner Mendall asked the lieutenant if HPD had asked the owner to restrict minors on Friday and Saturday nights and to explain why if they did. Lt. Lindblom said HPD didn't have any opinion about the matter.

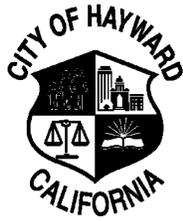
Commissioner Lavelle said the basement location of Chalk It Up makes it difficult for police to monitor activity as they drive by, so she asked if the proposed security cameras will be helpful and if beat patrol will stop by on a regular basis Friday and Saturday nights. Lt. Lindblom agreed that the basement location makes it impossible to see inside the establishment from the street. He said HPD had discussions with City staff about the type of security system and the one selected was the best based on the design of the building. The lieutenant said HPD will do the best they can to monitor the hall, and he hoped the beat officer would make regular visits to the establishment. Commissioner Lavelle said she noticed the beat officer stopping by the Bijou Restaurant the previous weekend and found that reassuring.

Commissioner Lavelle asked if, on a general basis, the lieutenant agreed that quite a few establishments downtown are successful and do not make a lot of calls to the police department, and Lt. Lindblom said that statement was true; there are some very well-run establishments downtown that are models for that type of business, work well with HPD, and prevent problems before they begin. Commissioner Lavelle said she will encourage the applicant to model the behavior of these successful businesses downtown. Commissioner Lavelle asked Lt. Lindblom if HPD will use the conditions of approval to revoke the alcohol permit of Chalk It Up if there are too many calls for police service. The lieutenant said if HPD determines Chalk It Up is a problem establishment run incorrectly and in violation of the use permit, he will "absolutely" come back to the Planning Commission and ask that their license is revoked. Commissioner Lavelle said she took his reply as a commitment and it is the City's responsibility to keep the community safe.

Commissioner McDermott asked staff to display the slide that showed the amendments to condition of approval number 17. She asked the lieutenant how much latitude HPD would have under this condition; if there was a problem, she asked, would HPD have to come back to the Planning Commission for permission or could HPD just shut the hall down. Lt. Lindblom said he wasn't sure, but thought HPD would have to come back to the Planning Commission to revoke the liquor license. Assistant City Attorney Conneely said the lieutenant was correct and the problem would come back to the Planning Commission for a full hearing on the grounds of the revocation of the use permit.

Commissioner McDermott asked how many officers are on duty in that sector on Friday-Saturday from 9:00 p.m. to 2:00 a.m. The lieutenant said three officers for that beat (or sector) with two officers specifically downtown on a walking beat assignment, for a total of five officers. Commissioner McDermott asked if a critical incidence downtown would pull officers from other beats leaving other areas of the City vulnerable and Lt. Lindblom said yes, explaining that in the last three years there have been incidents that pulled all officers from both shifts including one that required additional backup from other cities.

Commissioner Márquez asked the lieutenant if HPD would be working with Chalk It Up on camera placement if the application was approved and he said yes along with the security plan. Commissioner Márquez asked what his thoughts were regarding the back stairway and whether or not the gate should be locked or unlocked during business hours. From the police's perspective, Lt. Lindblom said it would be easier to only have one entrance with an exit-only through the gate.



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 10, 2011, 7:00 p.m.
777 B Street, Hayward, CA 94541**

Commissioner Márquez asked about monitoring blind spots in the club and whether the lieutenant thought additional staff or security should be added. Lt. Lindblom said the way the use permit is drafted, Chalk It Up will have adequate staffing and security. He acknowledged that the basement location is more difficult because responding police will have to walk down into the club to find out what is going on. Commissioner Márquez asked if the police should have a key to the back entrance and the lieutenant said he wasn't sure if that would help visibility-wise.

Commissioner Mendall corrected a typo in the amended condition 17 to read, "...*may* constitute grounds for revocation..." Commissioner Mendall confirmed that two critical incidences in one year would not necessarily bring the permit back for review if the club was otherwise well-run. Lt. Lindblom said HPD would make that determination on a case by case basis.

Planning Manager Patenaude acknowledged that many of the conditions for Chalk It Up looked similar to those established with Club ME and said that was intentional because staff, including HPD and the City Attorney's Office, spent a lot of time developing a set of conditions that would work for these types of establishments downtown, but he acknowledged that some wording does need to be corrected. Regarding an earlier comment that the City doesn't have a deemed-approved ordinance to shut problem establishments down, Mr. Patenaude said the City does have that capability with these newer establishments because the conditions developed give the City a lot of latitude. Mr. Patenaude continued saying that the City has not recently changed its regulations regarding alcohol establishments in the downtown, but acknowledged downtown is a more liberal area with two establishments allowed per block face and that does not include full-service restaurants.

Commissioner Lamnin asked Mr. Patenaude how this new set of conditions is working, in particular with Club Me. Planning Manager Patenaude said, in general, they have been working well, but it is too soon to tell. He said the Club is still trying to develop a business plan and fully utilize all the conditions that were approved. Lt. Lindblom agreed with Mr. Patenaude's comments saying Club Me is just now determining their business model and what goals they are trying to hit.

Chair Loché asked Lt. Lindblom what significance the increased occupancy had on the HPD's lack of support for the application. The lieutenant said the proposed increase did not play a significant role because a well-run establishment can handle the additional patronage. On the flip side, he pointed out that a poorly managed establishment will still be a problem regardless of capacity. Commissioner Loché confirmed that HPD felt the same way about the proposed liquor license. Lt. Lindblom reiterated Commissioner Lavelle's comment that there are a lot of well-run establishments downtown that cause no problems.

Regarding the smoking ordinance Lt. Lindblom said any place where the public is allowed to be or travel is considered a public place and smoking is prohibited in all public places. There really isn't any place around this establishment or in this establishment, or in the parking lot where people could smoke, he said.

Applicant Raj Chabra introduced himself and said he's been looking into making the facility handicap accessible as he himself has had a disability since childhood. As business improves he said he will have the money to make modifications, which will be very expensive, but which he is committed to doing. Regarding signage, Mr. Chabra said he's been working with the Redevelopment Agency (RDA) and an architect he recommended to them, on an architectural plan which includes new signage, which is critical on Foothill Boulevard. Mr. Chabra said he went back and forth on what Type of liquor license to request. He said a lot of Cal State East Bay students enjoy hanging out at Chalk It Up and the Type 42 (beer and wine) license would require him to exclude patrons under 21, where Type 40 (beer only) would allow minors to be present. He said the ABC laws are poorly written, and he was torn between the two Types because he'd like to serve wine, but he settled on the Type 40 because he didn't want to exclude minors.

Now over 50, Mr. Chabra said he's owned an interest in the building since he was 29, and he's familiar with the neighborhood and the building. He said he wrote the original lease for the billiard hall and even then he included a clause that allowed him to review the contract after one year. He said it won't be the police who say the liquor license isn't working; it's going to be him. Mr. Chabra pointed out that the building covers a third of the block. Regarding exits, he said a capacity of 250 is too high, but capacity limits are based on either 100 or 250; 150 would be better, but that choice wasn't available. He said he didn't see capacity increasing to 250 any time soon because putting in sprinklers for the whole building would be difficult; he said he would consider a third access first. Regarding parking, Mr. Chabra said he would like to work with other businesses in the area to provide valet parking for a nominal fee so people could feel safe dropping off their car and not having to walk. He concluded by explaining that he took over Chalk It Up from the previous tenant who was going to close it down because he felt the need for that type of establishment and felt it was an asset for downtown.

Commissioner McDermott wanted more information regarding why Mr. Chabra chose to prohibit minors on Friday and Saturday nights when beer is proposed to be served all the other days of the week. Mr. Chabra explained that because those nights are very busy it would be too difficult to monitor underage drinking; "We don't want to take any chances," he said. Commissioner McDermott said a lot has changed since 1992, but noted there was the same number of liquor licenses in the downtown. She said a critical component of the success of this establishment will be the management and they will have to be "at the top of their game." She agreed with Commissioner Lavelle that staff didn't have a lot of experience and training will be necessary, and Mr. Chabra agreed.

Commissioner McDermott said she was very impressed with the establishment, found it esthetically nice, but she agreed with the letters submitted that expressed concern about taking away Friday and Saturday nights from local youth who should have entertainment venues as well as adults. Commissioner McDermott said Mr. Chabra's target market includes patrons under 21 and his business depends on them. Mr. Chabra agreed and said he hopes the City will give him the flexibility to allow patrons under 21 for more hours if all goes well. Commissioner McDermott said she was also concerned that high school students were restricted during school hours, but Mr. Chabra said the business doesn't open until 6:00 p.m. during the week.

Commissioner Lamnin asked if background checks are conducted on staff and Mr. Chabra said no, but he will follow the advice of his security consultant. Commissioner Lamnin asked Mr. Chabra to describe his marketing plan. Mr. Chabra said they would like to attract corporate parties and movie



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 10, 2011, 7:00 p.m.
777 B Street, Hayward, CA 94541**

patrons after a show and bring in other restaurants. “Downtown really needs to have a reason to stay,” he said, and that means multiple venues for people to choose from. For example, if a restaurant opens next to Chalk It Up, he said he would work with them to do some cross marketing. Commissioner Lamnin said she appreciated the exploration of handicap accessibility. Commissioner Lamnin then asked if he considered more activities for minors since his staff expertise does include youth activities. Mr. Chabra said he could try that during the day time hours, and although resources have been limited, with more investment and success they can do more.

Commissioner Márquez said she appreciated Mr. Chabra’s attention to detail and asked how wristbands and hand-stamps would be monitored. Mr. Chabra deferred that question to his security consultant. Commissioner Márquez said the application from 1991 mentioned tournaments and hosting events and she encouraged him to pursue similar activities. Commissioner Márquez commended Mr. Chabra on the upgrades he’d made to the hall and said she appreciated the low cost beverages she enjoyed when she stopped by with a friend. She suggested an extra staff person to monitor a blind spot she saw behind the stairs and said she noticed that the back gate was unlocked. Mr. Chabra said the gate should only open for patrons exiting to the back parking lot, but Commissioner Márquez said it was unlocked coming in.

Jim Diaz, principal executive of James C. Diaz and Associates, a security consultant firm, introduced himself and explained that his company conducted the initial security plan for Chalk It Up billiards. Mr. Diaz confirmed for Commissioner Márquez that a security officer would be at the door checking IDs and a wristband would be issued at that point; a stamp could be used for exit and re-entrance, but would not be used in relation to alcohol consumption. Commissioner Márquez asked about security camera locations and Mr. Diaz said the existing interior camera system could be expanded to monitor the exterior of the building. Mr. Diaz noted that technology exists that would allow the police to monitor activity via the internet which could be helpful due to the basement location if a critical incident were to occur.

Commissioner Mendall said remote access was a great idea and as soon as HPD was equipped to do so encouraged the police department to access these systems. Mr. Diaz explained that access is code-controlled. Commissioner Mendall pointed out that a condition of approval requires the camera system at Chalk It Up to include the exterior. Commissioner Mendall said he hopes they don’t skimp on the number of exterior cameras because it was his impression that most incidents occur, or escalate, outside the establishment. He recommended cameras in front, in the back parking lot, and along the alley way and cameras must be visible so possible troublemakers know they are being watched. Mr. Diaz said signs can be posted to notify patrons that they are being videoed. Commissioner Mendall confirmed that exterior cameras are a requirement and Planning Manager Patenaude said HPD has to approve a final security plan.

Commissioner Mendall noted that the application indicated that one security officer would be present at all times and a second officer would be added on Friday and Saturday nights. That wasn’t a condition of approval, he said, but confirmed this with Mr. Diaz as being part of the security plan. Mr. Diaz added that appropriate security was required by the City and officers would be state licensed and

registered. Commissioner Mendall said Chalk It Up staff is young and inexperienced and encouraged Mr. Diaz and Mr. Chabra to hire experienced security personnel. Mr. Diaz said staff is college educated, but he does understand Commissioner Mendall's concern.

Noam Garfinkel, applicant and Operating Manager, thanked staff for consideration of the application and read a statement regarding the goals of Chalk It Up.

Chair Loché closed the Public Hearing at 8:41 p.m.

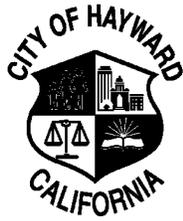
Commissioner Mendall said the vision for downtown is food, entertainment and arts, and establishments like this are an appropriate part of that and so is alcohol. He said having alcohol in a billiard hall is appropriate. He said he's proud of the conditional use permit requirements that the City has developed and said it will be very difficult for the applicant to run this establishment badly in terms of alcohol and alcohol-related problems without the City shutting them down or revoking their liquor license. Commissioner Mendall pointed out that it's the establishments that are run poorly that give alcohol-serving businesses a bad name. He said that he would vote to shut the business down if that's what HPD recommends.

When he was younger Commissioner Mendall said he played a lot of pool and it makes sense to have food and alcohol available, but it doesn't make sense to allow minors in the establishment every night of the week except Fridays and Saturdays, although he said he understands and respects why the owner is limiting access. Personally, he said he would like to see the condition limiting minors removed and if, after a year, there have been problems with underage drinking the Planning Commission can add it back in. If the applicant is concerned about underage drinking, Commissioner Mendall suggested hiring a third security officer, which he said, would cost him less than the business he could lose by not allowing minors. He concluded by saying that pool halls are one of the coolest place for minors to hang out.

Planning Manager Patenaude said removing the condition doesn't restrict them from operating and would give them the opportunity to explore the option of having minors present. Mr. Garfinkel confirmed that they didn't ask for it to be a condition, but just their preference, at least initially.

Commissioner Mendall made a motion to approve staff recommendation with the amendments mentioned including striking condition 31 prohibiting minors on Friday and Saturday nights.

Commissioner Lavelle seconded the motion, but said she wasn't in favor of allowing minors at this time and suggested allowing the applicant to proceed as planned, with the hours proposed and agreed to by staff and the applicant, and in one-year the Commission will review the use permit. At that time, she said the Commission could review any problems or issues with HPD and get feedback from the owner who has said it is not his goal to become a problem establishment and he would stop serving alcohol if problems do arise. Commissioner Lavelle thanked the COMMPRE representative for his letter and for reminding the Commission that there is an over-concentration of alcohol in Hayward. She said there are a lot of good things happening in downtown and if more people knew they could play pool and maybe have a beer, this would be very helpful. She said the many concerns expressed tonight are based on a few troubled establishments and the applicant should be given the chance to succeed. Addressing the COMMPRE representative, she said if they see any violations of the CUP to let the City know. She pointed out that this is an established business that is stepping up to improve and enliven downtown



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 10, 2011, 7:00 p.m.
777 B Street, Hayward, CA 94541**

and the City should support that effort adding that the City needs more places for college students to hang out. Regarding the marketing plan, she said the owner is waiting for the result of tonight's vote and suggested he include minor activities. Said she will only support the motion if condition 31 remains in place which would not allow minors on Fridays or Saturdays.

Commissioner Márquez asked for clarification on the motion and Commissioner Mendall indicated that he would consider amending the motion to keep condition 31, but he wanted to hear from the other commissioners first. Commissioner Márquez said she was torn because when she was at Chalk It Up the night before and she saw 20 people, of various ages, and she was disappointed to think minors wouldn't be allowed to patronize the business on Friday and Saturday nights because it was nice to see young people enjoying themselves. If condition 31 is removed she suggested requiring more security.

Commissioner Lamnin said she wanted to support the business, the expansion, and the improvements, but can't support the request to sell alcohol. She said she's not seeing the evidence that it's needed. She pointed out that she's heard over and over that there needs to be more youth-friendly opportunities and with Chalk It Up so close to the theater she said she wanted the family-friendly establishment to stay that way. To strike a balance, she said she would be more inclined to support occasional tournaments that included alcohol.

Commissioner McDermott said she also supports the expansion of the business including the Type 40 license. She said she was torn about allowing minors, but pointed out that the use permit will be reviewed in one year so the Commission would have another opportunity to review if allowing minors was a problem. There are just not enough activities in Hayward for youth, she said, and she's heard a lot of people say Chalk It Up is one of the few places minors enjoy and feel safe when they are there. She said she supports the removal of condition 31.

Chair Loché said he is also torn about the issues raised, but feels the vision for downtown is simply to have well-run responsible, thriving businesses. If the business is run well, he said, the sale of alcohol will not be an issue. He said it would be a mistake to not give the business the opportunity to succeed, and if they don't, it will come back to the Commission for review. Regarding occupancy he said 250 is too many and based on the comments from the applicant he asked staff if the number could be lowered. Planning Manager Patenaude said 250 is the next threshold but it is possible the number could be lowered. The applicant said he preferred 150, Chair Loché said he preferred that number and both Commissioner Mendall and Lavelle supported the amendment to the motion.

Chair Loché said he didn't even think about the impact on youth, but if management wanted to limit access then he supported that choice. Chair Loché said management should be given time to see how it goes and asked staff if the applicant would have to come back to the Planning Commission if they wanted to allow minors later and staff said yes, they would have to reapply. Chair Loché said he supported the applicant and even though "it pains him" to limit activities for youth he felt condition 31 should remain.

Commissioner Mendall asked fellow Commissioners to reconsider limiting access to minors because

the first year is the only time the Planning Commission knows it will be reviewing the application and he would hate to see access limited on Friday and Saturday nights before the City even knows whether or not it will work. If it does turn out to be a problem, he said he will be the first to support adding that condition back in. He pleaded with the commissioners to reconsider.

Commissioner Lavelle said the opposite is also true and if there are no problems that condition could be lifted in one year. She said in some bowling alleys minors are not allowed in the area where beer is served, and wondered if the same could be true at Chalk It Up. If alcohol service areas were limited, she would support the mixture of adults and minors at all times. She said unless the plan is re-submitted with this change, she wants to keep the conditions as currently stated with a review in one year. She said she will vote no if condition 31 is removed.

Commissioner Márquez said Commissioner Lavelle convinced her and that she prefers to keep condition 31.

Commissioner Mendall said he will accept the friendly amendment to keep condition 31 with regrets.

Commissioner Lamnin said she would be more supportive if the plan included a separate area for alcohol. She said having family-friendly environments is important and she didn't support introducing a potential problem.

Commissioner Lavelle suggested the applicant open earlier on weekends so minors can play from 4:00 to 8:00 p.m. and start beer service after they go home starting at 9:00 p.m. She clarified saying that wasn't a condition just a suggestion and several commissioners as well as the applicant liked that idea.

Commissioner McDermott asked for clarification that if the use permit is approved as is, Chalk It Up cannot allow minors in the establishment Friday and Saturday nights. Chair Loché said that was correct but they can request to change that in one year. Commissioner McDermott said from a business perspective limiting access for minors doesn't make sense, but said that was their decision.

Planning Manager Patenaude said the applicant can change that condition before the year is up by applying for a modification of the use permit.

Chair Loché said he will be in support of the motion as it now stands. Commissioner Mendall was asked to reiterate the motion.

Commissioner Mendall made a motion, with a second by Commissioner Lavelle, to approve staff recommendation with the following changes: remove language prohibiting solar collectors from Condition of Approval 14, and "on all floors" from Condition 24(p); correct language in Conditions of Approval 17 ("my include" to "may include") and Condition 30 ("security guard shall be provided from 6pm *until* a half hour after closing."); reduce security presence in Condition 24(l) to regular patrols rather than "duration of the night club"; and set maximum capacity at 150 patrons.

There being no other comments, the motion passed 5:1:1 with the following vote:

AYES: Commissioners Márquez, Mendall, McDermott, Lavelle
Chair Loché



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, March 10, 2011, 7:00 p.m.
777 B Street, Hayward, CA 94541**

NOES: Commissioner Lamnin
ABSENT: Commissioner Faria
ABSTAINED:

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters

Planning Manager gave an update of the Planning Commission schedule saying there will not be a second meeting in March, but there will be three meetings in April including a Joint Work Session with Council on the Tuesday, April 19th at 7:00 p.m.

3. Commissioners' Announcements, Referrals

Commissioner Mendall said he was pleased to receive notice that eight billboards are being removed in return for the installation of the electronic billboard along Highway 880. He said he looks forward to them being gone. He also gave an update on the Sustainability Committee indicating that at a public hearing it was decided that RECO (Residential Energy Conservation Ordinance) measures will be voluntary or via incentives rather than mandatory and that will come before the Planning Commission on June 9, 2011.

Commissioner Lavelle mentioned that she enjoys driving past the Fairway Plaza Shopping Center in south Hayward because renovations have been made in a beautiful fashion and the facility looks lovely. She remembered quite a few years ago the Planning Commission approved a plan for redesign of this older, long established shopping center. She said it was dear to her heart to see the sign for the new Fresh n' Easy grocery store which opens April 27, 2011. She said it's a great addition to the south part of the City. Chair Loché said a new fitness center is scheduled to open next month that should be very nice.

Commissioner Lamnin said the improvements to Carlos Bee Boulevard are almost done and also look great. She also asked if any action had been taken regarding the complaint received from Mission Boulevard business owners at the February 10th Planning Commission meeting regarding road construction and the ticketing of delivery trucks. Staff said they would review the complaint. Commissioner Lamnin asked if it would be helpful for the Planning Commission to issue new conditional use permits to those businesses currently not covered under one or to develop ordinances that would enable police to respond to and eliminate the high cost to the City from those few businesses. Planning Manager Patenaude said he will work with Lt. Lindblom to determine what uses need to be reviewed.

Commissioner Márquez commented that on her way to Burlingame on Tuesday she was pleased to see the bulletin board fully lit with an Amber Alert. She said it made her proud to see the board being used for that purpose and was also happy with the removal of the other billboards on Mission. She also said that her daughter is required to fulfill some community service hours for school and she was

pleased at how easy it was so sign up with the Keep Hayward Clean and Green Task Force. She announced a March 26th event with a March 24th deadline to sign-up and encouraged people to participate.

Commissioner Mendall seconded Commissioner Lamnin's comment that if there are conditional use permits that don't have all these well-thought-out conditions for establishments offering alcohol, the Planning Commission should review or update their permit, especially if HPD has deemed a need to do so. If the Commission could make conditional use permits consistent, he said there would be less of stigma against the City's few "bad apples" ruining the reputation of others.

APPROVAL OF MINUTES

4. Minutes from January 27, 2011 approved with Commissioner Faria absent and with minor changes.

5. Minutes from February 10, 2011 approved with Commissioner Faria absent and a request from Commissioner Márquez to keep the vote count with the motion.

ADJOURNMENT

Chair Loché adjourned the meeting at 9:22 p.m.

APPROVED:

Mariellen Faria, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk