



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

MAY 31, 2012

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CITY OF HAYWARD
777 B STREET, HAYWARD, CA 94541-5007
(510) 583-4205 / www.hayward-ca.gov
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AGENDA
SPECIAL HAYWARD PLANNING COMMISSION MEETING
Thursday, May 31, 2012 , AT 7:00 PM
COUNCIL CHAMBERS

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. 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 are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PRESENTATION Hayward Airport Administration Building

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. 1 the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision. For agenda item No. 2, the Planning Commission may make a recommendation to the City Council.

1. Administrative Use Permit PL-2011- 0298 – Adwin Pratap (Applicant) / Michael and Richard Silva (Owners) – Request to operate an auto body shop with a spray paint booth in an existing warehouse adjacent to residential properties. The site is located at 29225 Sims Court in the Industrial (I) District,(APN: 464-0100-015-03)



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 Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

[Staff Report](#)
[Attachment I Area and Zoning Map](#)
[Attachment II Findings for Denial](#)
[Attachment III Acoustical Study](#)
[Attachment IV Email from Maria Penafiel](#)
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[Attachment VII Email from Delnis Miranda](#)
[Attachment VIII Email from 29298 Bowhill Road](#)
[Attachment IX Letter to Neighbors from Applicant](#)
[Attachment X Plans](#)

2. Text Amendment Application PL-2012-0140 / City of Hayward (Applicant) - Establish zoning regulations regarding the retail sale of tobacco.

[Staff report](#)
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[Attachment IX - Staff Report for HEAL](#)

COMMISSION REPORTS:

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

APPROVAL OF MINUTES

5. [April 12, 2012](#)
[April 26, 2012](#)

ADJOURNMENT

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. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: May 31, 2012

TO: Planning Commission

FROM: Carl Emura, Associate Planner

SUBJECT: Administrative Use Permit PL-2011- 0298 – Adwin Pratap (Applicant)/ Michael and Richard Silva (Owners) – Request to operate an auto body shop with a spray paint booth in an existing warehouse adjacent to single-family residential properties.

The site is located at 29225 Sims Court in the Industrial (I) District (APN 464-0100-015-03)

RECOMMENDATION

That the Planning Commission finds the project exempt from California Environmental Quality Act (CEQA) review and denies the administrative use permit, subject to the attached findings.

SUMMARY

The applicant proposes to operate an auto body shop adjacent to residential properties that would not be open to the general public to serve his used auto sales business in San Leandro. The shop would include a spray paint booth and all work is proposed to be conducted inside the building. Residents in proximity to the property oppose the application, citing concerns about noise, paint fumes, toxic paints and property values. The neighborhood (1/2-mile radius) currently contains 18 auto or truck repair establishments. Staff is not supporting the proposed use, given staff's inability to make the required findings to support an administrative use permit, particularly due to the inability to determine this use, which would serve a business in San Leandro, would benefit the community of Hayward.

BACKGROUND

The applicant operates a used car sales lot, Absolute Auto Sales, in San Leandro and would like to convert an existing warehouse into an auto body facility, including a spray paint booth, to do minor body work and touch-up painting for vehicles sold at his car sales lot in San Leandro. The property, previously occupied by an ice cream truck company, is zoned Industrial (I) District. With the exception of the properties to the west, which are zoned Single Family Residential (RSB4) District, the surrounding properties are also zoned Industrial District. The property to the south contains a construction equipment storage yard; the property to the east, across Sims Court, contains an

office/warehouse; the property to the north is occupied by Roto-Rooter; and the properties immediately to the west contain small-lot, single-family homes.

The facility would initially operate three days a week from 9:30 a.m. to 2:30 p.m. and later expand operations to five days a week. According to the applicant, no work would be performed on the weekends and only minor automobile bodywork would be performed consisting of touch-ups or partial paint jobs; no collision repairs or extensive bodywork would be performed. All bodywork and painting would be done inside the building with the two roll-up doors closed. No automobile detailing would be done at this location. No work would be done outside the building.

Automobile repair is a primary use in the Industrial District, however, when a primary use abuts a residential property, approval of an Administrative Use Permit is required. During the public notice period, staff received six responses from the residents along the west side of the property opposing the facility. Concerns were raised about noise, paint fumes, toxic paint and chemicals, and impacts to property values. Because of the significant concern of the adjacent residents, the Planning Director referred this matter to the Planning Commission.

DISCUSSION

The concerns from the surrounding neighbors focused on three major issues: noise, paint fumes and toxicity, and property values.

Noise – One of the residents made reference to the noise from the ice cream truck business, previously operating on this site, emanating from their refrigeration units, trucks and workers, and was concerned about the noise from the proposed use. The applicant states that their operation would not adversely affect the adjacent residences closest to the property in that there would be a maximum of two staff members, the hours of operation would be limited to 9:30 a.m. to 2:30 p.m., they would not be open on the weekends or to the general public, and the two garage doors would remain closed when they are working on the vehicles.

The City of Hayward Municipal Code (Sec. 4-1.03.1) states that no person shall produce or allow to be produced noise that exceed 70 dBA (the level when close to a main road by day) between the hours of 7:00 a.m. and 9:00 p.m. or 60 dBA (a noisy lawn mower at a 10-meter distance) between the hours of 9:00 p.m. and 7:00 a.m. According to a report “Sims Court Acoustical Study” (Attachment III), dated February 10, 2012, and prepared by Patrick Burger, Architect, the noise level would be 56.6 dB at the concrete masonry wall on the property line adjacent to the residences with the doors closed, and 66.9 dB with the doors open. Therefore, the noise level would be consistent with the Municipal Code standards.

However, the property contains a significant amount of outdoor parking area with two garage doors that face some of the adjacent residences. Vehicle movements would take place in the outdoor area adjacent to the residences. It is also likely that it would be inconvenient to the operations to leave the garage doors closed at all times. As the business grows, the noise impact could increase. While the applicant proposes to limit the use to the day-time hours, some of the adjacent residents have expressed that they are home during the day.

Paint Fumes and Toxicity – Only water-based low volume Volatile Organic Compounds (VOC) paint would be used to paint the vehicles. Outdoor emissions of VOC contribute to the formation of ozone. The Bay Area Quality Management District (BAAQMD) requires obtaining an Air Permit if 30 gallons or more of paint or solvent is used per year. The Air Permit limits the amount of paint and solvent that can be used and requires that records of the date, quantity of paint sprayed, mixture ratio and vehicle license number be kept. Other requirements are to install a filter on the spray booth to achieve at least 98% capture efficiency and the spray booth should be fully enclosed and ventilated.

The applicant would be using a state-of-the-art Col-Met Spray Booth (www.colmetsb.com), a 15' x 34'-6" (518 square feet) self-contained enclosed structure, which will be located within the building. According to the applicant, all work (limited to minor bodywork and the partial spray painting of cars) will be performed inside the spray booth, or in the building, and not outside the building, or exterior parking area. This self-contained spray booth captures all paint film not deposited on the car body itself. The venting system exits through the roof of the building and incorporates an exhaust filter manufactured by Columbus Industries. The paint arrestor filter is rated at 99% efficiency for the removal of paint overspray.

However, there is no guarantee that emissions from the spray booth would be consistently controlled. Adjacent residents have expressed concern about the health impacts related to the spray painting operations, especially affecting those with asthma. Persons who are exposed to toxic air pollutants have increased chance of developing cancer and other serious health problems.

Property Values – The applicant would be planting a line of evergreen shrubs, along the rear and south property lines, to aid in the screening of their facility from the adjacent residential parcels, as well as new plantings and street trees along the front property line. The applicant believes his facility would be less visually and acoustically intrusive, than the property might otherwise be subjected to by any other potential full-time, more intensive use or any other existing use abutting the residential properties and therefore does not believe that his facility would detract from those existing values.

However, the proposed use would contribute to a large number of auto and truck repair establishments within a ½-mile radius of the project site that have the potential to negatively impact the health and welfare of nearby residents, thereby potentially affecting property values.

Administrative Use Findings

While the applicant may be able to mitigate the operational impacts of the business on the adjacent residential properties, staff does not believe that all the required findings, as follow, can be made.

A. The proposed use is desirable for the public convenience or welfare.

The proposed auto body shop and spray booth facility is not desirable for the public welfare in that the proposed business does not provide service to the Hayward community while having the potential for causing negative impacts to adjacent local residents. The surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments.

B. The proposed use will not impair the character and integrity of the zoning district and surrounding area.

The applicant claims that the proposed auto body shop and spray booth facility could operate in a manner that does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. However, it has been the experience of the City of Hayward that auto-oriented uses often find it convenient to perform certain operations outside of an enclosed building. The proposed use also has the potential to increase operations beyond that proposed. The potential intensity of this use is of special concern given the small-lot, single-family residential uses adjacent to the industrial properties along the westerly side of Sims Court. Residents have expressed concern regarding health impacts caused by pollutants and disruption of the neighborhood's peace and quiet.

C. The proposed use will not be detrimental to the public health, safety, or general welfare.

The applicant claims that the proposed auto body shop and spray booth facility will not be detrimental to the public health, safety, or general welfare in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. However, it is not possible to consistently monitor the operations of individual businesses, and potential impacts of the proposed use to the, at least, 18 auto and truck repair establishments within one-half mile of the site could be detrimental to public health and general welfare of the immediately adjacent neighborhood.

D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The purposes for requiring an administrative use permit when an industrial use abuts a residential district includes assuring that the use is permitted where there is a community need. In this case, the surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments. Therefore, community need cannot be established for this use, which would serve a business in San Leandro, that has the potential to negatively impact the adjacent residential neighborhood.

ENVIRONMENTAL REVIEW

Disapproved projects are exempt from CEQA review when the public agency determines that the application for project approval will not be approved. Should the Planning Commission decide to approve the administrative use permit, staff will be required to make an environmental assessment and will develop findings in support of the project and recommended conditions of approval for Commission consideration.

PUBLIC CONTACT

On September 28, 2011, an Official Notice of the request was sent to every property owner and occupant within 300 feet of the subject site. As a result of the notice, staff received six responses opposing the auto body shop from the residential property owners along the west side of the property. They expressed concerns about noise, health and property values. The applicant distributed a letter dated January 12, 2012 (See Attachment V) to the residents along the west property line addressing their concerns. On May 11, 2012 a Notice of Public Hearing for the Planning Commission meeting was mailed. No responses have been received by the time this report was prepared.

NEXT STEPS

Following the Planning Commission decision begins a 10-day appeal period. If denied, the decision could be appealed and the application would be scheduled for a public hearing before the City Council.

Prepared by: Carl T. Emura, ASLA, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk
Development Services Director

Attachments:

Attachment I Area Map

Attachment II Findings for Denial

Attachment III Sims Court Acoustical Study dated 2/10/12

Attachment IV Email from Maria Penafiel dated 9/26/11

Attachment V Email from Bruce Finley dated 9/26/11

Attachment VI Letter from Yusuf Ali dated 9/27/11

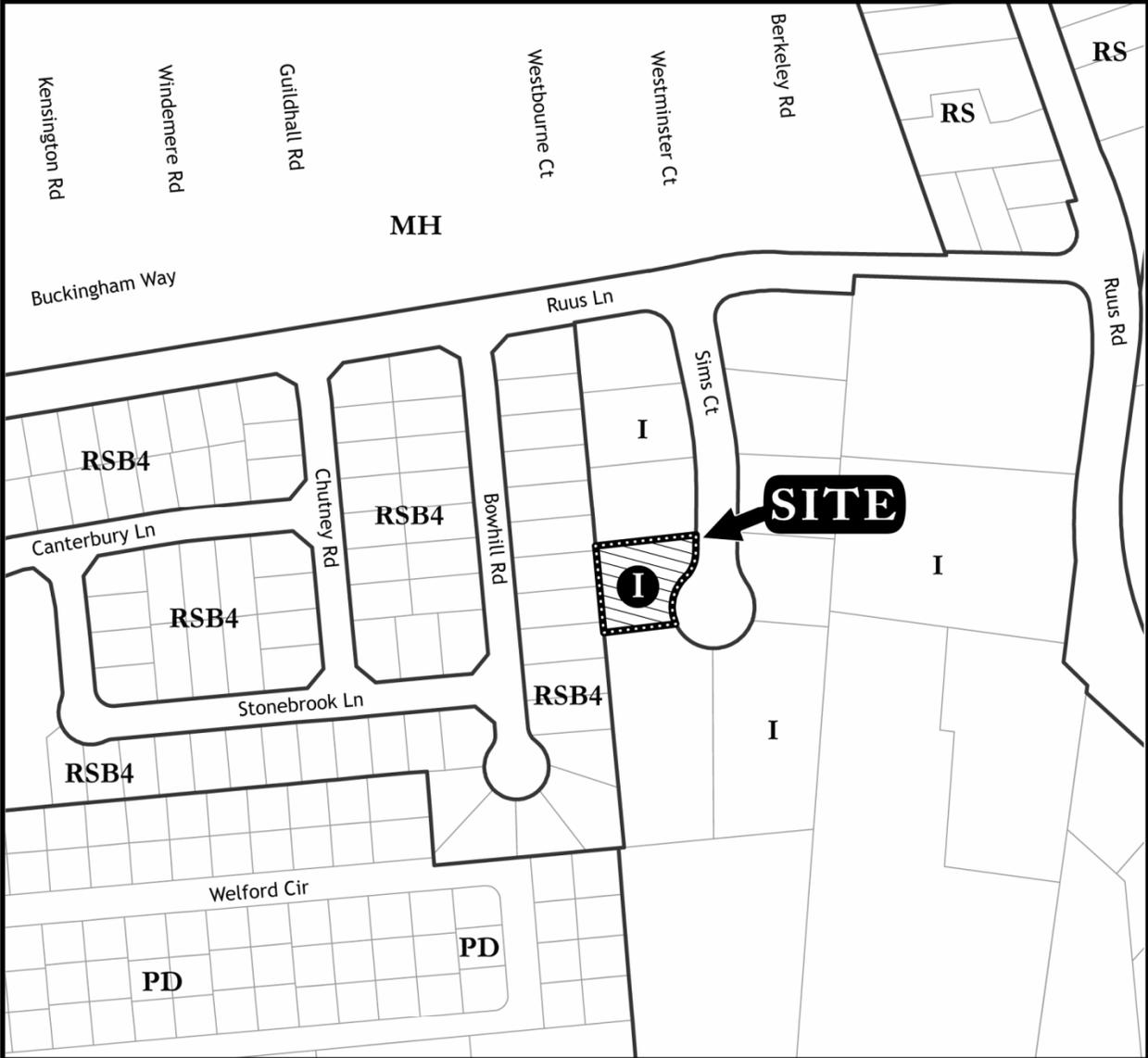
Attachment VII Email from Delnis Miranda dated 9/28/11

Attachment VIII Email from resident of 29298 Bowhill Road dated 10/3/11

Attachment IX Letter to Neighbors from Applicant dated 1/12/12

Attachment X Plan

Attachment I: Area and Zoning Map



Area & Zoning Map

PL-2011-0298 AUP
 Address: 29225 Sims Court
 Applicant: Adwin Pratap
 Owner: Micharel or Richard Silva

- Zoning Classifications**
- RESIDENTIAL**
 - MH Mobile Home Park
 - RS Single Family Residential, min lot size 5000 sqft
 - RSB4 Single Family Residential, min lot size 4000 sqft
 - INDUSTRIAL**
 - I Industrial
 - OTHER**
 - PD Planned Development



**CITY OF HAYWARD
PLANNING DIVISION
ADMINISTRATIVE USE PERMIT
May 31, 2012**

ADMINISTRATIVE USE PERMIT PL-2011- 0298 – Adwin Pratap (Applicant)/ Michael and Richard Silva (Owners) – Request to operate an auto body shop with a spray paint booth in an existing warehouse adjacent to residential properties.

The site is located at the 29225 Sims Court in the Industrial (I) District, (APN: 464-0100-015-03)

FINDINGS FOR DENIAL

- A. Denial of Use Permit Application No. PL-2011-0298 to request to operate an auto body shop and a spray paint booth in an existing warehouse adjacent to residential properties in the Industrial (I) Zoning District is exempt from the provisions of California Environmental Quality Act guidelines pursuant to Section 15270 (a), *Projects that are Disapproved*.
- B. The proposed auto body shop and spray booth facility is not desirable for the public welfare in that the proposed business does not provide service to the Hayward area while having the potential for causing negative impacts to adjacent local residents. The surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments.
- C. The proposed auto body shop and spray booth facility will impair the character and integrity of the zoning district and surrounding area. In spite of the applicant claims that the proposed auto body shop and spray booth facility could operate in a manner that does not impair the character and integrity of the zoning district and surrounding area in that operations would take place within an enclosed building to control noise levels; air quality would be maintained through emission regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. It has been the experience of the City of Hayward that auto-oriented uses often find it convenient to perform certain operations outside of an enclosed building. The proposed use also has the potential to increase operation beyond that proposed. The potential intensity of this use is of special concern given the small-lot, single-family residential uses adjacent to the industrial properties along the westerly side of Sims Court. Residents have expressed concern regarding health impacts caused by pollutants and disruption of the neighborhood's peace and quiet.
- D. The proposed auto body shop and spray booth facility will be detrimental to the public health, safety, or general welfare. In spite of the applicant claims that the operations would take place within an enclosed building to control noise levels; air quality would be

maintained through emissions regulations; and additional landscaping would improve the buffer between the subject property and the adjacent residential uses. It is not possible to consistently monitor the operations of individual businesses, and potential impacts of the proposed use to the, at least, 18 auto and truck repair establishment within one-half mile of the site could be detrimental to public health and general welfare of the immediately adjacent neighborhood.

- E. The proposed auto body shop and spray booth facility in harmony with applicable City policies and the intent and purpose of the zoning district involved in that the purposes for requiring an administrative use permit when an industrial use abuts a residential district includes assuring that the use is permitted where there is a community need. In this case, the surrounding area (1/2-mile radius from the site) already contains at least 18 auto or truck repair establishments. Therefore, community need cannot be established for this use that has the potential to negatively impact the adjacent residential neighborhood.

SIMS COURT ACOUSTICAL STUDY

Subject Property: 29225 Sims Court
 Date of Study: February 10, 2012
 Time of Study: 4:30 PM to 5:30 PM
 Weather: Clear, 56°, Wind >5 mph

Acoustical Study Parameters:

The Acoustical Study was performed while operating the loudest piece of equipment to be employed in Applicants operation of the facility: A Portable Air Compressor, manufactured by Schrader-Bridgeport. Model: NAC82-4256-VAT

The instrument used for the Study was a Center Technologies Model 325, with a range of 35-130dB, accuracy of +/- 1.5dB, and resolution of 0.1dB. A windscreen was employed during the testing. The device is a rated IEC 651 TYPE II device, OSHA Compliant, and calibrated to NIST (National Institute of Standards & Technology) Standards. The device employs an Electret condenser microphone, with a frequency range of 31.5Hz to 8KHz, and a dynamic range of 50dB.

Readings were taken using a Frequency Weighting of A; and a Time Weighting of FAST

For each location several readings were obtained, and for purposes of this study, the highest reading was taken, and is noted below.

The following are the results of the study:

@ 5' inside buildings south wall, with doors closed:	80.4 dB
@ 5' inside buildings south wall, with doors open:	79.1 dB
@ 5' outside buildings south wall, with doors closed:	66.4 dB
@ 5' outside buildings south wall, with doors open: (@ door closest to West property line)	72.9 dB
@ 5' outside buildings south wall, with doors open: (@ door closest to East property line)	77.9 dB
@ 2' from West property lines CMU wall, with doors closed:	56.6 dB
@ 2' from West property lines CMU wall, with doors open:	66.9 dB

Summary of Findings:

The results of the study confirm that the generated noise level is below 70dBA at the property lines, within the allowable limits requirements of the City's Residential Property Noise Restrictions. The existing 6' high CMU wall must further reduce the noise levels beyond the property line, although no readings were taken on the opposite side of the wall, from the neighboring properties. Based on these findings, Applicant believes his proposed use of the facility conforms to the requirements of the City's Residential Property Noise Restrictions.

I certify that the above Acoustical Study was conducted by me, on the date and at the time first noted above, and the instrument used and readings obtained, are those as outlined and stated above.

Patrick J. Burger
 Architect



Carl Emura

From: Maria Penafiel [maritesfiel@yahoo.com]
Sent: Monday, September 26, 2011 11:12 AM
To: Carl Emura
Subject: 29225 Sims Court auto body shop adjacent to single family homes

Dear Mr Carl Emura

This letter is in reference to PL-2011-0298 AUP . I am a property owner located at 29270 Bowhill Road Hayward CA 94544.

I am totally not agreeable to having someone operate an autobody shop with a spray paint booth because this is close to residential homes.

As you enter Ruus lane there will be a different traffic flow in that area plus the fumes that the residents can inhale. I know that this people just want to be competitive in their business that's why they want to be confined in one place so that when people want to bargain they can just go from one body shop to another . People can just walk from one body shop to another. Please not at our own expense, this is not a flea market . If they want to establish a business pls be considerate of others and the surroundings too and how it will affect others.

Hoping that you will not approve of this and I am also speaking in behalf of the residents of Georgia Manor, a residential facility for the elderly which is just across the street.

Thank you.

Sincerely
Maria Penafiel

From: Bruce Finley [bfbusiness@comcast.net]
Sent: Monday, September 26, 2011 8:04 PM
To: Carl Emura
Subject: Opposition to PL-2011-0298-AUP

Importance: High

Dear Mr. Emura,

I'm writing in reference to the Official Notice I received concerning Adwin Pratap, Micharel or Richard Silva's request to operate a auto body shop with a spray paint boot at 29225 Sims Court in Hayward.

I am adamantly opposed to having this facility so close to residential homes. Among the many reasons I have, is the fact that the noise level is sure to go up in the neighborhood. I'm very concerned about the potential noise level, not only during the day, but when they work outside normal business hours.

The use of chemicals and paints so close to homes is unconscionable. Everyone, especially the young, seniors, and those with medical conditions in the neighborhood are at risk for chemical exposure through airborne particles.

I implore you not to approve this request for the sake of the residents.

Please reply acknowledging receipt of this email.

Thank you,

Bruce Finley
29278 Bowhill Rd.
Hayward, CA 94544

September 27, 2011

RECEIVED
SEP 29 2011
PLANNING DIVISION

Carl T. Emura, ASLA
Planning Division
777 B Street
Hayward, CA, 94541-5007

Re: PL-2011-0298AUP
Address: 29225 Simms Court, Hayward, CA
Applicant: Adwin Pratap
Owner: Micharel or Richard Silva

Mr. Carl T. Emura,

Thank you for the opportunity to respond to the proposed auto body shop at 29225 Simms Ct. I reside on Bowhill Rd. My home is located along the south west edge of the proposed auto body shop. Auto body repair and paint facilities already exist within the community and I do not see the need for another. My home will directly be impacted by this facility.

There is what appears to be a heavy equipment storage facility within the court. There are more than a dozen auto repair and paint facilities from Ruus Lane to Industrial Parkway on Ruus Road and from Ruus Road to Stratford Road. on Industrial Parkway. There is a truck repair facility as well as a tire and brake repair facility on Industrial Parkway between Russ Road and Stratford Road and a very large auto auction wholesale center on Addison Way and Stratford Road. Though these shops and locations are all different they all have one thing in common, toxic and hazardous chemical waste and conditions. How often are the businesses checked for compliance?

According to the Department of Labor of the United States**, "auto body shops are potentially exposed to a variety of chemical and physical hazards. Chemical hazards may include volatile organics from paints, fillers and solvents; diisocyanates, polyisocyanates and hexavalent chromium from spray painting operations; silica from sandblasting operations; dusts from sanding; and metal fumes from welding and cutting. "

According to the United States Environmental Protection Agency***, " People who are exposed to toxic air pollutants at sufficient concentrations, for sufficient durations, may increase their chances of getting cancer or experiencing other serious health effects, such as reproductive problems, birth defects, and aggravated asthma. Auto body shops repair, repaint, and customize cars, trucks, and other vehicles. Their activities include sanding, cleaning, and painting, all of which may release pollutants into the air and may contribute to health concerns in the shop and in the community. "

All of these services also bring about noise within the community. The service doors of the building face my home. The noise from power tools and metal work will travel directly into my home. A food service business was there for several years (Hayward Wholesale Ice Cream). The refrigeration units would go on at all hours of the night not to mention all the ice cream vendor trucks and the loud yelling and ice cream truck music during business hours.

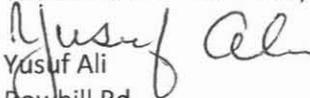
I am retired and spend most of my time at home during the day also my six grandchildren (3,4,4,5,10,12) are often at my home. They love to play in the backyard and I am now afraid that they will be subjected to the harsh and often caustic chemicals used in the auto body industry.

I understand that the auto body industry does use precautions to minimize the hazards of the industry. The equipment used such as a spray booth will contain paint fumes and toxic paints. This will minimize the impacts of pollution in the area, non-the-less, more pollution and hazardous materials will be introduced. Even at a minimized level, pollution, both toxic and noise, that was not present before will be now be present. Body shops work well into the evening hours to meet scheduled completion times. They may have official hours of business, but when quitting time comes, they don't drop their tools and walk away for the night.

The addition of the auto body shop so close to the home will also decrease property values in the area. With today's economic woes, the last thing the community needs is a decrease in property values. The decrease in value may increase the number of home owners who once had equity in their home to now owe more money than the home is worth, thus leading to the possibility of an increase in foreclosures or short sales. With this in mind home prices can drop by as much as 15%.****

I received my notice on the 24th of September. I am sure that a lot of home owners might not have the time to respond to this notice. Please give them more time to voice their opinions. Thank you for your time, your consideration in this matter will be greatly appreciated. I would like to see our neighborhood remain as it is. I do not believe another auto body repair and paint shop is needed in this area.

Thank You for Your Time,



Yusuf Ali
Bowhill Rd.,
Hayward, CA, 94544
(510)786-1974

**<http://www.osha.gov/SLTC/autobody/index.html>

***http://pubweb.epa.gov/oar/toxicair/community/guide/autobody_comm_info.pdf

****<http://realestate.msn.com/7-neighborhood-threats-to-your-homes-value>

From: Del Miranda [miranda@tensilica.com]
Sent: Wednesday, September 28, 2011 6:55 PM
To: Carl Emura
Subject: 29225 Simms Court

Attachment VII

Dear Carl Emura,

My name is Delnis Miranda and I live at 29236 Bowhill Road in Hayward. I recently received your mail notification regarding the property located at 29225 Simms Court, which is located directly in back of my home. I understand that you received a request to operate an autobody shop at that property. I would like to express concern over this decision.

From my understanding of Autobody shops, they are relatively high in terms of air, noise, and visual pollution. My primary concern is the health of my wife and two young children. My youngest daughter has severe asthma. The pollutants from excessive automotive exhausts and paint contaminants from the spray paint booth may result in dire consequences to my daughter's health. Second to that, the noise pollution resulting from operating an autobody repairing vehicles often exceed safe decibel levels and require the use of protective gear to prevent hearing loss. Such noise, especially in the early morning and late afternoon hours, will disturb the much needed tranquility and quietness of the neighborhood and cause a significant increase in stress levels for surrounding neighbors. Autobody shops also tend to collect wrecked cars in various stages of repair, leading to visual pollution and overall loss of property values. All in all, having an Autobody shop next to my home will be very troublesome for my family.

It is my belief that AutoBody shops should be located in areas that is a reasonable distance away from residential areas due to health risks due to pollution.

I hope that you will deny approval for this request and continue to do what's best for the people of Hayward and keep Hayward, the Heart of the Bay, a great place to live.

Feel free to contact me if you have any questions. I would appreciate if you keep me informed of what happens next.

Regards,
del

From: denfisherman@comcast.net
Sent: Monday, October 03, 2011 3:19 PM
To: Carl Emura
Subject: autobody shop at 29225 sims court

Attachment VIII

The body shop is too close to residential area to have a spray paint booth. We already have about six body shop in the area. If wind blow in the direction of the house the paint fume would be loud smelling. I disapprove of this location for a body shop. I am a homer at 29298 bow hill road. Thank you

Adwin Pratap
 Absolute Auto Sales
 16500 E 14th Street
 San Leandro, CA 94578
 (Office) 510-363-8705 (Cell) 510-274-9850

January 12, 2012

Subject: **29225 Sims Court – Proposed Minor Bodywork and Spray Paint Booth Within Existing Building**

To My Bowhill Road Neighbors,

We have received your comments regarding our proposed use of the subject site. We fully understand and appreciate your concerns and wanted to take this opportunity to further clarify our proposed use of the property.

We are not a business dedicated to automobile bodywork, and/or the repair of vehicles that have been seriously damaged. I own a car dealership, Absolute Auto Sales, located in San Leandro, which is my primary business. I intend on using this location, 29225 Sims Court, solely for minor bodywork, and the partial, touch-up painting of cars. I will not be completely painting any cars. There will never be more than 3 cars on site, and cars will generally be parked within the building. Three days a week, there will only be one employee's car in the parking lot. Any given car to be painted will be on site, within the building, for 1 to 2 days only. My use of this facility will be fairly limited.

The previous comments from the neighborhood to the City focused on four major concerns: Noise, Paint Fumes, Toxic Paints, and, Property Values. I address these issues below.

NOISE

My proposed hours of operation will be limited to 9:30 AM to 2:30 PM, on Mondays, Wednesdays and Fridays, for a total of no more than 15 work hours per week. There is no work proposed on Tuesdays, Thursdays or weekends.

Although an eventual expansion of my business may entail extending operating days to include Tuesday and eventually Thursday, the hours of operation would always be limited, as noted above, and no work would be performed on weekends. There will be a maximum of 2 employees, normally one employee, and on occasion, one helper or myself. There will be only minor automobile bodywork performed – no collision repairs or extensive bodywork. The spray painting performed will occur within a self-contained spray booth, within the building. The two roll-up doors to the building will be closed during the painting process. The compressor used for the spray painting is a Schrader-Bridgeport, 30 gallon, 2HP Running – 5HP Peak, Model NAC 82 – 4256, which generates approximately 85dB @ 3 meters. Audible noise level, in dB, outside the roll-up doors would be approximately <80dBA, and well below 70dBA at the property lines, well within the requirements of the City's Residential Property Noise Restrictions. As an example, normal conversation at a distance of 3-5 feet ranges from 60 to 70dB. **The limited hours of operation, and the low dB ('noise') generated, will not be an issue adversely affecting any of the adjacent residences closest to the subject building.**

PAINT FUMES

The spray paint booth I will be using (a Col-Met Spray Booth, www.colmetsb.com) is a state of the art, self-contained and enclosed structure, which will be located within the building. All work – limited to minor bodywork and the partial spray painting of cars - will be performed inside the spray booth, or in the building, and not outside the building, or in any outdoor parking area. This self-contained spray booth structure captures all paint film not deposited on the car body itself. The venting system exits through the roof of the building and incorporates an **exhaust filter manufactured by Columbus Industries. It is a paint arrestor filter rated at 99% efficiency for the removal of paint overspray.** Underwriters Laboratory file number: R5277 **Paint fumes will not adversely affect the neighborhood.**

TOXIC PAINTS & CHEMICALS

We will be using only water-based paints. There will be no VOC (Volatile Organic Compound) type paint products used at this facility. **There will be no toxic paints employed in my operations. We will not be detailing or washing any cars on site. I subcontract out to another off-site company – authorized for such work – all detailing and car washing. There will be no toxic chemicals used in our proposed operations.**

PROPERTY VALUES

We will be planting a line of evergreen shrubs, along the rear and left side property lines, to aid in the screening of our facility from the adjacent residential parcels, as well as new plantings and street trees along the front property line. As a condition of use, the City requires appropriate landscaping and an approved sprinkler system, to maintain the landscaping in optimal condition. My proposed use of this facility is a lot less intrusive visually and acoustically, than the property might otherwise be subjected to by any other potential full-time, more intensive use, tenant. **I propose that the above elements, in combination, act to increase the areas property values,** and not detract from those existing values. The view from any neighboring residential properties will be enhanced by the landscaping proposed, and my occupancy of the property.

In summary, **there will be no hazardous or toxic chemicals whatsoever released into the neighborhood. Sound pollution will also not be an issue.** There will be no late afternoon, evening or nighttime operations at this facility. I believe my use of the property will enhance your sightlines, vis-à-vis the landscape screening proposed, and not infringe on your privacy, either visually or acoustically – especially given the limited hours of operation. I hope I have satisfactorily addressed all of the issues that may be of concern to you, my residential neighbors, and hope to have your support as I proceed through Planning Review.

Should you have any questions or concerns you feel are not sufficiently addressed in this letter please feel free to contact me directly at 510-274-9850, or, for technical questions, my Architect, Patrick Burger at 415-595-5457.

Thank you for your time and your consideration of my proposal and planned use of the property.

Sincerely,

Adwin Pratap

DRAWING LEGEND

- A-1.0 TITLE SHEET & SITE PLAN
- A-1.1 FLOOR PLANS
- A-1.2 ELEVATIONS & SECTION
- A-1.3 LANDSCAPE PLAN & DETAILS

PREVIOUS USE

Hayward Wholesale Ice Cream Co. (2000's)
 Inland Industrial Tire N, Inc. (1990's)

SPRAY BOOTH INFORMATION

Col-Met Spray Booth will have an approved automatic fire-extinguishing system.
 Spray Booth size will be 15'-0" x 34'-6"
 Total Sq Ft = 518 sf < 571 sf (10% of Bldg Size)

SEWER SERVICE

Water and Sewer Services are available and subject to standard conditions and fees in effect at the time of application and payment.
 Sewer Capacity Fee Due and Payable Prior to Final Inspection

PROJECT INFORMATION

ADDRESS: 29225 SIMS COURT
 Hayward, CA 94544

A.P. # 464010001503

Owner: **Adwin Pratap**
 590 Meek Ave
 Hayward, CA 94541
 Ph 510-363-8705

Architect: **Patrick J. Burger**
 441 Banbury Street
 Hayward, CA 94544
 Ph 415-595-5457

ZONING: I - Industrial

Proposed Use:

Auto Spray Paint Booth
 Maximum Number of Employees: 1
 Hours of Operation: 9:30 AM to 2:30 PM

ALL Bodywork, Detailing and Car Preparation will be performed off site - at the Applicants Used Car Dealership:

Absolute Auto Sales
 16500 E 14th Street
 San Leandro, CA 94578

NOT OPEN TO THE PUBLIC
 (Limited to cars for the Applicants Used Car Dealership)

WATER SERVICE

Existing 1" Domestic Meter
 Account # 46-54020.03

Water Fixtures served by (e) 1" meter

- (1) Water Closet
- (1) Hand Sink

Only City Water Distribution Personnel shall perform operation of valves on the Hayward Water System

SOLID WASTE REQUIREMENTS

74 lbs per employee 1 employees = 74 lbs
 74/150 = <1/2 cy/week

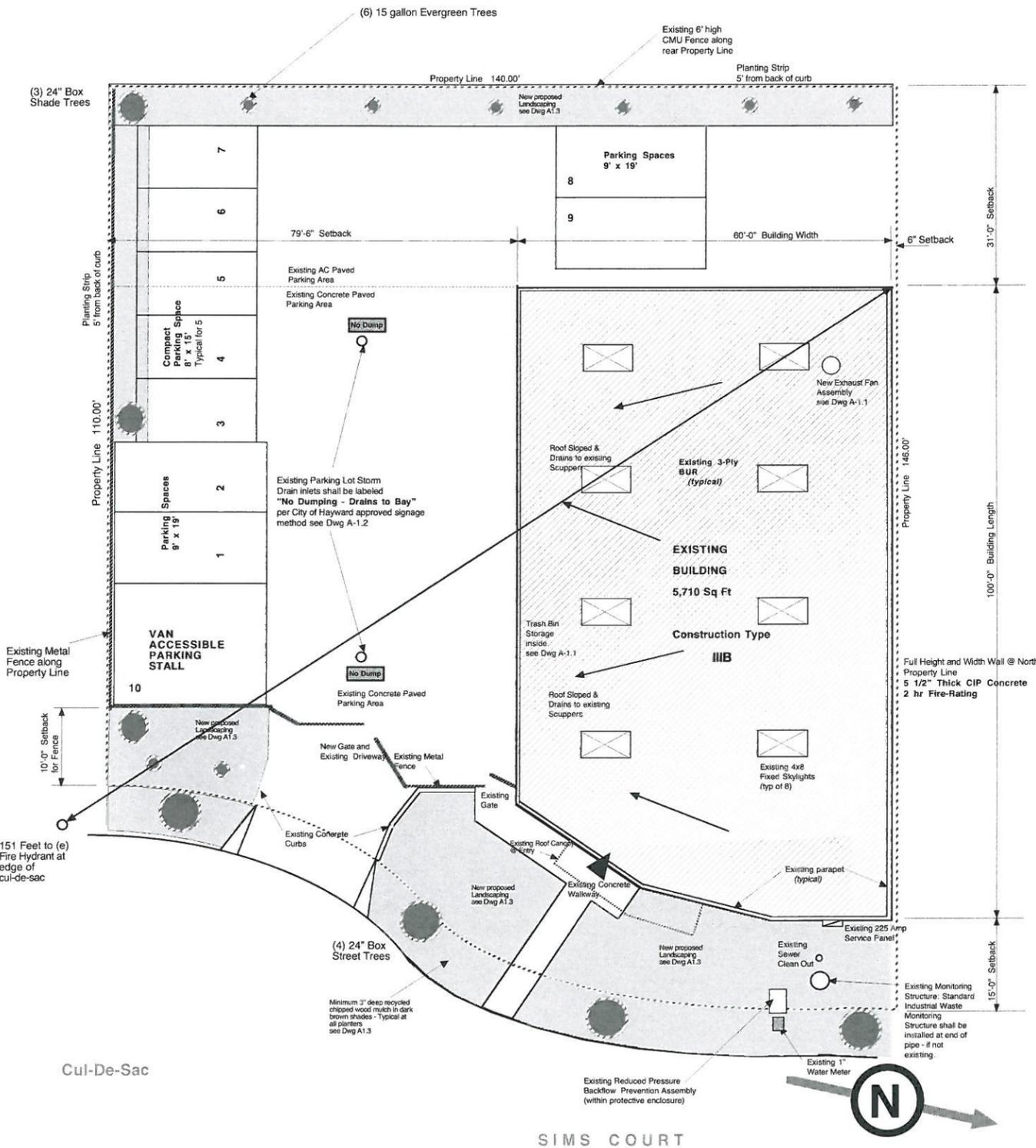
64 US gallons = 0.3169 cubic yards

(2) 64 gallon containers = 0.63 cubic yards

Total .63 CY provided > .5 CY required

- (1) 64 gallon Containers = garbage
- (1) 64 gallon Container = recyclables

64 gal = 28" w x 30" d x 43" h



VICINITY MAP

REVISIONS

Revised per Dec 16, 2011 letter of recommendations of Planning, Landscape, Fire, & Water Pollution Source Control

Patrick J. Burger, Architect
 441 Banbury Street Hayward, CA 94544
 patrick@architectinspect.com (415) 595-5457
 Architect, California Lic.# C-19988

TITLE SHEET & SITE PLAN
 Project: Auto Spray Paint Booth
 Address: 29225 Sims Court Hayward, CA 94544
 Owner: Adwin Pratap
 Project # PL-2011-0298 AUP

DRAWN BY: PJB
 November 30, 2011

SCALE: 1/8" = 1' - 0"

DRAWING NO:

A-1.0

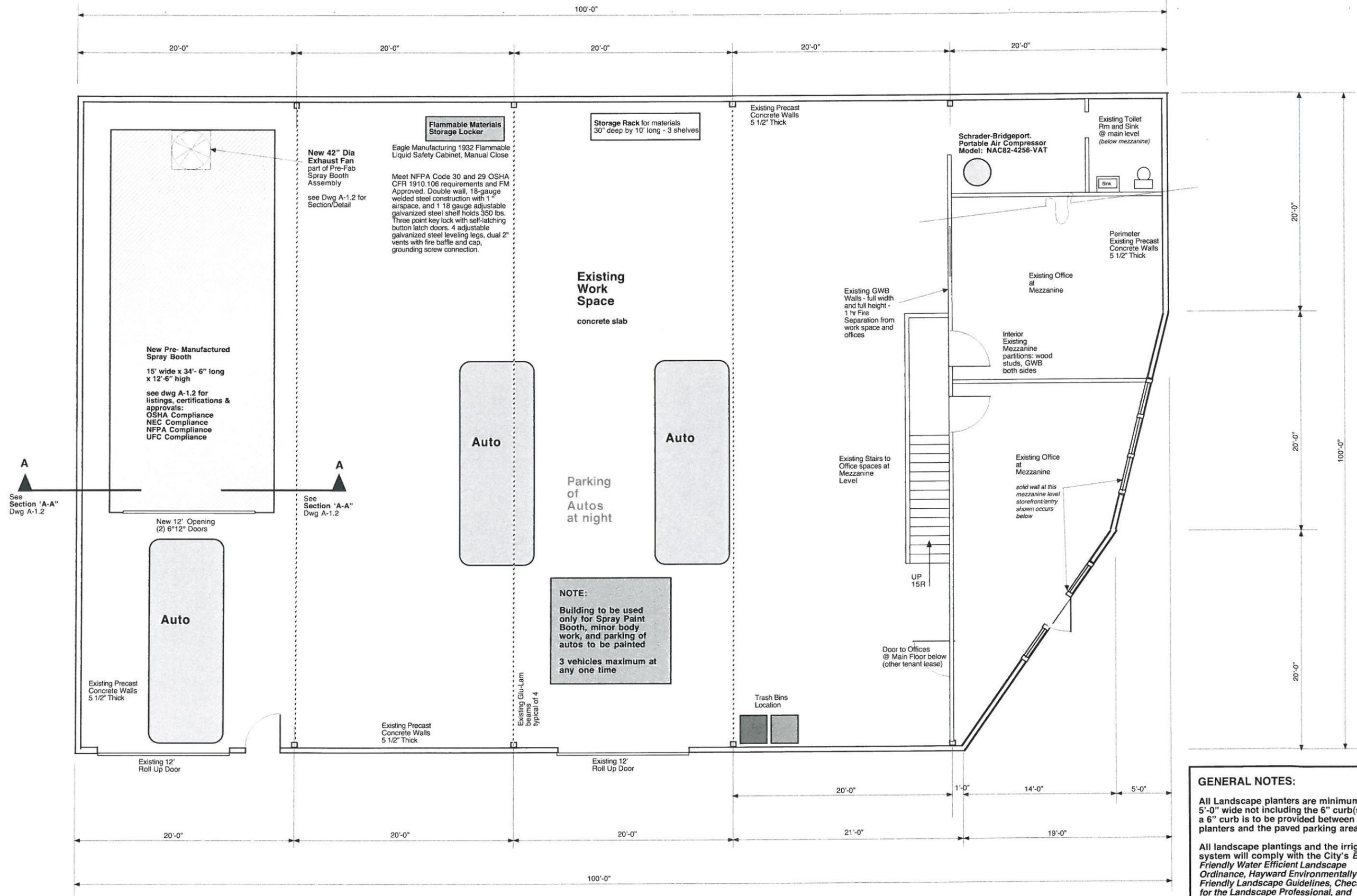
PROJECT: Sims Court

REVISIONS	

Patrick J. Burger, Architect
 441 Banbury Street Hayward, CA 94544
 patrick@architectinspect.com
 Architect, California Lic.# C-19988 (415) 595-5457

FLOOR PLAN
 Project: Auto Spray Paint Booth
 Address: 29225 Sims Court Hayward, CA 94544
 Owner: Adwin Pratap Project # PL-2011-0298 AUP

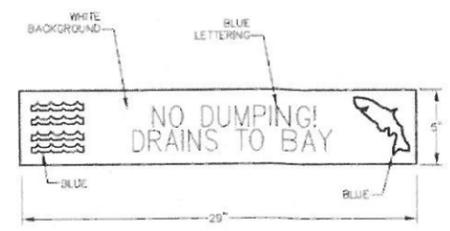
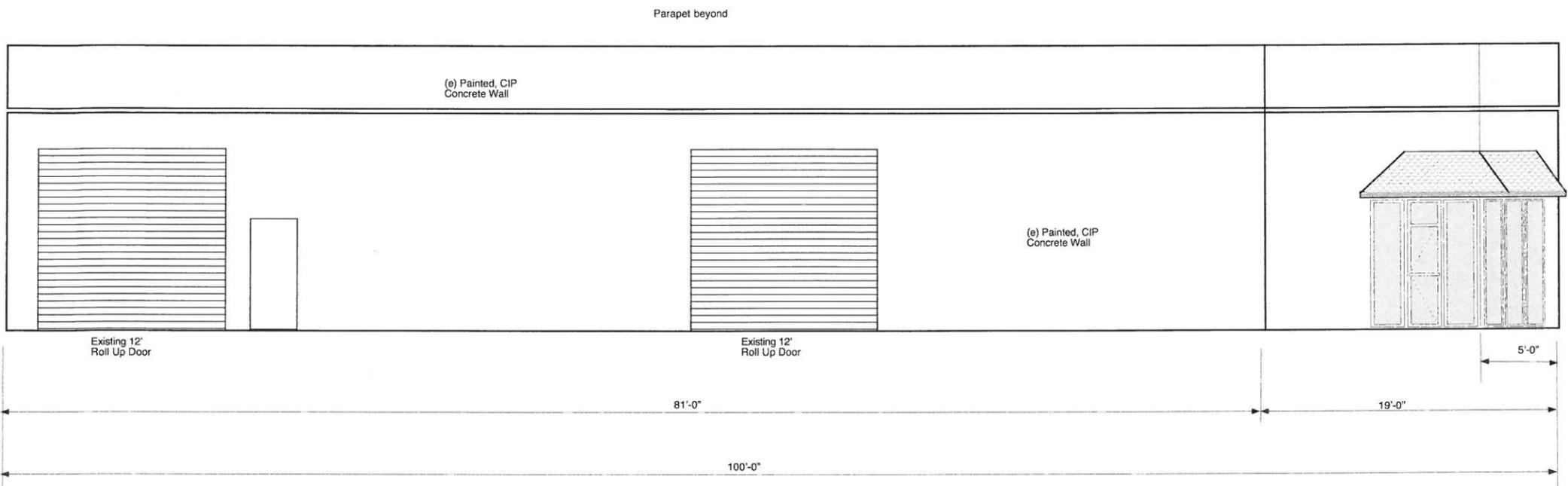
DRAWN BY: PJB
 Nov 30, 2011
 SCALE: 1/4" = 1'-0"
 DRAWING NO:
A-1.1
 PROJECT: Sims Court



NOTE:
 Building to be used only for Spray Paint Booth, minor body work, and parking of autos to be painted
 3 vehicles maximum at any one time

GENERAL NOTES:
 All Landscape planters are minimum 5'-0" wide not including the 6" curb(s), and a 6" curb is to be provided between the planters and the paved parking areas.
 All landscape plantings and the irrigation system will comply with the City's Bay-Friendly Water Efficient Landscape Ordinance, Hayward Environmentally Friendly Landscape Guidelines, Checklist for the Landscape Professional, and applicable Municipal Codes.
 There are no existing trees on the property.

EXISTING / PROPOSED FLOOR PLAN (no change) with PROPOSED SPRAY BOOTH
 Scale: 1/4" = 1'-0"

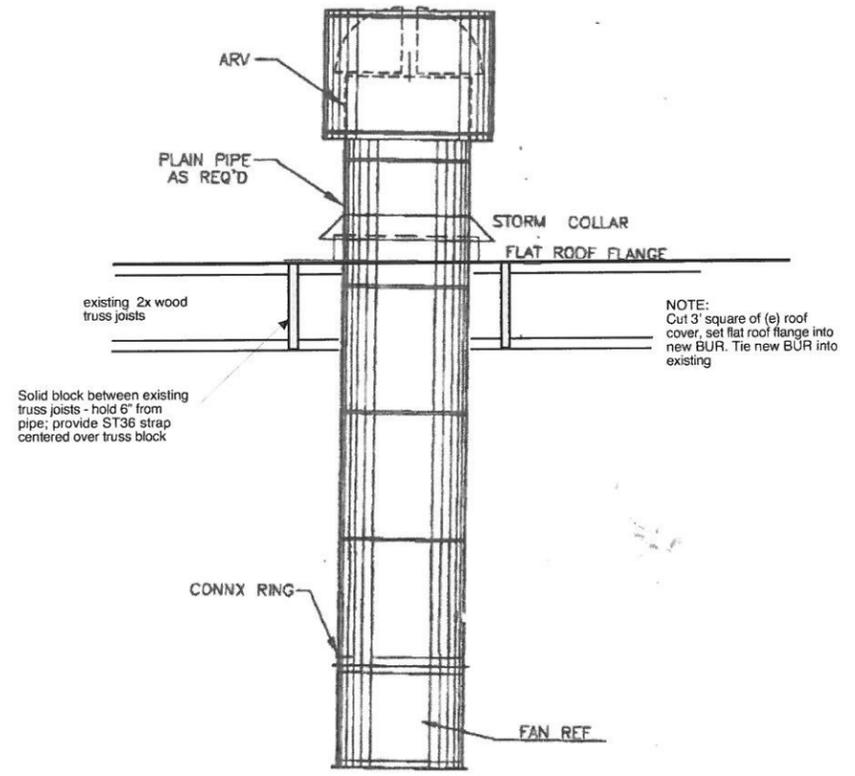
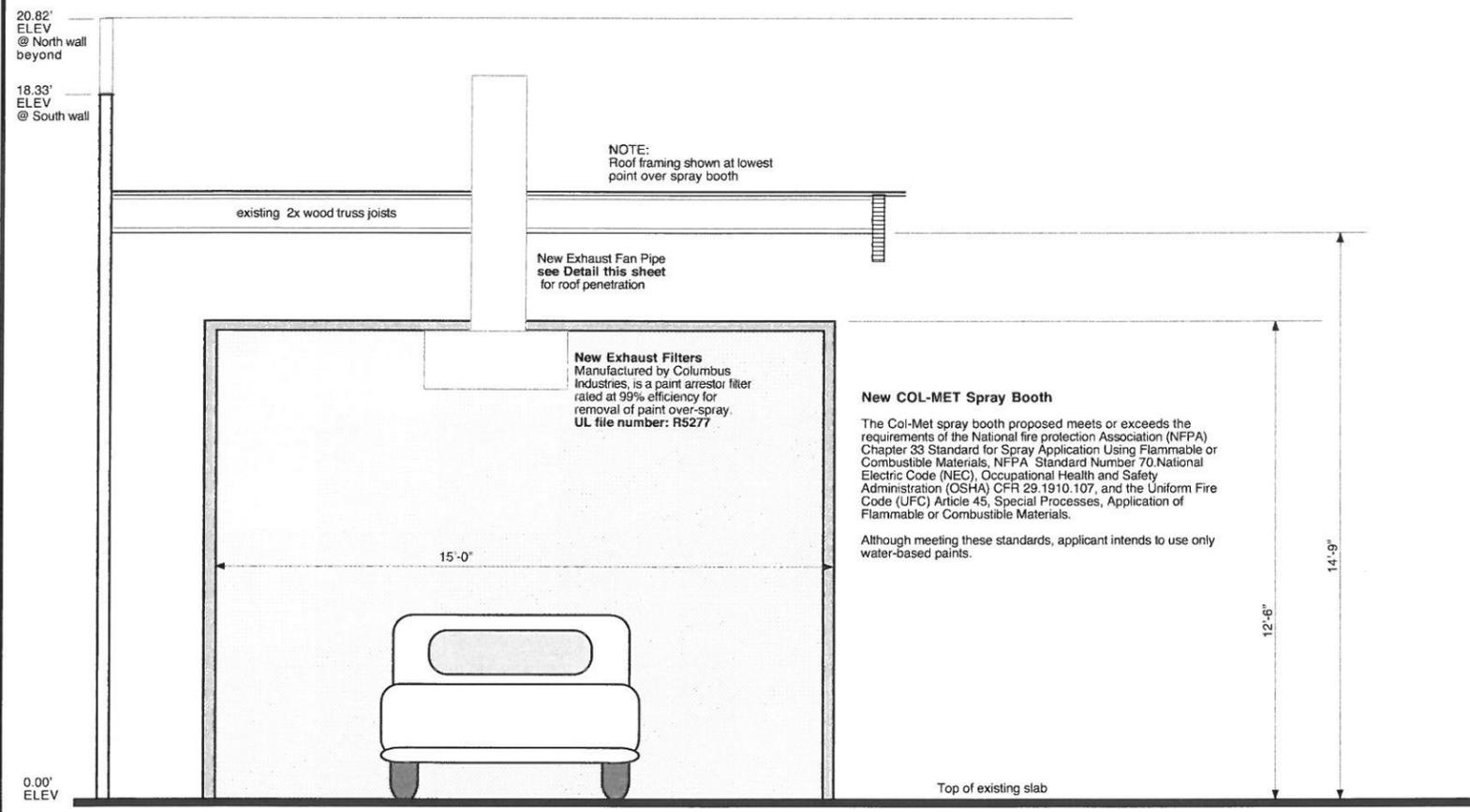


- NOTES:**
1. New concrete surfaces must be sandblasted to entirely remove the curing compound.
 2. This marking shall be applied on top of curb or sidewalk where storm water inlets are located.
 3. When there is no curb, apply the marking on the concrete floor or apron.
 4. The skid-resistant and retroreflective preformed thermoplastic marking shall be applied to concrete or asphalt by means of heat fusion in accordance with the manufacturer's recommendations. The marking shall be Flint Trading, Inc. PreMark #69162063415, telephone no (916) 424-1332, or approved equal.
 5. The preformed thermoplastic marking shall be a two layer application consisting of a blue non-beaded base layer with a white beaded stencil top layer.
 6. Storm water inlet marking to be applied at all new and modified stormwater inlets.

DETAIL of DRAIN SIGNAGE @ Storm Drains

BUILDING ELEVATION - South Wall (North and West Walls - Solid Walls - No Openings) No Change to Bldg Exterior

Scale: 1/4" = 1'-0"



PIPE DETAIL

SECTION "A - A"

Scale: 1/2" = 1'-0"

REVISIONS

NO.	DESCRIPTION

Patrick J. Burger, Architect
441 Banbury Street Hayward, CA 94544
patrick@architectinspect.com (415) 595-5457
Architect, California Lic.# C-19988

ELEVATION, SECTION & DETAILS
Project: Auto Spray Paint Booth
Address: 29225 Sims Court Hayward, CA 94544
Owner: Adwin Pratap Project # PL-2011-0298 AUP

DRAWN BY: PJB
Nov 30, 2011
SCALE: As Noted

A-1.2

PROJECT: Sims Court

REVISIONS

1/6/12
revised per Dec 16
recommendations by
City of Hayward
Landscape Architect
Michelle Koo

Patrick J. Burger, Architect
441 Banbury Street Hayward, CA 94544
patrick@architectinspect.com (415) 595-5457
Architect, California Lic.# C-19988

LANDSCAPE PLAN & DETAILS
Project: Auto Spray Paint Booth
Address: 29225 Sims Court Hayward, CA 94544
Owner: Adwin Pratap
Project # PL-2011-0298 AUP

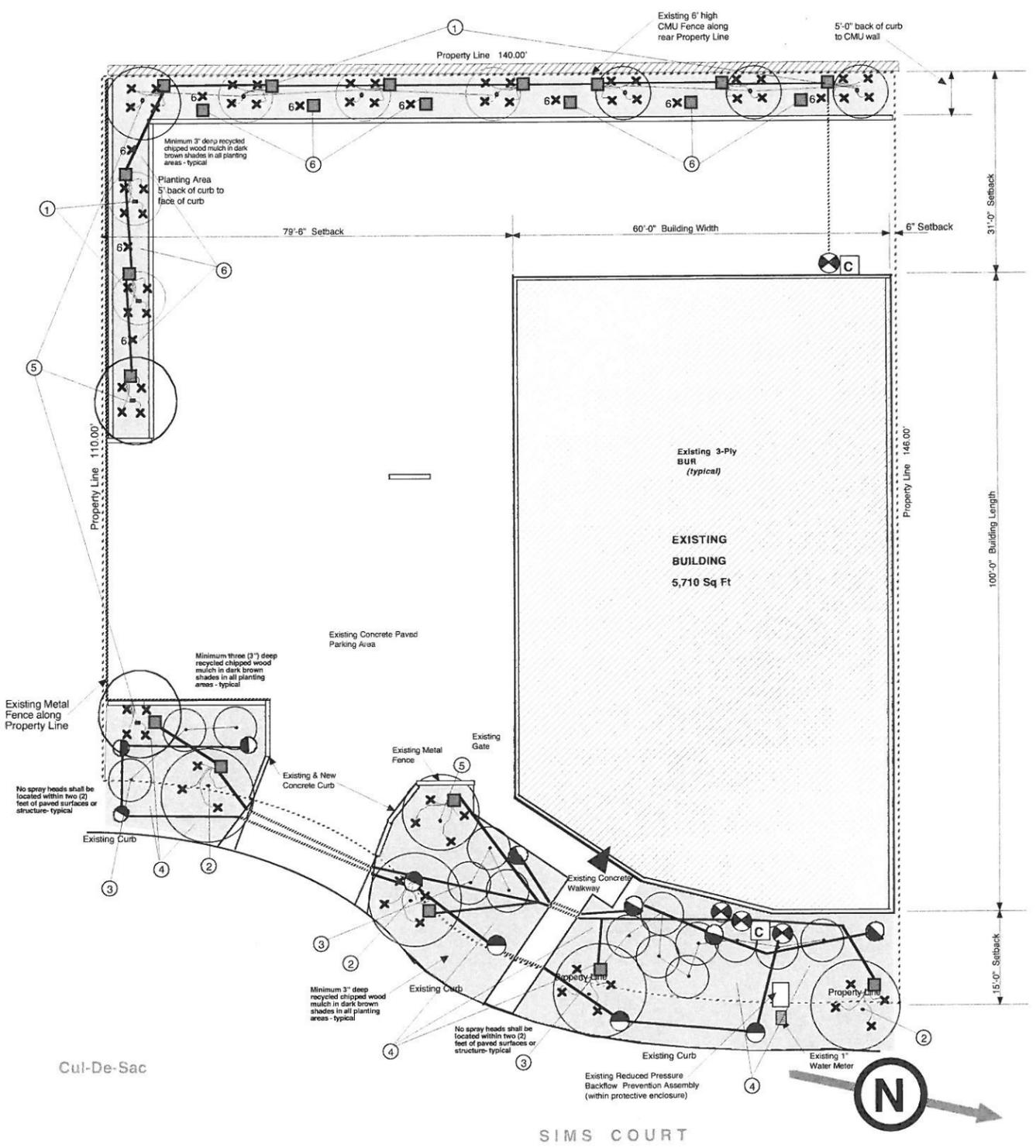
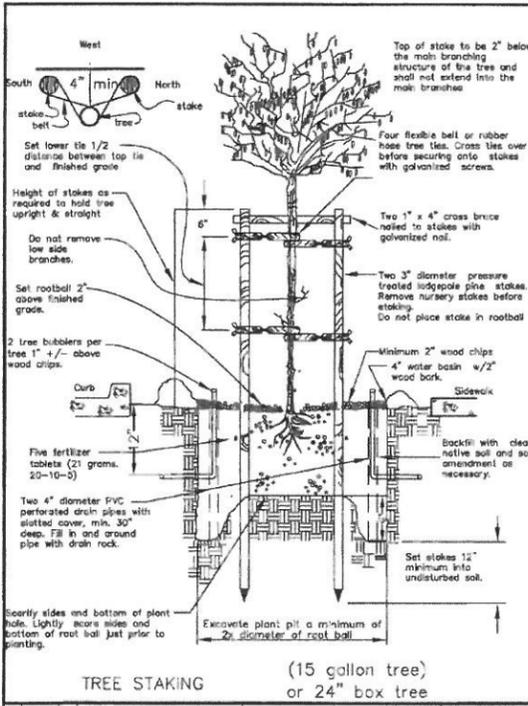
DRAWN BY: PJB
November 30, 2011
SCALE: 1/8" = 1'-0"
DRAWING NO:
A-1.3
PROJECT: Sims Court

PLANT, TREE & SHRUB SCHEDULE

Sym	Common Name	Botanical Name	Size	Quan
1	Arborvitae - Evergreen	Thuja occidentalis	15 gal.	8
2	Swamp Myrtle	Tristania laurina	24" box	4
3	Creeping Juniper	Juniperus Horizontalis 'Plumosa'	15 gal.	14
4	Sunrise Yellow Gazania	Gazania rigens luecolaena	12" o.c. each way	
5	Trident Maple	Acer buergerianum	24" box	4
6	Gazania, Kiss Bronze	Gazania splendens, kiss bronze	12" o.c. each way	

IRRIGATION SCHEDULE

Sym	Component Description
☐	Water Meter
ⓐ	Irrigation Controller, weather based
⊗	3/4" Control Valves - Rainbird 'E' Series
⊙	Rainjet 852c (half circle)
—	Class 160 PVC (12" deep)
----	Class 160 PVC (12" deep - under paving)
■	Rainbird MultiOutlet Xeribug
×	Rainbird Xeribug Drip Emitters



LANDSCAPE & IRRIGATION PLAN

Scale: 1" = 10'-0"

DATE: May 31, 2012

TO: Planning Commission

FROM: Tim R. Koonze, Associate Planner

SUBJECT: **Text Amendment Application Number PL-2012-0140 / City of Hayward (Applicant) – Establish zoning regulations regarding the retail sale of tobacco.**

RECOMMENDATION

That the Planning Commission recommends that the City Council: 1) adopts the attached Initial Study and Negative Declaration (Attachment II), 2) approves the Zoning Ordinance text amendment to permit the sale of tobacco and tobacco products in the General Commercial (CG) District with the approval of a conditional use permit, and 3) adds a definition of tobacco sales to the Zoning Ordinance, subject to the attached findings (Attachment VI).

SUMMARY

In response to Council direction in late 2011/early 2012, and because the sale of tobacco products is not specifically listed anywhere in the City's Zoning Ordinance, which is challenging for staff, staff is recommending provisions be added to the Zoning Ordinance that would limit the retail sale of tobacco to the General Commercial Zoning District with a conditional use permit. A conditional use permit would require a noticed public hearing before the Planning Commission.

BACKGROUND

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths – one in every five deaths – each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. The economic burden of cigarette use includes \$193 billion annually in health care cost and loss of productivity.

Smoking is not a right protected by the United States Constitution. Specifically, smoking is neither a specially protected liberty nor a right to privacy under the "due process clause" of the Constitution. In addition, smokers are not a specially protected category under the "equal protection clause" of the Constitution. Consequently, the United States Constitution allows for the enactment of smoke free laws that relate to the legitimate government goals of public health, safety, and welfare.

Since 1998, the State of California has continued to implement legislation that restricts smoking and exposure to second-hand smoke (SHS). These include no smoking in public school facilities and athletic events, in public playgrounds and tot lots, as well as day care centers in private residences. State action has also banned smoking in workplaces, in all restaurants and bars, and smoking in the presence of a minor (17 years or younger) while in a moving vehicle and to treat it as a misdemeanor offense when cited with a larger offense. Through a provision in California Government Code 7597, the State of California allows for local governments to adopt and enforce additional smoking and tobacco control ordinances, regulations, and policies that are more restrictive than the applicable standards required by the State of California.

On that basis, in 1996, the City enacted the first Smoking Pollution Control Ordinance, found in Chapter 5, Article 6 of the Hayward Municipal Code (HMC). The ordinance allowed smoking in private residences, bars, tobacco shops that exclusively sold tobacco, and halls and rooms rented for private events. Smoking was prohibited in all enclosed areas customarily used by the public, such as restaurants, theaters, auditoriums, and public transit, including taxi cabs.

Since 1996, the City of Hayward has implemented policies to make Hayward a healthier city. On May 27, 2008, the City Council amended the Smoking Pollution Control Ordinance prohibiting the use of tobacco products in or around public places in the City of Hayward. The premise for such action relates to the desire of the Council to protect the health and well being of the general public by reducing impacts associated with second hand smoke especially on children (refer to 2008 staff report, Attachment VII). The Ordinance included a prohibition to smoke within 20 feet of any enclosed public place and on public sidewalks and streets.

After the City began to enforce the new smoking ordinance, downtown restaurant operators expressed concerns that the enforcement of the Ordinance made the Downtown a less desirable location for those patrons given citations for smoking on the way to and from the restaurants. In addition, restaurant patrons have expressed concern over their safety if they were to smoke in less visible areas around the Downtown. According to some restaurant operators in the Downtown, patrons desiring to smoke have been known to leave restaurants to smoke in their car and/or parking lots. Operators indicate that patrons who leave dining establishments don't always return, which represents a loss of business.

City staff, working with the Council and restaurant operators, came to a solution of eliminating the requirement that smoking could not occur within 20 feet of an opening into a building. This allowed restaurants with limited outdoor space to still provide designated smoking areas. The Ordinance was amended on October 19, 2010 (refer to 2010 staff report, Attachment VIII).

The City furthered its goal to become a healthier city by adopting a resolution to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign, thereby setting goals to provide its citizens and employees with healthier choices (refer to Attachment IX).

In a continuing effort to make Hayward a healthy city and in striving to improve the health and welfare of its citizens, and in response to previous City Council direction, staff recommends limiting the retail sale of tobacco and tobacco products to one commercial zoning district with the approval of a conditional use permit. The conditional use permit would allow the Planning Commission at a

noticed public hearing (or City Council on appeal) to determine if a site is suitable for tobacco sales and if the sale of tobacco would be compatible with surrounding uses. Staff also proposes a definition for tobacco sales to ensure that the tobacco retailers are clear as to the type of products that are allowed to be sold and what products would be prohibited.

DISCUSSION

Staff is proposing the following changes to the Zoning Ordinance:

- Allow retail sales of tobacco and tobacco products only in the Commercial (CG) District with approval of a conditional use permit;
- Allow tobacco sales, as a secondary use, in retail stores over 10,000 square feet in any zoning district;
- Prohibit tobacco sales within 500 feet of sensitive receptors; and
- Create a definition for tobacco sales, to include the prohibition of the sale of drug paraphanelia and other specified items.

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district. As there is no restriction of tobacco sales, the Planning Director has made the determination that tobacco sales were a general retail item permitted in any commercial zoning district, except in the Downtown core area.

Continuing with the City's direction to maintain a healthier Hayward and to minimize smoking and access to tobacco products within the City limits, staff recommends restricting the sale of tobacco or tobacco related products to the General Commercial (CG) District. The CG District is located primarily along the City's major arterials of Mission Boulevard, Jackson Street, and Foothill Boulevard (refer to Attachment I). This CG District was selected as it provides regional serving retail opportunities along major transportation corridors with minimal impact to neighborhood-serving commercial areas. It is proposed that tobacco sales would be subject to the approval of a conditional use permit (CUP) (see Attachment III). By requiring a CUP, the City could evaluate proposed tobacco sale locations to ensure they are compatible with the surrounding properties.

Similar to the regulations for alcohol sales, the sale of tobacco products would be allowed without the need for a conditional use permit only in retail stores having 10,000 square feet or more in area in any zoning district; however, no more than 5 percent of such floor area could be devoted to the sale, display and storage of tobacco or alcohol products combined. This provision allows larger grocery stores and box retail stores to sell tobacco products as a secondary use. In addition, the sale of tobacco would be prohibited within 500 feet of sensitive receptors such as schools, parks, library, playground, recreation center, day care center, health care facilities or any other similar use (see Attachment IV).

Staff also proposes the following definition for "Tobacco Sales Establishments," which would limit tobacco retail establishments to any establishment involving the sale of tobacco and tobacco products (see Attachment V). The definition would read as follows:

Tobacco Sales Establishment – Any establishment that sells tobacco products such as cigarettes, cigars, chewing tobacco, and pipe tobacco, as well as tobacco related products such as pipes, lighters, ash trays, and other products associated with the use of tobacco. The sale of drug paraphernalia, items that are considered “kid friendly” such as flavored tobacco products, containers with secret compartments commonly referred to as “stash cans” and single cigarettes shall be prohibited.

The proposed regulations would prohibit tobacco sales in retail stores that commonly sell tobacco such as small grocery stores, minimarts, and gas stations. The proposed text amendment that would be presented in final form to the City Council for consideration would include revisions to the text for all of the commercial zoning districts where such uses are listed, to include a reference to the new recommended tobacco sales general regulations text that is shown in Attachment IV. For example, any place in the Zoning Ordinance where a convenience market is listed as an allowed use, there would be a reference to the General Regulations section of the Zoning Ordinance, which is proposed to reflect the text in Attachment IV. All existing retailers of tobacco products would be considered legal non-conforming uses and could continue selling tobacco unless the tobacco sales are discontinued for a period of six months or more, pursuant to Section 10-1.2915, Nonconforming Uses, of the Zoning Ordinance, and the City determines they cannot be re-established in accordance with Federal and State laws.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made:

A. Substantial proof exists that the proposed change will promote public health, safety, convenience and general welfare of the residents of Hayward.

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. Regulating the sale of tobacco and tobacco related products will promote public health, safety, convenience and general welfare of the residents of Hayward as it is a continuation of the City’s direction to maintain a healthier Hayward and to minimize the exposure of its citizens to tobacco by restricting the sale of tobacco or tobacco related products to certain commercial areas.

B. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.

The City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

This finding is not applicable in that this application does not involve a reclassification.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and further, a beneficial effect will be achieved which is not obtainable under existing regulations.

This finding is not applicable in that this application does not involve a reclassification.

Environmental Review - An Initial Study and Negative Declaration (IS/ND) have been prepared for the project pursuant to the California Environmental Quality Act (CEQA) (see Attachment II). No significant environmental impacts are expected to result from the project. The review period for the environmental documents ends May 30, 2012. No response to the notice indicating availability of the IS/ND had been received when this staff report was completed.

PUBLIC CONTACT

On May 21, 2012, a Notice of this Public Hearing and Availability of the Draft Negative Declaration was published in *The Daily Review*. At the time this report was prepared, staff had not received any public comments.

NEXT STEPS

Should the Planning Commission recommend that the City Council adopt the proposed text amendments, a public before the City Council will be held, tentatively scheduled for June 26, 2012. The decision of the City Council would be final.

Prepared by: Tim R. Koonze, Associate Planner

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



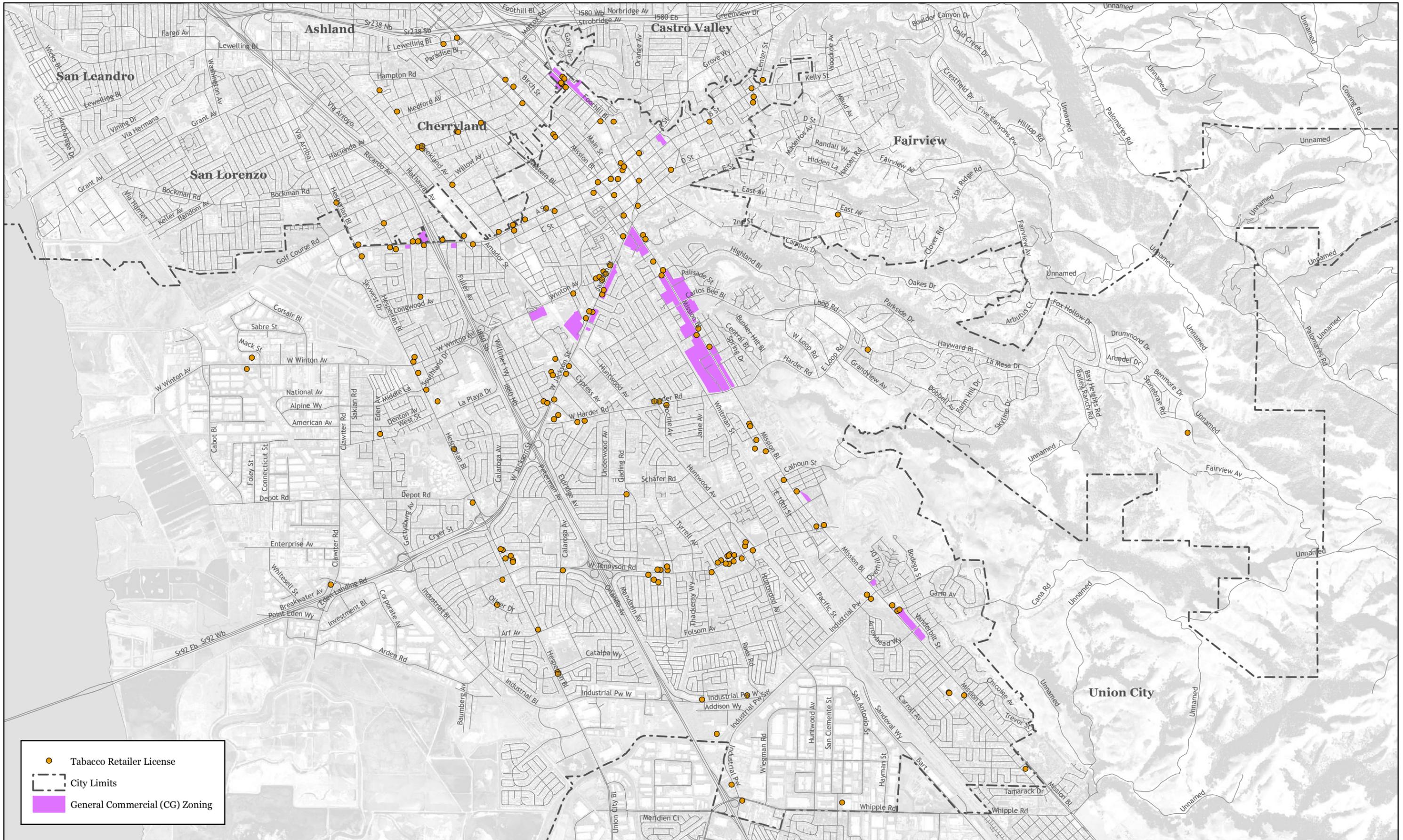
David Rizk, AICP
Development Services Director

Attachments:

- Attachment I Zoning Map Showing the Location of CG Zoning District
- Attachment II Initial Study and Negative Declaration
- Attachment III Addition of Tobacco Sales to the General Commercial District of the Zoning Ordinance
- Attachment IV Addition of Tobacco Sales Requirements to the General Regulations of the Zoning Ordinance
- Attachment V Addition of Definition For Tobacco Sales Establishments in the Definition Section of the Zoning Ordinance
- Attachment VI Findings for Approval for the Text Amendment Application
- Attachment VII City Council Report Amending the Smoking Pollution Control Ordinance 2008
- Attachment VIII City Council Report Amending the Smoking Pollution Control Ordinance 2010
- Attachment IX City Council Report by Adopting a Resolution for the City of Hayward to Become a Member of the Healthy Eating Active Living (HEAL) Cities Campaign



Tobacco Retailer Licenses in Hayward



-  Tobacco Retailer License
-  City Limits
-  General Commercial (CG) Zoning

Note: Licenses are as on April 23, 2012.



DEPARTMENT OF DEVELOPMENT SERVICES
Planning Division

INITIAL STUDY CHECKLIST

Project Title: Text Amendment PL-2012-0140 Tobacco Sales

Lead agency name and address: City of Hayward, 777 "B" Street, Hayward, CA 94541-5007

Contact person: Tim R. Koonze, Associate Planner
(510) 583-4207 tim.koonze@hayward-ca.gov

Project location: City Wide

Project sponsor's name and address: City of Hayward
777 B Street
Hayward, CA 94541
Attn: Tim Koonze

General Plan: General Commercial (CG), Commercial High Density Residential (CHDR), Retail Office Commercial (ROC), and Low Density Residential (LDR)

Zoning: General Commercial (CG) and Central Business (CB)

Description of project: Establish zoning regulations regarding the retail sale of tobacco.

Surrounding land uses and setting: N/A

Other public agencies Whose approval is required: None

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Terri R. Koonye May 2, 2012
 Signature Date

Printed Name For

EVALUATION OF ENVIRONMENTAL IMPACTS:

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? Comment: <i>The text amendment would not have an effect on scenic vistas.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? Comment: <i>The text amendment would not affect scenic resources.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings? Comment: <i>The text amendment would not degrade the existing character or quality of the site and its surroundings.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? Comment: <i>The text amendment does not include construction or development.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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II. AGRICULTURE AND FOREST

RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? Comment: *The text amendment would not affect farmland.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? Comment: *Refer to II a).*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? Comment *Refer to II a).*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Result in the loss of forest land or conversion of forest land to non-forest use? Comment *Refer to II a).*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? <u>Comment</u> Refer to II a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan? <u>Comment</u> The text amendment would have not affect on air quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? <u>Comment</u> Chapter 5, Article 6 Smoking control Ordinance of the City's Municipal Code in the interest of the public health, safety, and welfare, prohibits smoking in all public places. The proposed amendment minimizes the accessibility of pollutant producing items thus contributing to better air quality and creating a healthier environment for Hayward citizens.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? <u>Comment</u> Refer to III b).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Expose sensitive receptors to substantial pollutant concentrations? <u>Comment</u> Refer to III b).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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e) Create objectionable odors affecting a substantial number of people? <u>Comment</u> Refer to III b).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? Comment: <i>The text amendment would not affect any fish and wildlife species or regional plan, policies, or regulations set forth by the California Department of Fish and Game or U.S. Wildlife Service.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? Comment: <i>Refer to VI a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? Comment <i>Refer to VI a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? Comment: <i>Refer to VI a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? Comment <i>Refer to VI a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? Comment: <i>The text amendment would not conflict with any habitat conservation plans.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. CULTURAL RESOURCES -- Would the project:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5? Comment: <i>The text amendment would not affect historical resources as defined in § 15064.5.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? Comment: <i>The text amendment would not result in any development that would not affect archeological resources.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? Comment: <i>The text amendment would not affect paleontological geologic features.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries? Comment: <i>The text amendment would affect any human remains.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VI. GEOLOGY AND SOILS -- Would the project:

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
- i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. **Comment** *The text amendment would not result in any development that would expose people to any geologic hazard.*
 - ii) Strong seismic ground shaking? **Comment** *Refer to VI a)i).*
 - iii) Seismic-related ground failure, including liquefaction? **Comment** *Refer to VI a)i).*
 - iv) Landslides? **Comment** *Refer to VI a)i).*
- b) Result in substantial soil erosion or the loss of topsoil? **Comment** *The text amendment would not result in any development that would result in*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>substantial soil erosion or the loss of topsoil.</i>				
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? Comment <i>Refer to VI a)i).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? Comment <i>Refer to VI a)i).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? Comment <i>The text amendment would not result in any development that would create a need for a septic tank or alternative wastewater disposal system.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VII. GREENHOUSE GAS EMISSIONS --
Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? Comment <i>The text amendment would not cause the generation of greenhouse gas emissions, either directly or indirectly.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? Comment <i>The text amendment would not conflict with applicable plan, policies or regulations adopted for the purpose of reducing the emissions of greenhouse gases.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VIII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
environment through the routine transport, use, or disposal of hazardous materials? Comment <i>The text amendment would have no effect on the transport, storage, use, or disposal of hazardous materials.</i>				
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? Comment <i>Refer to VIII a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? Comment <i>Refer to VIII a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? Comment <i>Refer to VIII a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? Comment <i>The text amendment would not result in any development or have any effect on airport or airstrips.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? Comment <i>Refer to VIII e).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? Comment <i>The text amendment would not physically interfere with emergency response plans or evacuation plans.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? Comment <i>The text amendment would not cause people to be exposed to wildland fires.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IX. HYDROLOGY AND WATER QUALITY

-- Would the project:

a) Violate any water quality standards or waste discharge requirements? **Comment** *The text amendment would not violate any water quality standards or waste discharge requirements.*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

Comment *The text amendment would not affect ground water supplies or interfere with ground water discharge.*

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? **Comment** *The text amendment would not affect drainage systems or existing drainage patterns.*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? **Comment** *. Refer to IX c).*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? **Comment** *Refer to IX c).*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

f) Otherwise substantially degrade water quality? **Comment** *The text amendment would not affect water quality.*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? **Comment** *The text amendment would not create any*

Potentially Significant Impact: Less Than Significant with Mitigation Incorporated: Less Than Significant Impact: No Impact:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>development or structures.</i>				
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? Comment <i>Refer to VIII g).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? Comment <i>Refer to VIII g)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow? Comment <i>Refer to VIII g)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
X. LAND USE AND PLANNING -- Would the project:				
a) Physically divide an established community? Comment <i>The text amendment would not cause an established community to be divided.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? Comment <i>The text amendment would not conflict with the City of Hayward's land use plans, policies or regulations.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? Comment <i>The text amendment would not conflict with any applicable habitat conservation plan or natural community conservation plan.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? Comment <i>The text amendment would not affect any mineral resources.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
or other land use plan? Comment Refer to XI a).				

XII. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? Comment The text amendment does not involve construction and would therefore have no affect on the generation of noise or vibration .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? Comment Refer to XII a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? Comment Refer to XII a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? Comment Refer to XII a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? Comment Refer to XII a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? Comment Refer to XII a).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XIII. POPULATION AND HOUSING --
Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
infrastructure)? Comment. <i>The text amendment would not cause population growth either directly or indirectly.</i>				
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? Comment. <i>The text amendment would not cause the displacement of housing.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? Comment. <i>The text amendment would not cause the displacement of people.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XIV. PUBLIC SERVICES --

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other public facilities? Comment. <i>The text amendment would not have an impact on fire services, police services, schools or parks.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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XV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? **Comment** *The text amendment would not affect recreational facilities.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? **Comment** *Refer to XV a).*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XVI. TRANSPORTATION/TRAFFIC --

Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? **Comment** *The text amendment would have no affect on the existing traffic load or circulation.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
county congestion management agency for designated roads or highways? Comment. <i>Refer to XVI a) t</i>				
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? Comment <i>Refer to XVI a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? Comment <i>The text amendment does not include any construction.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access? Comment <i>The text amendment would not affect emergency access.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? Comment <i>The text amendment would not conflict or change any policies, plans or programs related to public transit, bicycle or pedestrian facilities.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVII. UTILITIES AND SERVICE SYSTEMS

-- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? Comment <i>The text amendment does not generate any wastewater.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment <i>Refer to XVII a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment <i>T The text amendment does not generate or alter any drainage, drainage systems or drainage patterns..</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? Comment <i>The text amendment would not affect any water supply or water system.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? Comment <i>Refer to XVII a).</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? Comment <i>The text amendment does not involve construction.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state, and local statutes and regulations related to solid waste? Comment <i>The text amendment would not cause solid waste to be generated.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? **Comment** *The text amendment would not have any impacts on wildlife or fish habitat nor eliminate a plant or animal community.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)? **Comment** *As evidenced in the*

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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checklist above, it has been determined that the text amendment would not have any significant impacts; thus no impact to cumulative impacts.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Comment *The text amendment would not have any environmental impacts thus will not cause substantial adverse effects on human beings.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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**DEPARTMENT OF
COMMUNITY AND ECONOMIC DEVELOPMENT
Planning Division**

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

I. PROJECT DESCRIPTION:

Text Amendment PL-2012 0140 - Establish zoning regulations regarding the retail sale of tobacco. City of Hayward (Applicant)

II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:

The proposed text amendment could not have a significant effect on the environment.

III. FINDINGS SUPPORTING DECLARATION:

1. The proposed text amendment has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project could not result in significant effects on the environment.
2. The text amendment will not result in any development that would adversely affect any scenic resources.
3. The text amendment will not result in any development that would have an adverse effect on agricultural land.
4. The text amendment will not result in any development that would have significant impacts related to changes into air quality.
5. The text amendment will not result in any development that would have significant impacts to biological resources such as wildlife and wetlands.
6. The text amendment will not result in any development that would have significant impacts to known cultural resources including historical resources, archaeological resources, paleontological resources, unique topography or disturb human remains.
7. The text amendment will not affect on geological hazards.

8. The text amendment will not affect water quality standards.
9. The text amendment is not in conflict with the policies of the City General Policies Plan, and the Zoning Ordinance.
10. The text amendment could not result in a significant impact to mineral resources since no construction will take place as part of this project.
11. The text amendment could not result in a significant noise impact.
12. The text amendment could not result in a significant impact to public services.
13. The text amendment could not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.
14. The text amendment could not result in a significant impact to parking.

IV. PERSON WHO PREPARED INITIAL STUDY:

Signature: Tim R. Koonze Dated: May 2, 2012
 Tim R. Koonze, Associate Planner

V. COPY OF INITIAL STUDY IS ATTACHED

For additional information, please contact the City of Hayward Planning Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4207

DISTRIBUTION/POSTING

- Provide copies to project applicants and all organizations and individuals requesting it in writing. Provide copy to Alameda County Clerks Office.
- Reference in all public hearing notices to be distributed 20 days in advance of initial public hearing and/or published once in Daily Review 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until the date after the public hearing.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (e) Banquet hall. (Where abutting a residential district or property but not where alcohol is served)
- (f) Carnival.
- (g) Catering facility. (Where abutting a residential district or property)
- (h) Commercial amusement facility.
- (i) Cultural facility.
- (j) Day care center. (state-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions)
- (k) Educational facility.
- (l) Flea market.
- (m) Kennel.
- (n) Mortuary.
- (o) Outdoor gathering. (Refer to General Regulations Section 10-1.2735.h.)
- (p) Passenger terminal.
- (q) Recreational facility.
- (r) Religious facility.
- (s) Sign shop.
- (t) Temporary use. (i.e., parking lot or tent sale)
- (u) Wind energy conversion system.

b. **Conditional Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District subject to approval of a conditional use permit:

- (1) Administrative and Professional Offices/Services.
 - (a) Check cashing store.
 - (b) Payday loan facilities.
- (2) Automobile Related Uses. Automobile sales and rental. Except as provided for under Sec. 10-1.1015a.(2)(b)
- (3) Personal Services.
 - (a) Massage parlor.
 - (b) Tattoo parlor.
- (4) Residential Uses. None.
- (5) Retail Commercial Uses. (See General Regulations Section 10-1.2735.b. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Dance or night club.
 - (c) Liquor store.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (d) Theater, Large Motion Picture. (See Sec. 10-1.1045 for special requirements.)
- (e) Tobacco Sales Establishment**
- (6) Service Commercial Uses.
 - None.
- (7) Other Uses.
 - (a) Homeless shelter.
 - (b) Warehouse. (When located behind and ancillary to primary uses)
 - (c) Wholesale establishment.

SEC. 10-1.1025 LOT REQUIREMENTS.

- a. Minimum Lot Size: None.
- b. Minimum Lot Area per Dwelling Unit: Same as permitted in RM or RH Districts, whichever is consistent with the General Policies Plan Map and Neighborhood Plan.
- c. Minimum Lot Frontage: 35 feet.
- d. Minimum Average Lot Width: None.
- e. Maximum Lot Coverage: 90 percent.
- f. Minimum Lot Depth: None.
- g. Special Lot Requirements and Exceptions: See General Regulations Section 10-1.2720.

SEC. 10-1.1030 YARD REQUIREMENTS.

- a. Minimum Front Yard: 10 feet, unless building is located at the property line.
- b. Minimum Side Yard: None, unless abutting a R, A, MH, OS or residential PD District where the side yard shall be a minimum of 10 feet.
- c. Minimum Side Street Yard: 10 feet, unless building is located at the property line.
- d. Minimum Rear Yard: None, if abutting a CG district, otherwise the same as the required rear yard of the abutting District.
- e. Special Yard Requirements and Exceptions: See General Regulations Section 10-1.2725.

SEC. 10-1.1035 HEIGHT LIMIT.

- a. Maximum Building Height: No Limit.
- b. Maximum Accessory Building Height: 14 feet and one story.
- c. Maximum Height for Fences/hedges/walls:
 - (1) Front and Side Street Yard 4 feet
 - (2) Side and Rear Yard 6 feet

CITY OF HAYWARD
ZONING ORDINANCE

- ◆ For a community facility host use:
A maximum of five spaces reduction will be allowed when not in conflict with parking needs of the host use.

(xviii)The area is illuminated to ensure comfortable and safe operation if operating hours are between dusk and dawn;

k. Tobacco Sales Establishments.

All tobacco sales establishments shall comply with the following standards:

- (1) **New tobacco sales establishments, in a building or tenant space of less than 10,000 square feet in area, may be permitted only in a General Commercial (CG) Zoning District, subject to approval of a Conditional Use Permit. The property on which such establishments are located may not be located closer than 500 feet to a property containing any of the following: school, church, museum, public park, library, playground, recreational center, day care center, or other similar use as determined by the Planning Director.**
- (2) **New tobacco sales establishments, in a building or tenant space of 10,000 square feet in area or greater, may be permitted in any zoning district where no more than 5 percent of the floor area of the building or tenant space is devoted to the sale, display, and storage of tobacco products and/or alcoholic beverages combined.**
- (3) **Tobacco sales establishments must be licensed by the State Board of Equalization. The retailer shall conspicuously display the license in a manner visible to the public.**

l. Vehicle Parking, Repair, Display, and Storage Requirements.

The term “vehicle” as used in this section shall include an automobile or truck (excluding truck tractor or any vehicle exceeding a maximum gross weight limit of 6,000 pounds of gross vehicle weight) recreational vehicle, trailer, boat mounted on trailer, special interest vehicle, or other vehicle referenced in California Vehicle Code section 5051, and other vehicles of similar kind and use. In all zoning districts, use of any kind of vehicle as defined herein for living or sleeping purposes shall be prohibited except within mobile homes within an approved mobile home park.

- (1) Single-Family Residential Uses.
 - (a)Parking and Storage in Front Yards. Vehicles shall be parked in the required front yard only on the paved driveway which provides direct access to the garage from a public street or an approved private street, perpendicular to the street, or on a curved driveway.
 - (b)Parking or Storage in Other Than Front Yards.

Parking or storage of vehicles in areas other than the front yard is permitted subject to the following requirements:

 - (i) No vehicle shall be parked or stored in a required side yard or side-street yard with the following exceptions: recreational vehicles that are not self-propelled, and are less than 6 feet in height, such as a boat, compact trailer tent or similar recreational vehicle can be stored

in a required side yard if screened from view from the street by a 6 foot-high solid fence.

SEC. 10-1.3500 DEFINITIONS

tent sales. For animals, “temporary use” shall mean the keeping of animals for specified periods of time either following birth, for purposes of recovery by no-profit breed rescue organizations, or other reasons as determined by the Planning Director.

THEATER. A building or outdoor structure where films, motion pictures, video cassettes, slide or similar photographic reproductions are regularly shown, or an establishment regularly featuring live performance of dramatic productions, for any form of consideration.

- a. **SMALL MOTION PICTURE THEATER.** An establishment having two (2) or fewer screens or less than two hundred (200) seats.
- b. **LARGE MOTION PICTURE THEATER.** An establishment having three (3) or more screens or two hundred (200) or more seats and showing first run films. Large Motion Picture Theaters are also referred to as multi-plex or multi-screen theaters.
- c. **LIVE PERFORMANCE THEATER.** An establishment having one or more stages and featuring live or dramatic productions.

THRIFT STORE. An establishment engaged in the retail sales of used or donated goods (including clothing, furniture, appliances, etc.).

TOBACCO SALES ESTABLISHMENT. Any establishment that sells tobacco products such as cigarettes, cigars, chewing tobacco, and pipe tobacco, as well as tobacco-related products, such as pipes, lighters, ash trays, and other products associated with the use of tobacco. The sale of drug paraphernalia, items that are considered “kid-friendly” such as flavored tobacco products, containers with secret compartments commonly referred to as “stash cans,” and the sale of single cigarettes shall be prohibited.

TRAILER. A vehicle without motor power used or adaptable for living, sleeping, business or storage purposes, having no function other than wheels, blocks, skids, jacks, horses, or skirting, which does not meet building requirements and has been or reasonably may be equipped with wheels or other devices for transporting the structure from place to place. A permanent foundation shall not change its character unless the entire structure is erected and maintained in accordance with prevailing laws.

TOY STORE. An establishment which sells toys and games to the public at retail.

TRAVEL AGENCY. See "OFFICE."

TRUCK TERMINAL. A facility which provides a transfer, loading, and unloading point for trucks and automobiles carrying goods and products. Typically includes fuel and food facilities.

UPHOLSTERY SHOP. A facility which re-upholsters household furnishings of all types (i.e., couches, chairs, footstools, pillows, etc.), for a fee (does not include automobile upholstery).

**CITY OF HAYWARD
PLANNING DIVISION**

TEXT AMENDMENT

May 31, 2012

Text Amendment Application PL-2012-0140 / City of Hayward (Applicant) - **Establish zoning regulations regarding the retail sale of tobacco in the General Commercial district and to include a definition in the Zoning Ordinance for Tobacco Sales Establishments.**

FINDINGS FOR APPROVAL

- A. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental Evaluation Checklist has been prepared for the proposed project. The Initial Study has determined that the proposed project, with the recommended mitigation measures, could not result in significant effects on the environment.
- B. Substantial proof exists that the proposed change will promote public health, safety, convenience and general welfare of the residents of Hayward.***

According to the United States Department of Health and Human Services, cigarettes are responsible for approximately 443,000 deaths each year in the United States. The chronic diseases caused by tobacco use lead the causes of death and disability in the United States. Regulating the sale of tobacco and tobacco related products will promote public health, safety, convenience and general welfare of the residents of Hayward as it is a continuation of the City's direction to maintain a healthier Hayward and to minimize the exposure of its citizens to tobacco by restricting the sale of tobacco or tobacco related products to certain commercial areas.

- C. The proposed change is in conformance with the purposes of this Ordinance and all applicable, officially adopted policies and plans.***

The City of Hayward has established various policies to create a healthier Hayward. On May 20, 2008, City Council amended Chapter 5, Article 6 of the Hayward Municipal Code prohibiting the use of tobacco products in or around public places in the City of Hayward. On July 26, 2011, the City adopted a Resolution for the City of Hayward to become a member of the Healthy Eating Active Living (HEAL) Cities Campaign. Hayward joined a group of over 75 other California cities that are setting goals to provide residents and employees with healthier choices. The approval of this text amendment would be consistent with the goals of making Hayward a healthier City.

D. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

This finding is not applicable in that this application does not involve a reclassification.

E. All uses permitted when property is reclassified will be compatible with present and potential future uses, and further, a beneficial effect will be achieved which is not obtainable under existing regulations.

This finding is not applicable in that this application does not involve a reclassification.



11

DATE: May 20, 2008
TO: Mayor and City Council
FROM: City Manager
SUBJECT: An Ordinance Amending Chapter 5, Article 6 of the Hayward Municipal Code, Prohibiting the Use of Tobacco Products in or around Public Places in the City of Hayward

RECOMMENDATION

That Council approves and adopts the proposed amendments to the Smoking Pollution Control Ordinance in Chapter 5, Article 6 of the Hayward Municipal Code.

SUMMARY

The proposed amendments to the Smoking Pollution Control Ordinance address the public health, safety and welfare issues related to tobacco use and second-hand smoke. Recent reports and studies about the impacts of second-hand smoke, especially on children, confirm the importance of reducing exposure to second-hand smoke in protecting the health and welling being of the general public. The proposed Ordinance seeks to achieve this purpose by the following amendments to Chapter 5, Article 6 of the Hayward Municipal Code:

1. Prohibiting smoking in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency;
2. Prohibiting smoking in public places and certain other areas, whether enclosed or unenclosed, including:
 - Public transit boarding and waiting areas;
 - Elevators and restrooms;
 - Service lines;
 - Retail stores;
 - Sites of public events;
 - Enclosed common areas of hotels and motels and 35% of rented rooms;
 - Enclosed and unenclosed areas of restaurants, dining areas and bars;
 - Any facility used primarily for exhibits and performances;

- Every room, chamber, and meeting place used for public assembly; and
 - All sports arenas, and recreational, park, and playground areas.
3. Establishing a reasonable smoking distance of at least 20 feet outside any enclosed public place where smoking is prohibited, that will encompass public sidewalks and streets, and include private residences used as child care or health care facilities;
 4. Requiring the posting of a “No Smoking” sign or symbol in every building or other place regulated by this Ordinance;
 5. Prohibiting distribution of free tobacco samples, and restricting tobacco vending machines; and
 6. Imposing administrative and civil enforcement and penalties for violations.

BACKGROUND

Smoking is not a right protected by the United States Constitution. Specifically, smoking is neither a specially protected liberty nor a right to privacy under the “due process clause” of the Constitution. In addition, smokers are not a specially protected category under the “equal protection clause” of the Constitution. Consequently, the United States Constitution allows for the enactment of smoke-free laws that relate to the legitimate government goals of public health, safety, and welfare.

Since 1998, the State of California has continued to implement legislation that restricts smoking and exposure to second-hand smoke (SHS). These include no smoking in public school facilities and athletic events, in public playgrounds and tot lots, as well as day care centers in private residences. State action has also banned smoking in workplaces, in all restaurants and bars, and within 20 feet of any door, window, or air intake of any government building, including buildings owned, leased, or occupied by any government entity, including public universities. State legislation was recently passed to ban smoking in the presence of a minor (17 years or younger) while in a moving vehicle, and to treat it as a misdemeanor offense when cited with a larger offense.

Through a provision in California Government Code 7597, the State of California allows for local governments, like the City of Hayward, to adopt and enforce additional smoking and tobacco control ordinances, regulations, and policies that are more restrictive than the applicable standards required by the State of California. On that basis, in 1996, the City enacted the first Smoking Pollution Control Ordinance, found in Chapter 5, Article 6 of the Hayward Municipal Code (HMC), and now proposes to amend that section of the HMC.

DISCUSSION

With this State legislative authority, a number of California cities have enacted local ordinances that limit smoking and restrict public exposure to second-hand smoke. These cities include

Belmont, Berkeley, Calabasas, Chico, Davis, Dublin, El Cajon, Fremont, Hayward, Livermore, Newark, Oakland, Pleasanton, San Francisco, San Jose, and San Ramon.

Belmont has banned smoking in parks and other public places, as well as inside apartments and condominiums. Calabasas has banned smoking in all indoor and outdoor public places, except for a handful of scattered, designated outdoor smoking areas. This is believed to be the strictest ban in the United States. El Cajon implemented a smoking ban on city streets, in outdoor patios in restaurants, and outside of the local shopping mall. Anyone caught smoking in public areas faces a fine of up to \$500. In Oakland, smoking is not permitted 25 feet from any building, window, opening or vent. In Santa Monica, smoking is banned within 20 feet of entrances, exits, or operable windows of a public building, and in local parks and parking lots. Santa Monica also banned smoking on local beaches, as did Monterey, San Diego County, and Orange County.

In addition, smoking restrictions have been implemented by both the Hayward Area Recreation and Park District (HARD), and the Hayward Unified School District (HUSD). HARD prohibits smoking and the disposal of smoking debris within 15 feet of any of its buildings, facilities, and trails or nature areas, and within 25 feet of any play structure. HUSD has a tobacco-free schools policy and prohibits the use of tobacco products at all times on district property and in district vehicles.

The rationale for the current proposal to amend Chapter 5, Article 6 of the Hayward Municipal Code ("Smoking Pollution Control") is based on recent scientific findings about the impact of exposure to second-hand smoke, and verifications of the serious health risks associated with second-hand smoke exposure. The California Environmental Protection Agency has proposed that second-hand smoke be classified as a toxic air contaminant and known human carcinogen. This places second-hand smoke in the most dangerous category of toxic substances along with radon, benzene, and asbestos. In addition, environmental tobacco smoke experts at the University of California at Berkeley and the University of California at San Francisco agree that at least 20 feet from a doorway would be needed to provide protection from the carcinogenic particulate in second-hand smoke.

Concerns about adverse impact of smoke free laws on the customer base of restaurants and bars have not materialized. A review by the University of California, San Francisco of data provided by the California Board of Equalization concluded that there were no adverse effects on the restaurant and tourist industries because of public smoking limitations. Therefore, it is likely that reducing the amount of exposure to second-hand smoke with a required 20-foot buffer from entryways and building openings will also not discourage patronage of these venues.

Enforcement will initially address problem areas where second-hand smoke presents public health concerns.

FISCAL IMPACT

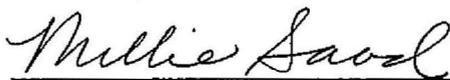
There will be an initial cost to the City for the creation of No Smoking signs that will be placed on publicly owned property. These costs may be offset by revenues from fines associated with enforcement through the proposed Administration Citation Ordinance. The number of citations

issued for violations is difficult to predict and entirely dependent on compliance by the businesses and the general public.

PUBLIC CONTACT NEXT STEPS

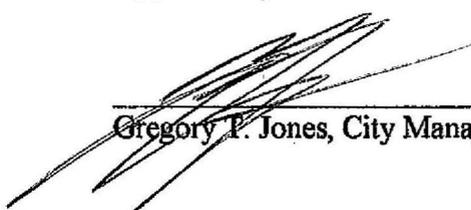
Once adopted by the City Council, the City Manager's Department will begin public awareness outreach to businesses and to the general public through the local media, the City website, and a variety of other approaches. The required No Smoking signage will also be undertaken for all City buildings, facilities, and park areas.

Prepared by:



Millie Saad, Assistant to the City Manager

Approved by:



Gregory P. Jones, City Manager

Attachment: Draft Ordinance

DRAFT

ORDINANCE NO. _____

mal
5/14/08

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 6 OF
THE HAYWARD MUNICIPAL CODE, PROHIBITING THE
USE OF TOBACCO PRODUCTS IN OR AROUND PUBLIC
PLACES IN THE CITY OF HAYWARD

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

Section 1. Chapter 5, Article 6 of the Hayward Municipal Code, the Smoking Pollution Control Ordinance, is hereby amended, to read in full as follows:

ARTICLE 6

SMOKING POLLUTION CONTROL

SEC. 5-6.00 TITLE. This article shall be known as the 'Smoking Pollution Control Ordinance.'

SEC. 5-6.01 FINDINGS AND PURPOSE. The City Council of the City of Hayward hereby finds that:

- a. Numerous studies have found that tobacco smoke is a major contributor to indoor pollution;
- b. The U.S. Environmental Protection Agency has determined that second-hand smoke is a Class-A carcinogen for which there is no safe exposure level;
- c. Reliable studies have shown that breathing second hand smoke is a particular health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease;
- d. Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm;
- e. Nonsmokers with allergies or respiratory diseases, and those who suffer other ill effects of breathing second-hand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

- f. The simple separation of smokers and nonsmokers within the same airspace may reduce, but does not eliminate, the exposure of nonsmokers to second-hand smoke;
- g. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places;
- h. Smoking is a documented cause of fires;
- i. Cigarette, cigar burns, and ash stains on merchandise and fixtures cause economic losses to businesses;
- j. The Surgeon General has determined that cigarettes and other forms of tobacco are as addictive as drugs such as heroin and cocaine;
- k. The free distribution of cigarettes encourages people to begin smoking, and tempts those who had to quit to begin smoking again;
- l. With certain exceptions, state law prohibits smoking inside an enclosed place of employment;
- m. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision of school district employees;
- n. State law prohibits smoking in playgrounds and tot lots and within 20 feet of the main entrances and exits of public buildings while expressly authorizing local communities to enact additional restrictions.

WHEREFORE, it is the intent of the City Council of the City of Hayward in enacting this ordinance to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use around non-tobacco users; by protecting children from exposure to smoking and tobacco while they play; by reducing the potential for children to associate smoking and tobacco with a healthy lifestyle; by protecting the public from smoking and tobacco-related litter and pollution; and by affirming and promoting the family atmosphere of the City's public places.

SEC. 5-6.02 DEFINITIONS. The following words and phrases, whenever used in this article, shall be construed as defined in this section:

- a. 'Business' means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

b. 'Dining area' means any area, both enclosed and unenclosed, available to or customarily used by the general public, that is designed, established, or regularly used for the consuming food or drink;

c. 'Enclosed' means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.

d. 'Playground' means any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.

e. 'Public Place' means any place to which the public is invited or in which the public is permitted, including, but not limited to, any rights-of-way, banks, educational facilities, health facilities, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

f. 'Reasonable distance' means any distance necessary to insure that occupants of a building are not exposed to second-hand smoke created by smokers outside of the building.

g. 'Recreational area' means any area, public or private, open to the public for recreational purposes regardless of any fee requirement, including, for example, parks, gardens, sporting facilities, and playgrounds.

h. 'Service line' means any place where one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money, including but not limited to ATMs, bank teller windows, telephones, ticket lines, bus stops, and taxi stands.

i. 'Smoking' means inhaling, exhaling, burning, or carrying a lighted pipe, lighted cigar, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, tobacco, or any other weed, plant, or combustible substance, including medical marijuana.

j. 'Sports arena' means enclosed or outdoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

k. 'Tobacco Product' means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis (flavored cigarettes), or any other preparation of tobacco.

SEC. 5-6.02 APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES. Smoking shall be prohibited in all facilities, areas, and vehicles owned, leased, operated, or controlled by the City of Hayward or the Hayward Redevelopment Agency, and all such areas shall be subject to the provisions of this Article.

SEC. 5-6.03. PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

a. Smoking shall be prohibited in any and all public places within the City of Hayward, whether enclosed or unenclosed, including but not limited to the following:

1. Elevators and restrooms;
2. Buses, taxicabs, and other means of public transit offered within the City, and in ticket, boarding, and waiting areas of public transit depots, including bus shelters;
3. Service lines;
4. The sites of public events including, for example, sports events, entertainment, speaking performances, ceremonies, pageants, and fairs; provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area and no larger;
5. Retail stores, except in areas in the stores not open to the public;
6. Within enclosed common areas for hotels and motels, as well as 35 percent of private hotel and motel rooms rented to transients, as defined by Hayward Municipal Code, Chapter 8, Article 4.
7. Restaurants, dining areas, and bars, whether enclosed or unenclosed;
8. Public areas of libraries and museums when open to the public;
9. Any facility used primarily for exhibiting any motion picture, stage drama, lecture, music recital, or other similar performance, except when smoking is part of any such production by the performers;
10. Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
11. Sports arenas, recreational areas, parks, playgrounds, and greenways.

b. Notwithstanding any other provision of this Article, any person, business, nonprofit entity, owner, operator, manager, or employer who controls any premises described in this section may declare that entire establishment as a non-smoking establishment.

c. No person shall dispose of smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by this Article.

SEC. 5-6.04. REASONABLE SMOKING DISTANCE REQUIRED-20 FEET.

a Smoking shall occur at a reasonable distance of at least 20 feet outside any enclosed area where smoking is prohibited to ensure that smoke does not enter the area through entrances, windows, ventilation systems, or any other means to ensure that those indoors and those entering or leaving the building are not involuntarily exposed to secondhand tobacco smoke.

b The prohibition in subsection (a) shall not apply to areas of private property that are not part of public place, playground, recreational area, or service area.

SEC. 5-6.05. AREAS NOT SUBJECT TO SMOKING REGULATIONS.

a Private residences, except when used as a child care or a health care facility.

b Hotel and motel rooms rented to guests; provided, however that each hotel and motel designates not less than 35 percent of their guest rooms as non-smoking rooms and removes ashtrays from these rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms.

SEC. 5-6.06. POSTING OF SIGNS.

a “Smoke Free” or “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager, or other person having control of such building or other place.

1. Every theater owner, manager, or operator shall conspicuously post signs

in the lobby stating that smoking is prohibited within the theater or auditorium.

2. Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SEC. 5-6.07. TOBACCO SAMPLES PROHIBITED. No person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products, or coupons for cigarettes or other tobacco products, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency, except in a retail tobacco store.

“SEC. 5-6.08. TOBACCO VENDING MACHINES RESTRICTED. No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other applicable or similar device designed or used for vending purposes, except in a bar.

“SEC. 5-6.09. ENFORCEMENT OFFICER. Enforcement shall be implemented by the City Manager or designee.

“SEC. 5.6.10. CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

a. It shall be unlawful for any person to smoke in any area restricted by the provisions of this section.

b. It shall be unlawful for any person who owns, manages, operates, or otherwise controls any use of any premises subject to any regulation under this section to fail to comply with its provisions.

c. Violations of this Article are subject to civil and administrative enforcement, punishable by a civil fine. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing as provided for in Chapter 1, Article 7 of the Hayward Municipal Code.

d. Any person who smokes in an area where smoking is prohibited is guilty of trespass and, if the area is accessible by the public during the normal course of operations, such smoking constitutes a public nuisance.

e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall also constitute a violation.

f. Upon a proper showing and hearing before the City Council that determines that a business establishment has violated the provisions contained in this section more than three times in any calendar year, the City Council has the discretion to revoke the business license of the establishment.

g. The remedies provided by this Article are cumulative and in addition to any other remedy available at law or in equity.

SEC. 5-6.11. OTHER APPLICABLE LAWS. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of _____, 2008, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ____ day of _____, 2008, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF
HAYWARD
 HEART OF THE BAY

7

DATE: October 19, 2010

TO: Mayor and City Council

FROM: Director of Development Services
 Chief of Police

SUBJECT: Revisions to Smoking Pollution Control Ordinance

RECOMMENDATION

That the City Council reads this staff report and introduces the attached ordinance (Attachment I) that would entail removing Section 5-6.05 from the City's Smoking Pollution Control Ordinance, in an effort to reduce confusion over the Ordinance provisions and assist the Hayward Police Department with enforcement of the Ordinance.

BACKGROUND

The City Council adopted a new Smoking Pollution Control Ordinance¹ (Ordinance) on May 27, 2008. The premise for such action related to the desire of the Council to protect the health and well-being of the general public by reducing health impacts associated with second-hand smoke, especially on children. The staff report associated with that action provides additional background information and may be found at the City's web site².

In summary, the Ordinance:

1. Established a reasonable smoking distance of at least twenty feet outside any enclosed public place where smoking is prohibited, including public sidewalks and streets, as well as private residences used as child care or health care facilities;
2. Prohibited smoking in all facilities, areas, and vehicles owned, leased, operated or controlled by the City of Hayward or the Hayward Redevelopment Agency;
3. Prohibited smoking in public places and certain other areas whether enclosed or unenclosed, including privately-owned parking lots open to the public, public transit boarding and waiting areas, elevators and restrooms, service lines, retail stores, sites of public events, enclosed common areas of hotels and motels and 35% of rented rooms, enclosed and unenclosed areas of restaurants, dining areas and bars, any facility used

¹ Ordinance 08-11, regulations available at: <http://www.hayward-ca.gov/municipal/HMCWEB/SmokingPollutionControl.pdf>

² <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2008/rp052008-11.pdf>.

primarily for exhibits and performances, every room, chamber, and meeting place used for public assembly, and all sports arenas and recreational park and playground areas.

Based on concerns from a few restaurant operators and others indicating the Ordinance negatively impacts their businesses, particularly during the past two years during the economic recession, staff brought a work session item to Council for discussion on September 28, 2010³. Staff had suggestion in the work session staff report that clarifying revisions be made to the Ordinance that would assist Police Department officers in enforcing the Ordinance. In response to concerns that the Ordinance may be negatively impacting downtown restaurants, staff had also suggested that smoking be allowed via a permit up to twelve times per year in unclosed areas at restaurants and bars, subject to certain criteria. Council members had varying reactions to the identified policy issues and staff's recommendation, as reflected in the attached meeting minutes (Attachment II). Most Council members seemed to support retaining the basic purposes of the Ordinance to reduce impacts associated with second-hand smoke, and some Council members expressed a desire to assist some of the local merchants by relaxing the Ordinance provisions.

DISCUSSION

Policy Decisions

There are two competing and conflicting viewpoints in regards to potential Ordinance changes that would relax provisions:

1. In Opposition to Changes: Hayward's ban on smoking in the Downtown has had an extremely beneficial effect on B Street and other areas in terms of improved cleanliness and mitigating the negative effects of secondhand smoke. The City took a bold and courageous step in enacting the Ordinance. Any amendments such as those being proposed by a few Downtown restaurateurs will weaken the Ordinance and perhaps start continued erosion such that the City will lose what it has gained. This would undermine one of the main purposes of the Ordinance in minimizing exposure to the impacts of smoke, since some of the second-hand smoke from such areas would most likely impact folks along public sidewalks, parking lots, etc. Also, opinions have been expressed that such businesses should offer other amenities to attract customers, including quality menu items at affordable prices, an overall pleasant dining experience with high quality service, etc.

The City cannot amend an ordinance to satisfy one business. Therefore, anything done here in response to the request will have to apply to other similarly situated businesses if they are able to meet the conditions. Again, the No Smoking Ordinance will be weakened and perhaps lost.

2. In Support of Changes: Enforcement of the Ordinance in the Downtown makes it a less desirable location for those patrons given citations for smoking on their way to or from restaurants. In addition, restaurant patrons have expressed concern over their safety if they

³ <http://www.hayward-ca.gov/citygov/meetings/cca/rp/2010/rp092810-02.pdf>

were to smoke in less visible areas around the Downtown. Restaurant patrons have suggested that cities such as Oakland that do not have smoking ordinances are more inviting environments for dining and entertainment.

According to some restaurant operators in the Downtown, patrons desiring to smoke have been known to leave restaurants to smoke in their car and/or parking lots. Operators indicate that patrons who leave dining establishments don't always return, which represents a potential loss of business. In addition, there is also a concern that some patrons go to their cars to smoke and, while there, may consume additional alcohol, making it more difficult for bartending staff to monitor alcohol consumption and not "over serve" to a specific customer.

These competing viewpoints are often expressed by the same person, indicating that there is no easy answer to maintaining the ban on smoking and retaining the Ordinance purposes, while simultaneously doing what the City can to support its businesses, particularly in the Downtown.

Recommended Amendment to the Ordinance

Because sufficient evidence has not been presented to support the position that the City's Ordinance has negatively impacted sales in restaurants and bars (versus the impacts of the depressed economy), because the majority of the City Council did not clearly indicate support at the September 28 work session to amend the Ordinance to allow for greater opportunities to smoke, and because of the nearly impossible challenge in eliminating or minimizing second-hand smoke impacts, staff is recommending that the Ordinance be amended only to clarify existing regulations, as described below. This minor clarifying change would not change the current Ordinance restrictions that prevent any business from allowing smoking anywhere on the premises that is accessed by the public.

The Police Department staff, responsible for enforcing the Ordinance, is asking for an immediate change to the Ordinance and is recommending deletion of the following section of the Ordinance, which is reflected in Attachment I:

5-6.05 REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

- a. Smoking shall occur at a reasonable distance of at least 20 feet outside any enclosed area where smoking is prohibited to ensure that smoke does not enter the area through entrances, windows, ventilation systems, or any other means to ensure that those indoors and those entering or leaving the building are not involuntarily exposed to secondhand tobacco smoke.*
- b. The prohibition in subsection a. shall not apply to areas of private property that are not part of public place, playground, recreational area, or service area.*

Police Department staff indicates that this section is difficult to regulate and causes a lot of misunderstanding by the public. The confusion occurs because there are many places where smoking would be allowed twenty feet away from an area except that the Ordinance defines even private parking lots as public areas; and because most businesses are within twenty feet of public property such as sidewalks where smoking is clearly prohibited by the Ordinance.

One common example of the public's misunderstanding of the Ordinance involves privately-owned parking lots that are made available by businesses for their customers. Since the public can use the parking lot, it is a "public place" within the meaning of the Ordinance, and smoking is not permitted anywhere in the lot. However, based on input from the public, many members of the public assume that they can smoke in a customer parking lot, provided they do so at a distance of at least twenty feet from all doors and windows.

Deletion of this section of the Ordinance would not expand in any appreciable way the areas in the City where smoking is already prohibited; nor would it be more restrictive. It does relieve some ambiguity and lessens the opportunity for misinterpretation.

Alternative Amendments to the Ordinance

Because there was not clear consensus from City Council at the September 28 work session, and some Council members expressed a desire to assist businesses during these difficult economic times, staff has prepared an alternative approach for Council's consideration. Such option would allow for limited expanded opportunities for smoking during the next two years through the end of calendar year 2012. At that time, when most predictions indicate the economy should be stronger, the Ordinance could be amended to allow for such additional smoking opportunities to be permanent, extended, amended, or eliminated.

If Council is considering the option of further amending the Ordinance, to try to minimize impacts of second-hand smoke, to ensure full disclosure and noticing, and to be fair to all such businesses (versus just Downtown merchants), staff is recommending that such opportunities be limited to restaurants and bars throughout the City and that certain criteria be met, as outlined below.

- 1) *A smoking permit from the Police Department be required (along with an administration fee set by resolution to process such permits), which would expire on December 31, 2012;*
- 2) *The designated smoking area shall be unenclosed and fully secured and properly identified as an area where smoking is permitted;*
- 3) *Access to the designated area shall be from within the establishment and access from a sidewalk or public right of way shall be prohibited;*
- 4) *Doors leading into or out of the designated smoking area shall be closed at all times (except for ingress to or egress from the designated area). To preclude smoke from entering into the establishment from the designated smoking area when the door opens and closes for ingress/egress, some form of ventilation system, including fans or venting, must be utilized;*
- 5) *Neither food nor beverages shall be served in the secured area, nor shall any wait staff be required, as part of their employment, to service the proposed smoking area during the hours it is open to patrons;*
- 6) *The Hayward Police Chief (or his/her designee) shall approve the area as meeting all requirements before smoking is allowed.*
- 7) *Residential and commercial neighbors immediately adjacent to the proposed outdoor smoking area are notified and agree in writing to the proposed area and hours of operation;*

- 8) *No consistent complaints of second-hand smoke are filed with the City by pedestrians on any sidewalk, parking lot, or other public area immediately adjacent to the proposed smoking area, from wait staff, or from restaurant/bar patrons;*
- 9) *The Hayward Police Chief (or his/her designee) reserves the right to revoke the permit, at any time, if he/she believes the Smoking Pollution Control Ordinance is being negatively impacted or in other ways rendered ineffective or significantly weakened as to its original intent, or if complaints become numerous and/or cannot be addressed by the owner/operator.*

ECONOMIC IMPACT

Staff has not done a full impact analysis. However, as an example, since the passage of the Ordinance, *Bijou Restaurant* has indicated its sales have dropped from \$6,000 per night to \$3,000 to \$4,000 per night. They attribute this reduction in revenues in part to the passage of the Ordinance, for the reasons described above. Since passage of the Ordinance, *Bijou* no longer promotes its Cigar Socials, where patrons sampled cigars and paired cigars with signature alcohol. According to *Bijou's* operators, the cancellation of its Cigar Socials represents a loss of revenues from \$2,500 to \$3,000 per event.

FISCAL IMPACT

No direct substantial impacts to the General Fund exist, though some minimal impacts related to loss of sales tax revenue due to clients choosing not to frequent businesses may be occurring.

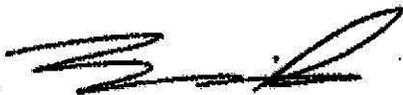
SCHEDULE

If Council agrees with staff's recommendation and introduces the attached ordinance (Attachment I), the ordinance will be presented to Council on October 26 for adoption, and elimination of Section 5-6.05 of the Smoking Pollution Control Ordinance would be effective 30 days afterwards.

If Council selects the alternative approach outlined by staff, staff will return to Council in the near future with an ordinance for consideration, along with resolutions related to establishing a Smoking Permit processing/administration fee and determination regarding consistency with the California Environmental Quality Act associated with such action.

Prepared by: David Rizk, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Draft Ordinance
Attachment II: September 28, 2010 City Council Meeting Minutes



DATE: June 1, 2011

TO: Mayor and City Council Sustainability Committee

FROM: Development Services Director

SUBJECT: Healthy Eating Active Living Cities Campaign

RECOMMENDATION

That the Sustainability Committee recommends that the City Council adopt the attached resolution for the City of Hayward to become a member of the Healthy Eating Active Living Cities Campaign.

BACKGROUND

Cities and their residents face increased health care costs and diminished quality of life due to the obesity epidemic. City leaders across California are addressing the crisis by implementing land use and employee policies that encourage physical activity and nutritious eating.

The League of California Cities led the way with a resolution in 2004 that encouraged cities to embrace policies that promote healthier lifestyles and communities. Two years later, the League adopted a resolution to work together with the Institute for Local Government, and the Cities Counties and Schools Partnership, to develop a clearinghouse of information that cities can use to promote wellness policies and healthier cities. The Healthy Eating Active Living Cities Campaign (Campaign) grew out of these resolutions and is a partnership of the California Center for Public Health Advocacy and the League of California Cities.

The Campaign works with California cities to adopt policies to improve the physical activity and food environments for residents and employees, focusing on land use, healthy foods, and employee wellness. The Campaign has asked the City to join the campaign to make Hayward a healthier city by setting goals to provide its citizens and employees with healthier lifestyle choices. By adopting the attached resolution, the City is committing to strive to continue making advancements that would work towards the goals of the Campaign. This may include future policy and ordinance changes. In addition, future decisions made by the City would take into consideration the goals of the resolution.

As reflected in the attached resolution, the Campaign's goals include encouraging cities to build a healthy environment by (1) prioritizing capital improvement projects to increase opportunities for physical activity in existing areas; (2) facilitating community gardens and farmers markets to increase access to healthy food including fresh fruit and vegetables; and (3) revising comprehensive

plans and zoning ordinances to increase physical activities and access to healthier foods. In addition, promoting employee wellness and encouraging local restaurants to offer healthier food choices are important elements of the resolution.

The Campaign encourages walking and biking and a built environment that facilitates alternative modes of transportation, which are directly related to Strategy One of the City's Climate Action Plan (CAP). Furthermore, while the City's greenhouse gas inventory does not take into account energy use associated with food production and transportation, healthy food and local food production promoted by the Campaign supports the City's efforts to reduce overall greenhouse gas emissions. The education and outreach needed to promote the Campaign can easily be combined with the outreach efforts related to the CAP.

DISCUSSION

The attached resolution was created from a sample resolution provided by the Campaign. By following its goals, Hayward would move toward becoming a healthier city. The City has already taken many steps in meeting these goals, but there are more steps that could be taken.

Built Environment - In some ways, the City has already taken measures to meet some of the Campaign goals. For instance, the City has had a Bicycle Master Plan for many years. This plan was last updated in 2007 and provides a network of bicycle facilities that includes bike paths, lanes, and routes. The City should strive to continue to improve upon the existing plan and implement means to improve undeveloped bike paths.

The City plans to promote pedestrian access by developing a Pedestrian Master Plan when the Circulation Element of the General Plan is updated in the next couple of years. A Pedestrian Master Plan would enhance pedestrian travel and safety within the City.

The Zoning Ordinance provides for pedestrian-oriented design by including zoning districts that allow mixed-use development and higher density zoning in the downtown area and near public transportation. Recognizing that living near public transportation or near a vibrant downtown promotes walking, these districts have lower parking requirements. Parking can be further reduced by providing bicycle spaces, shuttle service to BART or bus stations, carpools for employees, and other similar methods that reduce vehicle trips.

To promote pedestrian-oriented neighborhoods, City staff is developing two form-based codes along most segments of Mission Boulevard. The intent of the form-based codes is to ensure that existing and new buildings work together to define pedestrian-oriented space of the streets and other public places. Buildings would be harmonious with each other in scale and character, and create an attractive, walkable neighborhood. To encourage alternate modes of transportation, the form-based codes will not have minimum parking requirements for automobiles. The South Hayward BART/Mission Boulevard Form-Based Code is scheduled to be adopted in July and the Mission Boulevard Corridor Form-Based Code is anticipated to be completed in the first quarter of 2012.

The City strives to promote the safe pedestrian use of City streets. Approximately one million dollars per year is spent on repairing existing sidewalks throughout the City. These improvements include installing or modifying handicap ramps to meet State standards. In addition, one-half million dollars per year is spent on installing new sidewalks.

Every Saturday, year round, there is a farmer's market in downtown Hayward. The market features locally grown produce and a selection of hot foods from nearby restaurants and caterers. The market provides a place to retail locally-grown produce while creating a sense of community.

To help provide access to healthier foods; the City is working with community action groups to expand the use of community gardens and urban farms throughout the City. One of the groups that is trying to promote urban farming within the City is *Urban Farming for Hayward*, which is made up of a group of concerned citizens interested in growing and selling their produce. They have held several meetings over the past few months to find potential farming plots, seek funding to finance their venture, and work with similar organizations in other communities to overcome solutions to the stumbling blocks along the way. Attachment II, "Policy Recommendations Related to Urban Farming," outlines some of the goals the organization wishes to accomplish. By allowing well-managed and maintained urban farming, the City would meet the goal of creating easily accessed healthy foods.

Allowing urban farming and community gardens within the City reduces the trips to the local grocery store and, on a more global scale, reduces the carbon footprint due to the transportation of produce via ships, trucks, and trains. Urban farms and community gardens allow the community to work together while providing a local food source.

A new agency, led Urban Agriculture Advisory Group, is being convened by the City, Hayward Area Recreation and Park District, and Hayward Unified School District. It also includes the Alameda County Office of Education's Project EAT program (school gardens), Stopwaste.org, Bay-Friendly Landscaping & Gardening Coalition, Day Labor Center, and a few people from the current Community Gardens. This group's initial purpose will be to develop a vision and identify assets, gaps, resources, and opportunities relating to urban agriculture in Hayward, including community gardens, urban farming, etc. The ultimate goal here is to convene a new set of key stakeholders to assist with bringing about the community visioning process and revamping of the Hayward Community Gardens and other food production ventures. The first meeting of the group will be June 9, 2011.

Employee Wellness - The Hayward Police Department initiated a new health and wellness program for City employees called Pursuit Performance Training. The program allows employees to access a website where they are given daily workout routines, can track weight loss, and have access to advice on how to eat and live a healthier life. The City is also establishing exercise and yoga classes for employees. These classes have expanded beyond the Police Department and are now available throughout the City.

There is also a movement to provide healthier food choices in the vending machines throughout the City. The vending machines will feature healthier snacks, such as granola bars and veggie chips. This will give the employee the ability to make a healthier choice for a snack.

Healthy Food Access - A measure the City could implement, as suggested by the Campaign, is to allow restaurants that remove foods that contain artificial trans fats from their menus to display a Hayward Healthy Eating logo identifying their restaurant as a healthier choice.

ECONOMIC IMPACT

Creating pedestrian-oriented development would allow shoppers to spend their money locally rather than driving to stores located outside City limits. Allowing urban farming could create jobs and additional income for local residents and create a market to sell locally produced fruits and vegetables.

FISCAL IMPACT

Creating the Pedestrian Master Plan as part of the next comprehensive General Plan update, developing form-based codes focused on pedestrian-oriented development, modifying the City's Zoning Ordinance, and working with the Hayward Local Agencies Committee could be done by existing staff and should bear no additional cost over the next fiscal year, other than the costs associated with a General Plan update, which would be significant.

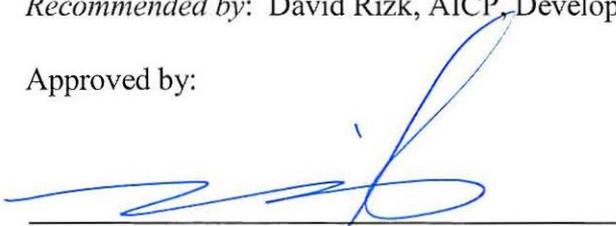
NEXT STEPS

Staff will forward the Committee's recommendation to the City Council. If the attached resolution is adopted, Hayward will become part of the Healthy Eating Active Living Cities Campaign. Planning staff will continue to meet with community groups and various City departments to develop ordinances and policies that would help facilitate a healthier city.

Prepared by: Tim Koonze, Associate Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution Making Hayward a Healthy Eating Active Living City
- Attachment II: Policy Recommendations Related to Urban Farming in Hayward – prepared by Urban Farming for Hayward

Attachment I

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

Introduced by Council Member

**RESOLUTION TO BECOME A MEMBER OF THE HEALTHY
EATING ACTIVE LIVING CITIES CAMPAIGN**

WHEREAS, in 2004, the League of California Cities adopted an Annual Conference resolution to encourage cities to embrace policies that facilitate activities to promote healthier lifestyles and communities, including healthy diet and nutrition and adoption of city design and planning principles that enable citizens of all ages and abilities to undertake exercise; and utility bills represent a major portion of operating costs for home and business owners; and

WHEREAS, the League of California Cities has a strategic goal to promote and develop safe and healthy cities; and

WHEREAS, in July 2010 the League of California Board of Directors resolved to partner with and support the national *Let's Move Campaign*, and encourages California cities to adopt preventative measures to fight obesity; and

WHEREAS, more than half of California's adults are overweight or obese and therefore at risk for many chronic conditions including diabetes, heart disease, cancer, arthritis, stroke, and, hypertension; and the current generation of children are expected to have shorter lives than their parents due to the consequences of obesity; and

WHEREAS, California Senate Bill 375 and Assembly Bill 32 call on cities to adopt plans to reduce greenhouse emissions which include reducing vehicular miles traveled; and

WHEREAS, local land use policy governs development of the built environment in which individuals make personal nutrition and physical activity choices; and

WHEREAS, by supporting the health of residents and the local workforce would decrease chronic disease and health care costs and increase productivity; and

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby recognized that obesity is a serious public health threat to the health and wellbeing of adults, children and families in Hayward. While individual lifestyle changes are necessary, individual effort alone is insufficient to combat obesity's rising tide. Significant societal and environmental changes are needed to support individual efforts to make healthier choices. To that end, Hayward adopts this Healthy Eating Active Living resolution:

I. Built Environment

BE IT FURTHER RESOLVED that the City of Hayward planners, engineers, community economic and redevelopment personnel responsible for the design and construction of neighborhoods, streets, and business areas, should make every effort to:

- Prioritize capital improvements projects to increase the opportunities for physical activity in existing areas;
- Plan and construct a built environment that encourages walking, biking and other forms of physical activity;
- Address walking and biking connectivity between residential neighborhoods and schools, parks, recreational resources, and retail;
- Facilitate the citing of new grocery stores, community gardens and farmers markets in underserved communities to increase access to healthy food, including fresh fruits and vegetables;
- Expand community access to indoor and outdoor public facilities through joint use agreements with the Hayward Unified School District and the Hayward Recreation and Parks District, and/or other partners;
- Revise comprehensive plans and zoning ordinances to increase opportunities for physical activity and access to health foods wherever and whenever possible, including compact, mixed-use and transit-oriented development;
- Include health goals and policies related to physical activity and access to healthy food in the next general plan update;
- Build incentives for development project proposals to demonstrate favorable impact on resident and employee physical activity and access to healthy foods;
- Examine racial, ethnic, and socio-economic disparities in access to healthy foods and physical activity facilities or resources and adopt strategies to remedy these inequities.

II. Employee Wellness

BE IT FURTHER RESOLVED that in order to promote wellness within Hayward, and to set an example for other businesses, Hayward pledges to adopt and implement an employee wellness policy that will:

- Offer employee health incentives for healthy eating and physical activity;
- Establish physical activity breaks for meetings over one hour in length;
- Accommodate breastfeeding employees upon their return to work;
- Encourage walking meetings and use of stairways.

BE IT FURTHER RESOLVED to set nutrition standards for vending machines located in city owned or leased locations;

BE IT FURTHER RESOLVED to set nutrition standards for food offered at city events, city sponsored meetings, served at city facilities and city concessions, and city programs.

III. Healthy Food Access

BE IT FUTHER RESOLVED that Hayward encourages restaurants doing business in Hayward to:

- Disclose the calorie amount and grams of fat for each menu item listed on a menu or menu board in a clear and conspicuous manner.
- Remove foods containing artificial trans-fat from their menu offering.

BE IT FURTHER RESOLVED that Hayward encourages food retailers doing business in Hayward to prominently feature healthy check-out lanes free of high density foods;

BE IT FURTHER RESOLVED that restaurants and food retailers that promote healthy food choice in the above manners be recognized by the City and will be entitled to display a Hayward Healthy Eating Active Living logo.

IV. Implementation

BE IT FURTHER RESOLVED that the City shall encourage the Hayward Unified School District (HUSD) and the Hayward Area Recreation and Parks District (HARD) to also become members of the Healthy Eating Active Living Cities Campaign, and that the City will work with HUSD and HARD to jointly promote access to healthy food and the use of well-designed parks within the City.

BE IT FURTHER RESOLVED that the City Council shall receive an annual report regarding steps taken to implement this resolution, additional steps planned, and any desired actions that would need to be taken by the City Council.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Attachment II

Urban Farm Hayward Policy Subcommittee Purpose: To focus on the policy and political will development required to support Urban Farming in Hayward.

Policy Recommendations related to Urban Farming in Hayward

1. Studies among Hayward Residents, within the scientific community, and nationally support the value of local food production through farming. Members of the Urban Farming planning committee for Hayward are collecting studies and models and are eager to work with City Staff to craft policies that enhance the health and safety of Hayward.
2. Urban “Farming” is delineated from “Gardening” activities as the produce is raised through farming is for commercial sales.
3. Foods which have additional preparation (ex: cooked or made into preserves) are considered “value added” and are not included in the scope of these suggestions as this process moves the food from agriculture regulations into those related to food safety.
4. Raising animals is not a part of these recommendations at this time.
5. Bee keeping is valuable for healthy food production and should only be undertaken by trained individuals. At this point, bee keeping is not part of these recommendations.
6. City Ordinance, Zoning/Code, etc. should be simple, making compliance easy.
7. Farming should be allowed as a land use “by right” in multiple areas of the city.
8. Zoning/Codes should give the City the tools needed to address nuisances, complaints, and non-conforming farms.
9. The phrase ‘agriculture is permitted until a “better use” is identified’ negates the value of locally produced food, job creation, and blight reduction possible through well-run urban farming efforts and should not be used.
10. Currently, the Alameda County Department of Agriculture requires a “Certified Producer” certificate (a process that includes an application and a site visit) to ensure that the farmer is only selling crops that they grow. Any certified farmers' market association requires this certification plus being named as additional insured on the farmer’s insurance policy. The California Department of Food and Agriculture also offers additional programs to ensure integrity at the marketplace and fair sales practices. These existing processes should continue to be the standards and could be used for oversight so that undue burden is not added to the City. <http://www.cdfa.ca.gov/egov/farmersmarket/>
11. Currently, Alameda County’s Departments of Agriculture and Health have a permitting process for basic food production (which includes an application and certification process to grow and sell crops).
12. Food produced should be sold at existing Farmer’s Markets as they already have licensing and health regulations. Small production farmers should be encouraged to work with the Community Gardens or other cooperative efforts when they are ready to start selling.

13. Anyone wishing to sell to restaurants or outside of the Farmer's Market structure should be able to do so, but must purchase a business license to facilitate compliance with health and safety guidelines, tax codes, and other existing business standards. Such regulation also facilitates a competitive marketplace environment that is fair for all.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, April 12, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

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

ROLL CALL

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

Commissioner Loché led in the Pledge of Allegiance.

Staff Members Present: Conneely, Pearson, Philis

General Public Present: 0

PUBLIC COMMENTS

None

WORK SESSION

1. Proposed General Plan Update Process Overview

Senior Planner Erik Pearson gave a synopsis of the report.

Commissioner Mendall said one of his responsibilities at work was to manage documentation and documentation methods and that he did so electronically; he said he didn't print out anything. He said he also used a Wiki site and noted that it was possible to control who could make changes to content and by posting to Wiki made it easy to share documents. Commissioner Mendall said he really wanted the City to move in the same direction.

Regarding Pleasanton Ridge and detaching it from Hayward east of Palomares Road, Commissioner Mendall asked staff who would get the land. Senior Planner Pearson said the land would be ceded to the County, but discussions included talk of an equal area of land being transferred back to Hayward. Mr. Pearson said years ago, Council wanted that area under its jurisdiction due to some significant development proposals, but that never happened. Now the concern, Mr. Pearson said, was if the land was detached from Hayward that it remained open space. Commissioner Mendall said he saw no compelling reason to detach the land from Hayward.

Besides being completed 12 years ago, Commissioner Mendall asked if the General Plan was wrong or out of date, and he asked why the City should spend the time and money to update it now. Senior Planner Pearson said the General Plan was based on data, including geographic and economic data, which is outdated. Although there is no strict state requirement to update the Plan, Mr. Pearson said the City's priorities had changed to include sustainability, community cleanliness and fiscal stability. Commissioner Mendall said the General Plan didn't strike him as out of date, still seemed fairly applicable, and the City had passed several

stand-alone items (Climate Action Plan, Green Building Ordinance, Noise Ordinance, Form-based Code, and Historical Preservation Ordinance) that could be “shoe-horned” into the General Plan without starting over. He agreed with feedback from the City Council that updating the General Plan should take less time and at less cost. Commissioner Mendall also mentioned that because the City didn’t have the staff or the staff time, it wasn’t practical to start from scratch. He said the goal shouldn’t be doing the same work in less time at less cost, but instead, to do less work so the City could realistically complete the task at less time and cost. As an example, Commissioner Mendall mentioned the neighborhood plans, and he suggested only updating the two or three plans that had changed dramatically and saving the others for later or when there was an impetus to update them. He concluded that that kind of approach would lead to time and cost savings while still producing good results.

Commissioner Loché agreed that it would be a huge mistake if the City didn’t make a move toward a web-based General Plan, since Hayward was a tech-savvy city. Regarding the letter received from the Office of Planning and Research and the requirement that a comprehensive revision include at least five of the seven mandatory elements, Commissioner Loché asked if there were any elements the City wasn’t going to address. Senior Planner Pearson said all elements needed to be updated noting that every chapter of the General Plan had baseline data and policies that would need to be revisited. Mr. Pearson agreed with Commissioner Mendall that the City didn’t have to wipe the slate clean and could move forward with what was currently in place. Commissioner Loché asked if the City had considered partnering with college students or interns to do some of the work and Senior Planner Pearson said that hadn’t been talked about, but could be considered.

Commissioner Loché asked if seismic issues were addressed in the General Plan and if there were any new issues. Senior Planner Pearson said the location of known fault lines and setbacks were addressed in the General Plan, and that he didn’t anticipate a lot of new information in that area.

Commissioner McDermott agreed that a web-based General Plan was an excellent idea noting it would be easier to manage, easier to update, and made more sense with the City being environmentally friendly. Noting that because of reduced staff the City planned to hire a consultant to assist with the General Plan update, Commissioner McDermott asked what the consultant’s primary responsibility would be. Senior Planner Pearson said the primary task of the consulting team would be to prepare technical and environmental impact reports, and noted that most of the general text would be written by staff. Commissioner McDermott asked why more than one consultant was needed and Mr. Pearson explained that each consultant would have a specialized area, for example, air quality, greenhouse gas emissions, noise, geotechnical, and transportation, and would work as sub-consultants under a lead consultant. Commissioner McDermott said she was very sensitive to the issue of hiring consultants because the City had been criticized for the additional cost and burden hiring a consultant incurs. She said she understood the need to hire a consultant, but the issue was of perception; the City was reducing the number of jobs, but hiring consultants to do City work.

Commissioner McDermott agreed with Commissioner Mendall that the wheel didn’t have to be reinvented and mentioned the City of Sunnyvale’s General Plan which had received recognition and was very accessible. She suggested looking at the General Plans of other cities for ideas so City staff could focus on the unique needs of this community. Commissioner McDermott asked when the article “Why Now Is a Smart Time to Consider Updating Your General Plan,” attached to the staff report, was written, and Senior Planner Pearson said he thought sometime in 2011. Based on the article, Commissioner McDermott said she did some math to determine the cost to various cities to adopt a General Plan and at approximately \$4 million, Sacramento spent \$2.81 per resident. For a city the size of Hayward, she said, the article estimated the cost of developing a General Plan at \$800,000-\$900,000, with the most expensive component being the EIR. With the City’s stated estimate at \$2.8 million, Commissioner McDermott asked why there was such a big difference in cost. Senior Planner Pearson said the cost could not be correlated with population because some costs were fixed. He noted that a big part of the cost for Hayward, both in dollars and in time, was the number of meetings expected to be held in the community. Based on Council’s direction to staff to complete the update faster, Mr.



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Pearson said staff would need to rely more on technology to share documents and collect input and hold fewer meetings. He also noted that other cities' cost information did not include staff time.

Regarding the letter from the Office of Planning and Research, Commissioner McDermott confirmed with staff that the City was required to update the Housing Element. She then noted that the letter stated that if the City didn't have an updated General Plan by July 2011, a letter would be submitted to the Attorney General. Senior Planner Pearson explained that when the General Plan is 10 years old, the Attorney General will be notified, but he commented that he was not aware of any state action after a letter was submitted.

Commissioner Lamnin said she appreciated the need for the General Plan update and cited Vallejo as an example of a city not taking action. She also agreed with the other Commissioners that only the parts of the General Plan that were not working should be updated. She said using Wiki was a great idea, but noted training would be needed for those who didn't know how to use it. Senior Planner Pearson explained that Wikipedia was the best example, but a "Wiki" was any online document that members of the community could login and make changes to.

Commissioner Lamnin said she didn't see any mention of Universal Design elements in the General Plan and she asked where it would fit. Senior Planner Pearson defined Universal Design as the idea of designing buildings for people of all physical abilities and explained that it was addressed under the current Housing Element adopted a year and a half ago. He said the next step was to develop an ordinance that would require Universal Design, but noted it could also be addressed in the General Plan.

Commissioner Lamnin said she supported streamlining City processes as much as possible to make business and development as simple and as accessible as possible. She said she understood why the General Plan was organized around Council priorities, but expressed concern that someone with questions about land use wouldn't look under Clean and Green, and she suggested keeping titles clear and concise. As mentioned in the article, Commissioner Lamnin said now was a great time to build community identity and ownership, and with limited resources, she suggested using existing resources such as Neighborhood Partnership meetings to reach all the neighborhoods. With two meetings a month, she pointed out, staff could meet with residents from the 17 or 18 neighborhoods in a matter of months, but she also suggested waiting until there were specific issues for them to address. Commissioner Lamnin said she loved Commissioner Loché's idea of utilizing local college students and suggested giving them specific questions, such as how to make Hayward youth-friendly or dealing with bicycle access, and then have them take those questions to high school and elementary school students so there were even more ways of engaging the community. Commissioner Lamnin commented that the Implementation Plan was a great idea, but if there wasn't an action step for something, that it didn't need to be part of the General Plan. Finally, she said topics like sustainability and health should be incorporated under other sections of the Plan with an index to direct people to those topics.

Regarding the recent update to the Housing Element, Commissioner Lavelle asked staff how long it remained valid and Senior Planner Pearson said the City was starting a new cycle for updates. He said the Sustainable Communities Strategy being developed by the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) would be adopted in the next year and would include a new regional housing needs assessment. Once that was adopted, he said, the City had 18 months to adopt a revised Housing Element. Senior Planner Pearson said with the current schedule the City would be in compliance with that deadline. Commissioner Lavelle asked for confirmation that the Housing Element was an ongoing process that was part of the General Plan, but didn't have to be updated in conjunction with General Plan and Mr. Pearson said that was correct, however, he noted that when the General Plan was updated, a revision to

the Housing Element would be part of it and from then on, the cycle would be every eight years. Commissioner Lavelle asked if the Housing Element revision would include the economic impact of Redevelopment Agency funds for affordable housing being discontinued and Mr. Pearson said yes. Commissioner Lavelle commented that she thought this was one of the most significant changes the City Council would have to address.

Referring to the comments made by Council regarding outreach to the community, Commissioner Lavelle said she agreed with Commissioner Lamnin that the City needed to reach out past the “usual suspects” and she also favored moving to an electronic format. That said, she pointed out that Hayward had a lot of senior citizens and low income residents who might not have access to a computer. While draft documents should be online and available to everyone, she said, there needed to be places in the City where people could go to look at the documents. Commissioner Lavelle commented that for her personally, paper maps were easier to review and she concluded that to meet the goal of increasing participation, all forms of outreach should be used including utilizing interns. Regarding the goal of outreach using a variety of media, Commissioner Lavelle commented that nobody at City Hall needed to be posting on Twitter, but a Wiki site was a good idea.

Commissioner Lavelle asked how frequently Council updated its priorities and Senior Planner Pearson responded once a year from January thru March. Commissioner Lavelle asked if priorities were updated on an annual basis, with significant changes made every four or five years, how that would affect the General Plan which was adopted and in place for 10-15 years. Mr. Pearson said staff didn't expect priorities to change dramatically from year to year and Commissioner Lavelle said she didn't think that was realistic noting that policy makers and economic factors could change and that could significantly alter what Council needed to focus on. Senior Planner Pearson said that was good point, but noted that even if the current format of the Plan was used rather than organizing around priorities, the current priorities would still be reflected in the policies of the General Plan. He said each adopted Plan would be a snapshot in time and the priorities of the community and Council, but he noted the Plan could be amended between the 10 year cycles. Commissioner Lavelle suggested that staff, and any involved consultants, considers ways for the Plan to remain flexible.

Regarding the Council's priorities, Commissioner Faria said she had the exact same concern especially with this being an election year. She asked if it was a good idea to organize a General Plan on Council Priorities when priorities could change. Commissioner Faria also noted that priorities could change in the two years it takes to make changes to the Plan and suggested a more broad-minded approach to the organization of the Plan. She also agreed with her fellow Commissioners that the Plan should be web-based, but noted a lot of people didn't have access to a computer, and costs need to be minimized relating to the update of the Plan and to do so, the City should use existing resources and update rather than build a new Plan from scratch.

Commissioner Faria asked when the Council resolution regarding airport land use was going for a vote and Senior Planner Pearson said he didn't know but would report back in the next couple of weeks.

Commissioner Mendall agreed with comments made about organizing around priorities and he echoed Commissioner McDermott's comment about the use of consultants. He said consultants should only be used when staff didn't have the expertise, otherwise everything should be done by staff. He said any money used for a consultant was money the City would have to take away from staff and laying someone off was not a good outcome. Regarding the comment that the Plan would be a snapshot of time, he said that was true, but that was what bothered him, he said the Plan should be an evolving document that was “tweaked” as time goes on, piece by piece, rather than all at once to avoid the Plan becoming stale.

Regarding input from the community, Commissioner McDermott said the success of any Plan was predicated on community involvement and if the goal was to reach new people, she suggested using interns and students to help with that challenge. She also said it was critical that anyone who facilitates the community meeting look at long-term as well as short-term goals because, historically, people are more interested in what's



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happening now and don't think about long-term. Adding to previous comment regarding priorities, Commissioner McDermott said the General Plan needed a strong foundation, so changes could be made, but the key elements, or the foundation, remained the same and kept the Plan a strong working document.

Regarding the boundary issue, Commissioner Lamnin said if the City couldn't tend to the responsibilities in the areas under our sphere of influence, then those areas shouldn't be our responsibility. She said neglecting an area was a bigger problem not only for the City, but for the community at-large. Commissioner Lamnin said three and half years was realistic amount of time given the amount of work and community input that updating a General Plan required, however, she expressed concern about the cost of the update. She said based on the article mentioned earlier, a cost of \$1.5 million for the update seemed more realistic for a city the size of Hayward. Commissioner Lamnin said she loved the idea of keeping the plan current and incorporate updating the Plan into the work done by staff if possible. She pointed out that the easiest way to stay in compliance was to keep it going all the time. She said she shared the concerns expressed about hiring consultants and added that doing so undermined the feel of community inclusion although she did understand that for elements like the EIR it wasn't practical to keep the task in-house. And finally, regarding the "digital divide," Commissioner Lamnin suggested having 3-5 sites around the community, where City of Hayward employees were already present, where people could view information on a computer with a trained staff person there to help, collect comments, and assist with language translation.

Chair Márquez said she was glad to see the strong emphasis on outreach efforts and agreed with most comments made that the process had to be accessible to the community and made the suggestion to hold meetings at senior and EDU community centers. As part of the outreach, she said the City needed to go to the population it was trying to outreach. Chair Márquez said the General Plan needed to be web-based, but agreed with past comments that hard copies should be available too. She also agreed that work should be completed in-house as much as possible, and she asked staff how many consultants were used the last time. Senior Planner Pearson said he didn't know exactly, but noted the circulation element been updated a few years prior so consultants were used for the EIR and the noise section. If consultants had to be used, Chair Márquez asked who would manage them and Mr. Pearson said staff would manage the consultants, and for the EIR the lead consultant would manage any sub-consultants.

Chair Márquez asked if the Health and Safety section of the General Plan could include topics not mentioned before, but important to include, such as proper needle disposal, hazardous materials, public safety, air quality, and what to do with old medications to name a few examples. She said she liked the idea of including local college students in the process and she agreed with Commissioner Lamnin that questions for the community should be more focused to keep them engaged and not lose momentum by making the topic too open-ended. Chair Márquez said she was also worried about the cost of the update and she concluded her comments by saying the ridge should be kept as open space.

2. Implementation of the South Hayward BART/Mission Boulevard Form-Based Code

Senior Planner Pearson presented the report noting that the purpose of the work session was to get some familiarity with the Form-Based Code and how projects would be reviewed. He mentioned that a second work session would be held at the next Planning Commission meeting to resolve any unanswered questions and finish the presentation.

Noting that the T4 zoning under the Form-Based Code only allowed 35 units per acre, Commissioner Lamnin asked if a variance would be needed to allow the Mission Paradise project to have 43 units per acre, as

previously approved before the Form-Based Code was adopted. Senior Planner Pearson responded that under the Form-Based Code variances on density were not allowed and the number of units would have to be reduced if it were a new project.

Commissioner Mendall asked if the project would have to be denied when the developer filed for an extension next July and Senior Planner Pearson said he wasn't sure if the project was eligible to request another extension or if the new zoning was enough to cause a denial. Assistant City Attorney Maureen Conneely said the City would have to look at the efforts of the developer to move the project forward and if the developer had retained consultants, prepared architectural elevations, and expended funds even if that didn't include construction financing, the City would be "somewhat constrained" from denying the extension. Commissioner Mendall said that seemed fair, but asked for the outcome if the developer hadn't made any progress and Ms. Conneely said that was why the City had timeframes for entitlements and those entitlements expired after a certain period of time. She said inaction was a non-arbitrary basis for not granting an extension.

Commissioner Mendall noted that under the T4 zoning the project could have a mix of uses and he asked if the City had any latitude to request a certain mix or withhold a vote if the mix wasn't what the City desired. Senior Planner Pearson said requesting specific mixes was "off the table" and noted that one of the reasons for the Form-Based Code was to give developers a sense of security in terms of what was allowed and acceptable to the City. Mr. Pearson said the City could encourage the developer to include a specific use, but it wouldn't be required.

Commissioner Lavelle noted that the Mission Paradise project was approved before the Form-Based Code was adopted and retail was included on the first floor. Looking at Table 9 of the Form-Based Code, Commissioner Lavelle commented that some retail uses were permitted by right so the retail use would not have to go before the Planning Commission for review; staff would review the project and approve the use. Regarding uses that require a CUP, Commissioner Lavelle said the Planning Commission would review the proposal and have the opportunity to comment and the decision could be appealed. Senior Planner Pearson confirmed all those comments were correct.

Noting she was not a member of the Planning Commission when the Mission Paradise project was approved, Commissioner McDermott asked if the project would be "grandfathered in" under the Zoning Code in place at the time of approval and exempt from having to make any changes to proposed height or density and Senior Planner Pearson said yes, but noted the approval would end when the extension expired in July of 2013.

Regarding the right of way of streets, project site area, and building densities, Commissioner Mendall asked for confirmation that the width of the right of way "could be" not "must be" factored in with the density of the proposed building. Senior Planner Pearson said assuming the right of way was vacated and deeded to the property owner, the land would be factored into the overall project site area and the density allowed would be based on that total. Commissioner Mendall pointed out that if the City was giving the property owner excess right of way then the City could ask for something in return or use the land as a point of leverage. He asked staff if the City had that leverage and Senior Planner Pearson said he didn't recall the exact procedure for vacating the right of way, he thought it might go before City Council, and offered to follow-up and provide more information at the next meeting. Commissioner Mendall asked him to do so noting the value of the land and the potential leverage it could provide.

Commissioner Lavelle asked if some of the width of the street could be given to the property owner to make the parcel larger and Senior Planner Pearson said yes. She then asked Commissioner Mendall if that was the leverage he was talking about and he said yes. Commissioner Lavelle pointed out that Hancock Street was really wide and was bordered by grassy weeds and she asked if by giving the excess right of way to the property owner the City was trying to narrow the street and make it more attractive and Mr. Pearson said yes,



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and noted the developer would be required to install the new sidewalk, street trees and everything else along the frontage of the property. Commissioner Lavelle confirmed with Mr. Pearson that because this project was approved before the Form-Based Code was adopted, this particular example didn't apply.

Commissioner Mendall asked if the excess right of way could be split rather than go to one side or the other and Senior Planner Pearson said the excess was typically split down the middle, but the City would first have to review if any adjustment would be needed at the intersection. Commissioner Lavelle said there was a street light at Hancock so it would have to be split down the middle and Commissioner Mendall pointed out that if there was a signal, it would be easier to push the excess to one side so the signal wouldn't have to be moved. Mr. Pearson said pole location and street striping would have to be considered.

Looking at Table 9 of the Form-Based Code, Commissioner Faria asked for the definition of "By Right" and "Administrative Use Permit." Senior Planner Pearson explained that "By Right" in the Form-Based Code had the same meaning as "Primary Use" in the Zoning Ordinance that applied to the rest of the City, and it meant a use that required no special permit. For an "Administrative Use Permit" Mr. Pearson explained that the Planning Director had the authority to approve the permit. Commissioner Faria confirmed that the Planning Director would consider whether the use met criteria and approve the AU permit and that it would not come before the Planning Commission. Mr. Pearson said the Planning Director could refer an AU permit to the Commission if the use was controversial or had been appealed.

In response to Commissioner Lavelle's question about lot width, Senior Planner Pearson explained that the maximum lot width under the Form-Based Code was 120 feet per parcel and the Mission Paradise project actually spanned three existing parcels that totaled 435 feet wide. He explained that to be in compliance, the property lines would have to be adjusted and an additional lot would have to be created for a total of four lots. Commissioner Lavelle commented that wouldn't make sense for this kind of project because the application would have to be denied when the developer was trying to fit a nice, dense project into a suitable area. Senior Planner Pearson replied that for this type of development it made sense to merge the lots and develop it as one parcel.

Commissioner Lavelle asked if the lot coverage percentage included parking and Senior Planner Pearson said no.

Commissioner Mendall asked if a variance could be granted to allow for a wider lot width and Mr. Pearson explained that under the Form-Based Code there were two kinds of variances called "Warrants" and "Exceptions," which he said he would explain during the next Work Session.

Chair Márquez confirmed the discussion would continue in two weeks.

COMMISSION REPORTS

3. Oral Report on Planning and Zoning Matters

Senior Planner Pearson gave a brief description of upcoming topics. Commissioner Lamnin confirmed that the proposal for the old Mervyns' site wasn't scheduled for the next meeting and Mr. Pearson said no and that he didn't think it had been scheduled yet.

4. Commissioners' Announcements, Referrals

Commissioner Mendall mentioned that three months ago Frank Goulart had asked if the City collected a property transfer tax from banks when they executed a foreclosure and although he had asked for an update on behalf of Mr. Goulart a couple of meetings ago, Commissioner Mendall said he still hadn't received an answer. He said he would like an answer, and if it was available, some educational information about the tax. Senior Planner Pearson said he would look into it.

APPROVAL OF MINUTES

5. None

ADJOURNMENT

Chair Márquez adjourned the meeting at 8:31 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk



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777 B Street, Hayward, CA94541**

MEETING

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

ROLL CALL

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

Commissioner Mendall led in the Pledge of Allegiance.

Staff Members Present: Conneely, Pearson, Philis

General Public Present: 0

PUBLIC COMMENTS

None

WORK SESSION

1. Implementation of the South Hayward BART/Mission Boulevard Form-Based Code

Senior Planner Erik Pearson gave a synopsis of the report.

Commissioner Mendall commented that since there was no minimum parking requirement for the residential units, the original thought was to have a parking component to the plan and he asked if it was ready yet. Senior Planner Pearson asked Commissioner Mendall if he meant a paid parking program for the neighborhood and Commissioner Mendall said whether the plan was paid or unpaid, to not have a minimum parking requirement in residential especially, could work, but there would need to be a plan. Commissioner Mendall said without a plan in place, someone could propose to build 80 units with no parking and the City would have to approve the project because it conformed to the zoning. Senior Planner Pearson said the City would have to approve the project, but it could be conditioned to require a parking district or a permit parking system. Mr. Pearson said there could be a mechanism to address parking at the time of project approval. Commissioner Mendall asked for confirmation that a project could be conditioned even without a parking plan in place and he pointed out that he had raised this concern several times that more and more time was going by and there was no parking plan. Senior Planner Pearson said he had not been closely involved in the Joint Power Authority with the South Hayward BART station, and that he thought the plan was coming soon. Commissioner Mendall asked Mr. Pearson to remind Development Services Director Rizk and Planning Manager Patenaude that a parking plan should be in place before projects start being proposed.

Commissioner Márquez said she saw a parking lift used at some condos in downtown Oakland and she asked if a lift would be allowed at a project like Mission Paradise as long as they meet the minimum parking requirements. She also asked if there were any restrictions. Senior Planner Pearson said a lift would be subject to maximum parking restrictions; similar to a traditional parking space. Commissioner Márquez asked if there were any lifts in Hayward and Mr. Pearson said he didn't think so.

DRAFT

Regarding parking being restricted to the third layer of a lot (or 20 feet back from the front of the building), Commissioner Mendall asked if parking was in the third layer so that frontage windows would be visible and parking wouldn't be right up against the front of the building and Senior Planner Pearson said yes, the idea was to look at buildings, not a parking lot from the street.

Commissioner Lamnin asked if limiting parking to the third layer would have any impact on the retail component and Senior Planner Pearson said no, and pointed out the retail spaces were 50-60 feet deep with parking behind, which would be in compliance. Commissioner Lamnin asked if there were any requirements for on-street parking and Mr. Pearson said the street configuration would define how wide the travel lanes would be and whether or not there would be a parking lane on the street. Mr. Pearson said he believed Hancock would have a parking lane.

Commissioner Faria asked about handicap parking and Senior Planner Pearson identified parking under the structure.

Commissioner Mendall asked if the parking spots for clean air cars had outlets for charging and Senior Planner Pearson said no, indicating that outlets were not a Cal-Green requirement. Commissioner Mendall wondered how someone with an electric vehicle would make that work if there were no outlets, and Mr. Pearson acknowledged that was a good point and outlets could be required under the conditions of approval for the project until outlets become a code requirement. Commissioner Mendall said developing a fair way to have residents pay for the electricity should be considered.

Commissioner Mendall asked what the square footage requirement would be for a bicycle parking spot versus a car. Senior Planner Pearson said he hadn't seen a standard for bicycle parking, but mentioned the Cal-Green code referred to outside documents prepared by bicycle advocacy organizations that could be used as a standard. Mr. Pearson also mentioned that Cal-Green bicycle parking requirements were less than those under Hayward's Form-Based Code, but the higher requirement prevailed.

Commissioner Márquez asked about short term bicycle and motorcycle parking and asked if there would be signage to identify the spaces. Senior Planner Pearson said there was no requirement for signage, but noted there was an opportunity to designate the type of bicycle parking types for either short or long term parking. Mr. Pearson said the short term parking would be easier to get to and not as secure as the long term parking which would be more sheltered and out of the way.

Regarding variances under the Form-Based Code, known as Warrants and Exceptions, Commissioner Mendall noted that when a warrant or an exception was required, it could become a potential point of negotiation. Senior Planner Pearson said that was true to some extent. Commissioner Mendall said for a large project having a couple points of leverage would be a good thing and he wouldn't want to eliminate all warrants and exceptions. Mr. Pearson pointed out that the Form-Based Code requires a site plan review application, but that wouldn't necessarily go before the Planning Commission. Commissioner Mendall clarified that without a warrant or exception, because the code was so detailed, if the project complied with the Code the City would have to approve it. Senior Planner Pearson said no, the City wouldn't have to approve the project noting a section of the code was added to the template that said a site plan review was required. Commissioner Mendall asked if the application complied perfectly with code the City could still reject it and Senior Planner Pearson confirmed the City still had some leverage.

Looking at the bicycle parking, Commissioner Lamnin commented that according to the handout, most of the bicycle facilities were by warrant rather than by right, and she asked if the City was requiring long term bicycle parking did it make sense to require it by right. Senior Planner Pearson said the table she was looking at was set up differently than others in the Code that only showed what was allowed or expected. He said she made a good point and the City may have to require, or at least allow, some of the other bicycle parking types



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in the T4 zone. Commissioner Lamnin said if the City was requiring long-term parking, the developer should be allowed to choose what type.

Regarding exceptions, which require Planning Commission review, Commissioner Mendall asked if all four conditions must be met for the exception and Senior Planner Pearson said yes, if one finding cannot be made, that would be grounds for denial.

Commissioner Márquez asked Mr. Pearson what the next steps were for the project. Senior Planner Pearson said he was not aware of what the developer was doing, if anything, to move forward with the project. Commissioner Márquez asked if the developer was aware the Form-Based Code had been adopted and Mr. Pearson said yes, and that staff could check in with the developer to see if there was any progress. Commissioner Mendall pointed out that the Ford-Based Code didn't apply to them, unless they lapsed on their renewal, because they were grandfathered in and Mr. Pearson said that was correct.

COMMISSION REPORTS

2. Oral Report on Planning and Zoning Matters

In response to a Public Comment made at a prior meeting about the property transfer tax, and Commissioner Mendall's request for an answer at the prior meeting, Senior Planner Pearson responded that the City's Municipal Code exempted foreclosed properties from the property transfer tax when the value of the property (or sale price) was less than the mortgage (or debt). Commissioner Mendall asked if that included short sales and Mr. Pearson said yes. Commissioner Mendall pointed out that that would mean most of the sales occurring in town right now and when Mr. Pearson agreed, Commissioner Mendall said, "Ouch!" and asked what the reasoning was for that. Senior Planner Pearson explained that the exemption had been in the Code for a long time and staff was looking at possibly modifying the Code. Assistant City Attorney Maureen Conneely said changing the Municipal Code would require voter approval and when Commissioner Mendall asked for more information she explained that it was a tax and if the City wanted to seek to apply a tax in a way that it had not previously been applied, and modify the Municipal Code, under Proposition 26 any new tax on a new set of people required voter approval (50%). Commissioner Mendall asked for confirmation if that would be true even with just an elimination of an exemption and Ms. Conneely said it would be more than that because it was the application of a tax on a group of people who had not been subject to that tax before. She pointed out that Proposition 26 was new, only a year old, so the breadth of its application was unknown, but that was the argument she would expect to hear at any attempt to amend the code without voter approval.

Commissioner Márquez asked why 50% and Assistant City Attorney Conneely said general taxes that would go into the General Fund without being earmarked for a special purpose only required 50% voter approval; a special tax would require a 66% voter approval.

Commissioner Loché asked how the issue was being handled in other Bay Area cities, noting that the gentleman who originally asked the question referenced other cities collecting the tax. Assistant City Attorney Conneely said it might well be within the authority of municipalities to collect a tax on foreclosure or short sales, she noted she hadn't checked the state law to determine if City's were preempted from imposing that type of tax, but she said she didn't know what they were doing except that if it was within the City's authority, it would be reflected in their municipal code. Commissioner Loché said it was possible that different cities were handling it in different ways and Ms. Conneely said yes.

Commissioner Faria how much money they were talking about or how a formula would be applied. Senior Planner Pearson speculated it was \$1 per thousand dollars, but Assistant City Attorney Conneely said the amount was based on the value of the property being transferred and she thought it was \$4.50 per thousand dollars in value.

Commissioner Mendall asked for clarification that if a property was foreclosed upon and then the bank sold it, both transactions were exempt from the tax. Assistant City Attorney Conneely said if the bank never became the grantee and the property went straight from the defaulting property owner to the new owner, then that transaction was taxed. Under the Municipal Code, she said, it was only the beneficiary of the deed of trust (the loaning bank) or the mortgagee (the bank again) that the exemption applied. Basically, she concluded, as the mortgagee or the beneficiary of the Deed of Trust, you owned an interest in the property so it would be unfair to tax the transaction if the property was only going back to the lender because the owner defaulted. If the foreclosure was completed without the bank getting title, she said, the third party would pay the transfer tax on the sale value. Commissioner Mendall reiterated that the provision prevented the property from being taxed for two transfers when there was really only one, and Ms. Conneely said that was correct.

Senior Planner Pearson gave an update of upcoming meeting topics.

3. Commissioners' Announcements, Referrals

Commissioner Lamnin announced a Candidate Forum sponsored by the South Hayward Neighborhood Collaborative, which is a network of non-profit agencies, with panels for the Hayward City Council race, the 20th Assembly District race, and with candidates running for judge, U.S. Senate, and other on-going races. She said the Forum would take place from 4-8 p.m. on Monday, April 30, 2012, at UFCW Hall in Hayward.

APPROVAL OF MINUTES

4. None

ADJOURNMENT

Chair Márquez adjourned the meeting at 7:41 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk