



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **CITY COUNCIL AGENDA**

**MAY 31, 2011**

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**MAYOR MICHAEL SWEENEY  
MAYOR PRO TEMPORE FRANCISCO ZERMEÑO  
COUNCIL MEMBER BARBARA HALLIDAY  
COUNCIL MEMBER OLDEN HENSON  
COUNCIL MEMBER BILL QUIRK  
COUNCIL MEMBER MARVIN PEIXOTO  
COUNCIL MEMBER MARK SALINAS**

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CITY COUNCIL MEETING FOR TUESDAY, MAY 31, 2011

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**SPECIAL CITY COUNCIL MEETING  
BUDGET WORK SESSION  
Council Chambers - 3:30 PM**

**CALL TO ORDER Pledge of Allegiance** Council Member Henson

**ROLL CALL**

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

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**NON-ACTION ITEMS:** *(Work Session and Informational Staff Presentation items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.)*

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**BUDGET WORK SESSION**

1. City of Hayward, Hayward Redevelopment Agency, and Hayward Housing Authority Operating budget for Fiscal Year 2012  
[Staff Report](#)

Adjournment to Closed Session

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**CLOSED SESSION  
Closed Session Room 2B – 6:00 PM**

1. **PUBLIC COMMENTS** *(Limited to items agendaized for Closed Session)*
  2. Conference with Labor Negotiators  
Pursuant to Government Code 54957.6
    - Lead Negotiators: City Manager David, City Attorney Lawson, Assistant City Manager Morariu, Human Resources Director Robustelli, and Interim Finance Director Stark
    - Under Negotiation: All Bargaining Units
  3. Reconvene to Special Meeting
-

**SPECIAL CITY COUNCIL MEETING**  
**Council Chambers - 7:00 PM**

**CLOSED SESSION ANNOUNCEMENT**

**PROCLAMATION** The Salvation Army Hayward Corps – 86 Years of Service

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**Residential Energy Conservation Ordinance (RECO) WORK SESSION (60-Minute Limit)**

2. Update on Efforts to Develop a Residential Energy Conservation Ordinance (RECO) for Single-Family Homes

[Staff Report](#)

[Attachment I - Sustainability Committee Minutes - March 2, 2011](#)

[Attachment II - Public Comments](#)

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

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**CONSENT**

3. Approval of Minutes of the Special City Council/Redevelopment Agency/Housing Authority Meeting on May 3, 2011

[Draft Minutes](#)

4. Approval of Minutes of the City Council Meeting on May 17, 2011

[Draft Minutes](#)

MAY 31, 2011



5. Park In-Lieu Fee Request for \$308,912.04 for Fiscal Year 2011 from the Hayward Area Recreation and Park District (HARD)  
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  6. Modification to the Preferential Residential Permit Parking Program  
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[Attachment I Resolution Amending Traffic Regulation](#)  
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[Attachment III Section 3.95 Preferential Residential Permit Parking](#)
  
  7. Opposition to AB 506 (Wieckowski) Local Government Bankruptcy  
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  8. Support of S. 781 (Feinstein) Ethanol Subsidy and Tariff Repeal Act  
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  9. Adoption of Ordinance Providing for the Revision of the City of Hayward Municipal Code Chapter 2, Article 3: Board and Commissions and Article 4: Employees to Align the Code with the City Charter and to Reflect Changes to Federal and State Anti-Discrimination Laws  
[Staff Report](#)  
[Attachment I](#)
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*The following order of business applies to items considered as part of Public Hearings and Legislative Business:*

- *Disclosures*
  - *Staff Presentation*
  - *City Council Questions*
  - *Public Input*
  - *Council Discussion and Action*
- 

## **PUBLIC HEARING**

10. City Councilmember Call-Up of Planning Director's Approval of Administrative Use Permit PL-2011-0024 for an Exempt Transfer Facility at 30989 San Clemente Street in the Industrial Zoning District for Hazardous and Non-Hazardous Materials – David Buckner of Heritage Environmental (Applicant) / Robert Coussan (Owner)  
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MAY 31, 2011



- [Attachment IV - Findings for Approval \(revised\)](#)
- [Attachment V - Conditions of Approval](#)
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- [Attachment XI - Heritage Environmental Project Narrative](#)

11. Increase to Per Mile and Flag Drop Rates for Hayward Taxi Cabs  
[Staff Report](#)  
[Attachment I: Resolution](#)  
[Attachment II: Letter from Attorney](#)

**LEGISLATIVE BUSINESS**

12. Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS)  
[Staff Report](#)  
[Attachment I: Resolution of Intent](#)  
[Attachment II: Exhibit Amendment to the Contract](#)
13. Reaffirmation of Fiscal Emergency Facing the City of Hayward  
[Staff Report](#)  
[Attachment I: Resolution](#)

**COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS**

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

**ADJOURNMENT**

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*PUBLIC COMMENT RULES: The Mayor 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 or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker’s Card must be completed by each speaker and is available from the City Clerk at the meeting.*

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

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

**NEXT REGULAR MEETING – 7:00 PM, TUESDAY, JUNE 7, 2011**

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





**DATE:** May 31, 2011

**TO:** Mayor and City Council  
Redevelopment Agency Board of Directors  
Housing Authority Board of Directors

**FROM:** Interim Finance Director

**SUBJECT:** City of Hayward, Hayward Redevelopment Agency, and Hayward Housing Authority Operating Budget for Fiscal Year 2012

**RECOMMENDATION**

That Council and the Agency and Authority Boards of Directors review and comment on the Recommended Operating Budget for Fiscal Year 2012.

**BACKGROUND**

This is the second in a two-year General Fund and Redevelopment Agency budget process. The original was presented to Council in May of 2010, and adopted by Council and the Agency Board no later than June 28, 2011. May 31, 2011 is the start of the FY2012 budget adoption process.

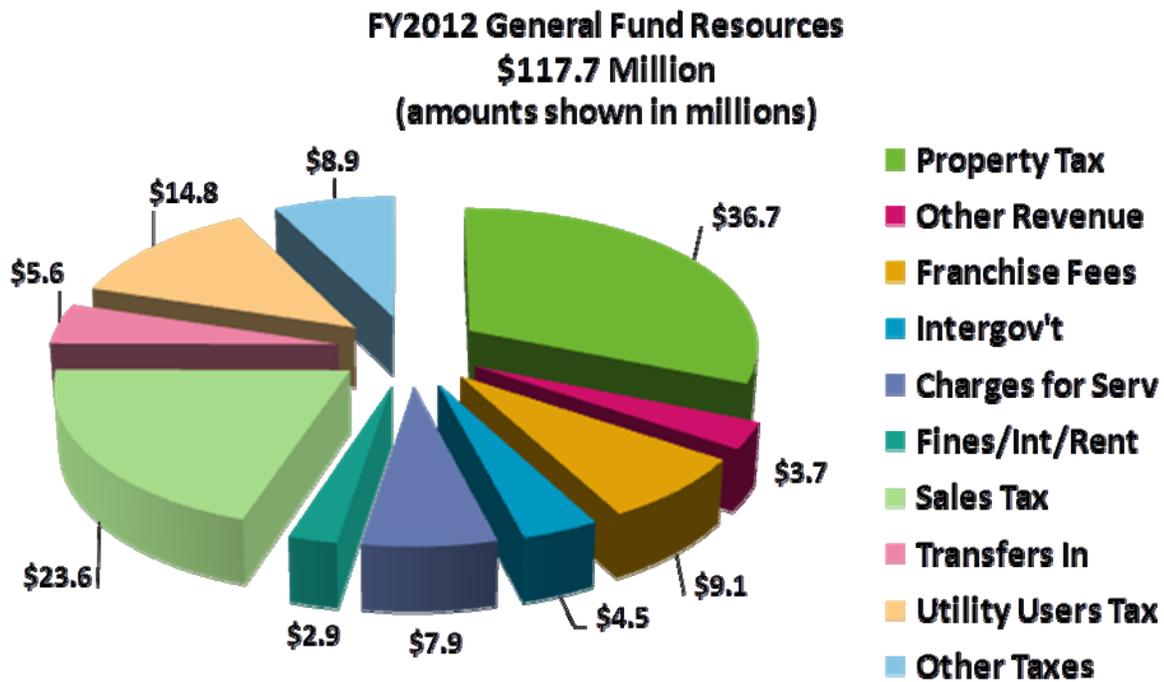
Many things have changed in the City’s financial picture since June 2010. As such, there is more detail presented in the FY2012 Recommended Budget that warrants Council’s attention than would ordinarily be seen in the second year of a two-year budget. In addition, because of the threats to Redevelopment, many changes have occurred within the operations and finances of the Redevelopment Agency and the Housing Authority. This will be the first time in several years that a proposed budget has been presented to the Housing Authority Board for discussion and adoption.

Readers are also referred to the City Manager’s Transmittal memorandum, included with the FY2012 Recommended Budget, for a more in-depth discussion of factors affecting the City’s financial health in FY2012 and beyond. That document is intended to “partner” with this report and may be found on the City’s web site at

<http://www.hayward-ca.gov/departments/finance/sfinanceFY2012ROB.shtm>.

**DISCUSSION**

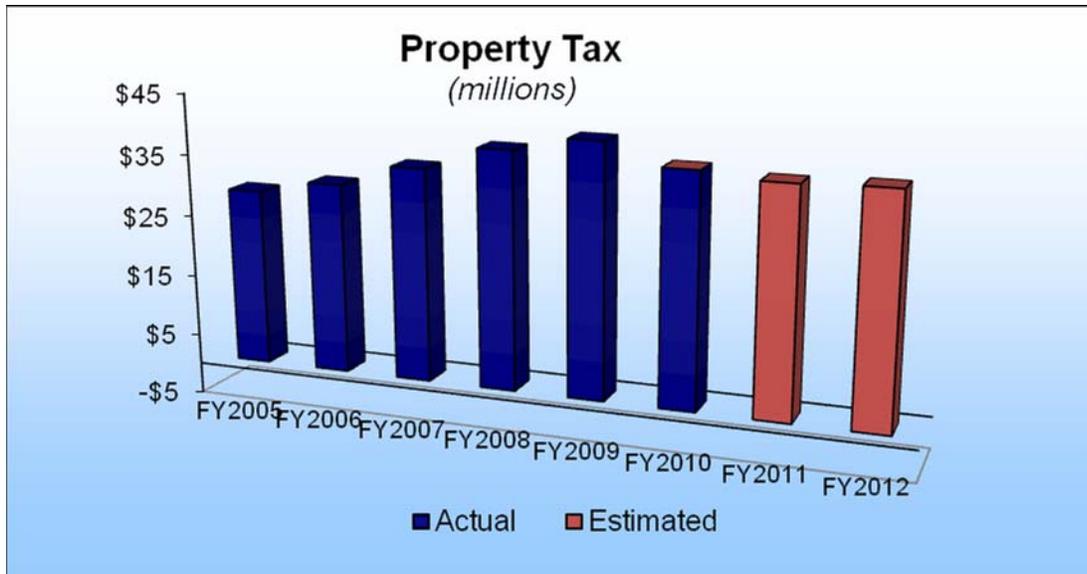
**General Fund - Resources** – The following chart summarizes the major revenue categories and their projected levels for FY2012. Following the chart is a brief discussion of each major revenue showing comparison to previous years and the amount projected for FY2012 around which the Recommended Budget was constructed. The FY2012 General Fund resource budget anticipates only minor increases in most areas, with decreases related to some one time resources, grant expirations, and an estimated reduction to sales tax receipts in anticipation of reduced consumer spending on taxable items.



Property Tax:

FY2009 Actual:	\$40.7 million
FY2010 Actual:	\$37.3 million
FY2011 Estimated:	\$36.3 million
FY2012 Recommended Budget:	\$36.6 million

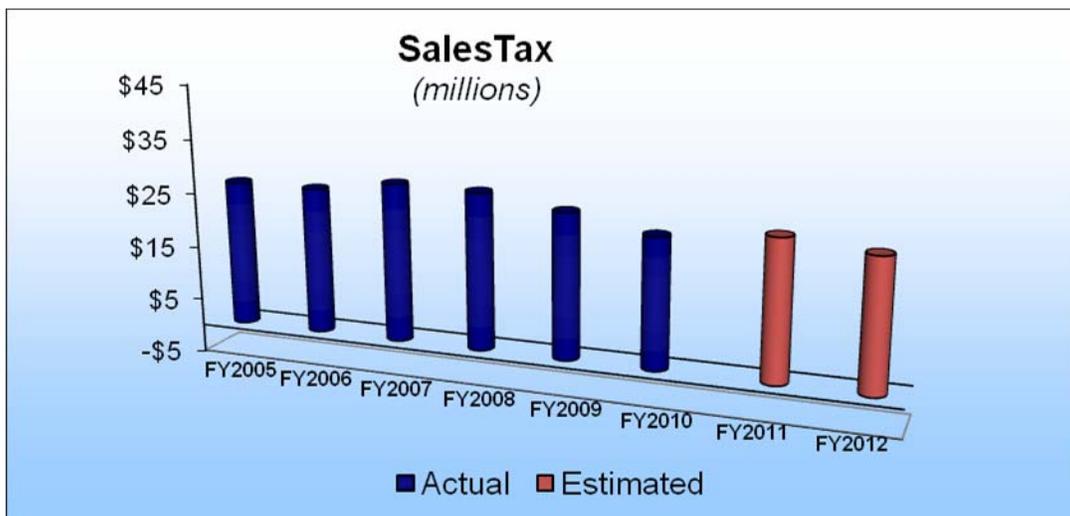
Property taxes remain the City’s single largest revenue source at slightly over 30% of total General Fund revenues. While FY2010 realized an 8% decline in this resource, the City is seeing a slowdown in the decline with a lesser (3%) decline estimated for FY2011. Staff is recommending a 1% increase for FY2012.



Economists project property values increasing slightly nationwide. These indicators show a slow recovery of property values throughout FY2012. It is believed that this occurs as a result of the uptick in private sector jobs, which is anticipated to result in an increase of jobs overall in spite of the downturn in public sector jobs. This overall increase in jobs is believed to provide the stimulus consumers may need to begin purchasing homes again.

Sales Tax:

FY2009 Actual:	\$26.3 million
FY2010 Actual:	\$23.5 million
FY2011 Estimated:	\$25.2 million
FY2012 Recommended Budget:	\$23.6 million



Sales tax receipts remain the second largest revenue source at approximately 21% of total General Fund revenues. However, difficult economic times during recent years have seen a considerable drop in this revenue stream from a high of \$28.8 million in FY2008 to the current estimate of \$23.6 million for FY2012. The addition of Costco in November 2009 slowed some of the annual decline and some one time promotions and offers on new car sales in FY2011 helped momentarily pick up this revenue in the current fiscal year. Unfortunately, recent reports also show a considerable drop (18%) in the business-to-business sales category as well as 11% and 13% declines in taxable food products and retail building materials. Therefore, at this time staff is projecting a 6% overall decline in this revenue.

Utility Users Tax:

FY2009 Actual:	\$ 0.0
FY2010 Actual:	\$10.9 million
FY2011 Estimated:	\$14.5 million
FY2012 Recommended Budget:	\$14.8 million

Implemented in October 2009, the Utility Users' Tax is estimated to produce approximately 13% of total General Fund revenues in FY2012 (\$14.8 million). The City received the first full year of income from this revenue source in FY2011 and is anticipating only a slight increase for FY2012, primarily based on some anticipated utility company rate increases.

"Franchise Fees":

FY2009 Actual:	\$8.8 million
FY2010 Actual:	\$8.6 million
FY2011 Estimated:	\$8.8 million
FY2012 Recommended Budget:	\$9.1 million

In the budget "all operating funds" summary schedules, there is a line titled "Franchise Fees" that totals \$9.1 million in FY2012. This line item includes franchise fees collected from the utility and cable television businesses in Hayward. Franchise fees remain somewhat steady at approximately 8% of total General Fund revenues. However, this area has seen some fluctuations as businesses' gross receipts are generally the basis for calculating the fee. FY2012 budgeted revenues reflect a four percent increase over FY2011 primarily due to some anticipated utility rate increases.

"Other Taxes":

In the budget "all operating funds" summary schedules, there is a line titled "Other Taxes" that totals \$8.9 million in FY2012. Included in this line item are Real Property Transfer Tax (\$3.5million), Business License Tax (\$2.4 million), Emergency Facilities Tax (\$1.7 million), and Transient Occupancy Tax (\$1.2 million). This category is projected to see only a very minor increase of under \$100,000 in the Real Property Transfer Tax area. As a result of the downturn in the real estate markets, Real Property Transfer Tax revenues have seen a marked decline from a high of over \$10 million in FY2006 to the recommended budget level of \$3.5 million for FY2012. Real property transfer taxes are anticipated to see a very slight uptick during FY2012 as the

real estate market realizes minor increases in market value and sales activity. This revenue cannot be well projected and is consistently volatile in direct correlation to property sales volume and pricing. Staff is recommending a very conservative budget increase for FY2012 with respect to this revenue.

“Charges for Service”

In the budget “all operating funds” summary schedules, there is a line titled “Charges for Service” that totals \$7.9 million in FY2012. Included in this line item are the following categories: Construction Related revenues; Fees & Charges for Service; and Licenses & Permits.

The following presentation details the activities in the three categories referenced above.

	FY2009 <u>Actual</u>	FY2010 <u>Actual</u>	FY2011 <u>Estimate</u>	FY2012 <u>Budget</u>
	<i>(amounts stated in millions)</i>			
Construction Related Revenues	\$ 3.4	\$ 3.8	\$ 3.3	\$ 3.4
Fees & Charges for Service	2.7	2.8	2.6	2.7
License & Permits	<u>1.5</u>	<u>1.8</u>	<u>1.7</u>	<u>1.8</u>
	\$ 7.6	\$ 8.4	\$ 7.6	\$ 7.9

Due to both a minor increase in recent construction and development activity and the City’s continued cost recovery policy that resulted in some fees being increased, revenue projections for the above activities reflect a relatively small increase (approximately \$270,000) in potential revenues for FY2012.

“Other Revenue”; “Intergovernmental”; and “All Other Sources”:

The remaining revenue line items in the “all operating funds” summary schedules include the following activities:

“Other Revenue” for FY2012 = \$3.7 million – This line item includes: approximately \$2.4 million of reimbursement funds from the Fairview Fire Protection District contract; \$1.2 million in salary reimbursement funds related to Workers Compensation cases<sup>1</sup>; and approximately \$43,000 in various miscellaneous revenues.

“Intergovernmental” for FY2012 = \$4.5 million – This line item reflects funds related to grants and reimbursements from other public agencies including Police and Library grants and reimbursements for Fire Mutual Aid and Emergency Medical Services (EMS).

“All Other Sources” for FY2012 = \$2.9 million – The major source of revenue in this line item is derived from Fines & Forfeitures totaling approximately \$2.4 million in FY2012. While there are some small increases and decreases in this category, the primary change for FY2012 is an

<sup>1</sup> Operating salaries are reimbursed to departments from the Workers Compensation fund when employees are on Workers Compensation leave.

estimated increase of \$113,000 in fines resulting from the Police Photo Red Light program. The remaining revenue of \$0.5 million is primarily the second year of a two-year Laydown Area Lease with Russell City Energy Center during construction. This revenue totals \$350,000 in each of the two years (FY2011 and FY2012).

Transfers In or “Transfers From Other Funds”:

Transfers In will see a continued decline in FY2012. There are two driving forces to the FY2012 decline. First, many onetime funding sources were exhausted in prior years. Funding previously available in FY2011 and no longer in FY2012 include onetime bond cost reimbursement from the Redevelopment Agency (\$1.0 million) and the expiration of several grants and onetime transfers (\$0.7 million).

Secondly and specifically related to FY2012 is the reduction of Transfers In related to Gas Tax funds. In FY2012, the transfers in from Capital Improvement Program (CIP) Gas Tax funds have been reduced by approximately \$0.5 million. While this is necessarily reflected as a reduction to General Fund resources, it is more than offset in the Outlay/Expenditure section of the FY2012 budget as additional eligible General Fund expenses are now being charged to the CIP Gas Tax fund. Gas Tax related expenditures totaling \$1.2 million were reduced in the General Fund (under Maintenance & Utilities expenditures) and added to the CIP Gas Tax fund. The result is a net savings to the General Fund of approximately \$0.7 million.

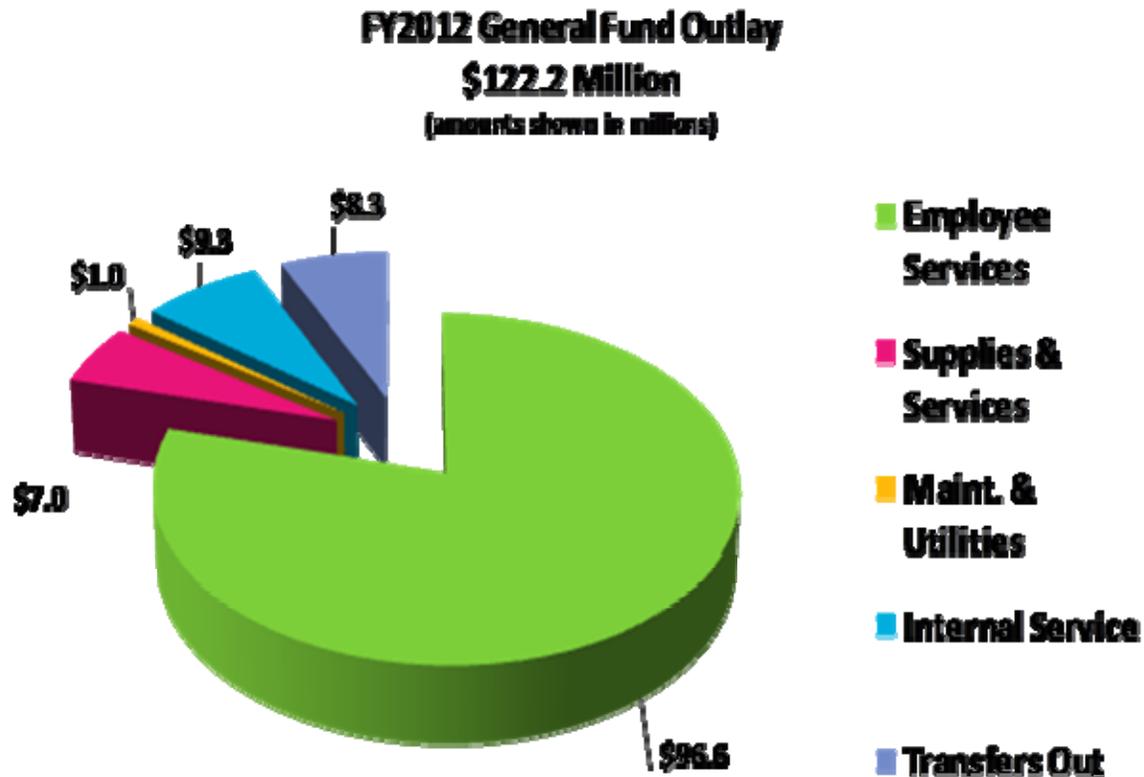
Reduction to Transfers into General Fund	\$ (0.5) million
Reduction of Expenditures in General Fund	<u>1.2</u> million
Net Result is a Savings to General Fund	<u>\$ 0.7</u> million

TOTAL General Fund Resources:

	<u>Revenues</u>	<u>Transfers In</u>	<u>Total Resources</u>
	<i>(amounts stated in millions)</i>		
FY2009 Actual	\$ 105.7	\$ 14.3	\$ 120.0
FY2010 Actual	\$ 109.3	\$ 12.4	\$ 121.7
FY2011 Estimated	\$ 112.2	\$ 7.7	\$ 119.9
FY2012 Recommended Budget	\$ 112.1	\$ 5.6	\$ 117.7

Of significant note here is the shrinking of total resources from FY2010 to FY2012. As noted above, Transfers In are necessarily dwindling from lack of further one time sources, grant funding, and a change in Gas Tax transfers.

## General Fund - Outlays



The challenge of funding City services continues. As with all service organizations, employee services costs are the largest expenditure of the General Fund. In recent years, the cost of employee services has gone from approximately \$94 million in FY2009 to an estimated cost of \$108 million in FY2010 (exclusive of credits). When cost estimates for FY2012 were hit with single year PERS increases ranging from 18% to 50% and promises of more to come, overall employee service costs began rising at an alarming rate. Not to be left out, healthcare costs continue to rise at nearly double digit rates almost every year.

In recent years, the employee groups have assisted in closing the budget gap by agreeing to furloughs and other concessions while departments reorganized, improved efficiencies, and where possible, downsized. It became clear a great deal more would be needed both for FY2012 and on out in the future. For FY2012, instead of 5% employee participation as originally presented in the two-year budget, the City Manager asked employees for 13% concessions, with as much structural change as possible. All bargaining groups met or exceeded the requested 13%, including the structural change, except SEIU, HAME, Local 21, and HPOA. The first three have thus far remained firm with their original 5% commitment, which includes the continuation of furlough programs; HPOA continues to work with staff to identify their full participation. Local 1909 and the

Fire Chiefs and Fire Officers exceeded the 13% and offered their concessions for both FY2012 and FY2013. The total amount of savings achieved through informal employee concessions thus far is approximately \$7.9 million.

To further address the deficit in FY2012, the following steps have been taken and/or impacts identified:

- Other employee services cost reductions will be seen through additional vacancy savings of approximately \$1.0 million in FY2012. This will be achieved through stringent management of vacant positions and careful consideration regarding whether or not to refill a vacancy on a case by case basis.
- Operating expenditures for FY2012, when compared to FY2011, are estimated to decline by approximately \$2.1 million. The largest part of this reduction comes about as a result of moving Gas Tax related expenditures (\$1.2 million) out of the General Fund and into the Capital Improvement Program Gas Tax budget. This is the expenditure part of the discussion presented earlier in this report under “Transfers In”. Other changes to operating expenses include a decline in Supplies and Services including estimated election costs (\$120,000) and various budgeted reductions citywide (\$200,000). With cost cutting across all departments and reductions in positions, the Internal Service Fees expense line has also been reduced from the prior year by approximately \$440,000.
- The final step to balance the FY2012 General Fund operating budget is the recommended use of approximately \$4.4 million from General Fund Reserves & Designations (specifically from the designation for Economic Uncertainty).

#### Transfers Out:

Transfers Out of the General Fund for FY2012 total \$8.3 million and are made up of the following actions:

#### FY2012 Transfers Out:

- \$2.8 million to be transferred out to fund debt service payments.
- \$2.7 million to be transferred out to Capital Improvement Programs for Police, Fire, Maintenance Services, and Technology projects.
- \$2.5 million to be transferred out to meet liability insurance premium requirements.
- \$310,000 to be transferred out to fund Workers Compensation.

### GENERAL FUND - SUMMARY OF RESERVED & DESIGNATED FUND BALANCES

Reserves represent a financial requirement ensuing from a legal obligation possibly resulting from a contract, purchase order, or even a loan. Designations reflect a commitment or obligation ensuing from a Council policy or management decision including such items as a “reserve policy” wherein guidelines are established setting financial goals to reserve monies against future possibilities. The

following schedule is provided to demonstrate the change in General Fund reserves and designations from year to year. The Council's policies related to these funds are contained in the Supplemental Information section of the budget document.

<b>General Fund - Reserve Summary</b>							
<i>Reserved and Designated Fund Balance (FY 2009 - 2012)</i>							
<i>\$'s in 1000's</i>							
	June 30, 2009 Actual	Amount Of Change	June 30, 2010 Actual	Amount Of Change	June 30, 2011 Estimated	Amount Of Change	June 30, 2012 Recommended
<b>Reserved for:</b>							
Encumbrances	974	(718)	256	0	256	4	260
Advances to Redevelopment Agency	9,841	(696)	9,145	(1,420)	7,725	(800)	6,925
Inventory	12	7	19	0	19	1	20
Prepaid expenses	1	14	15	0	15	0	15
<i>Total Reserved Fund Balance</i>	<b>\$10,828</b>	<b>(1,393)</b>	<b>\$9,435</b>	<b>(1,420)</b>	<b>8,015</b>	<b>(795)</b>	<b>\$7,220</b>
<b>Designated for:</b>							
Economic Uncertainty	7,000	2,350	9,350	2,148	11,498	(4,685)	6,813
Liquidity	3,500	1,175	4,675	1,074	5,749	61	5,810
Emergencies	-	-	-	3,000	3,000	1,000	4,000
Hotel Conference Center	1,000	-	1,000	(810)	190	0	190
Retirement Reserve	522	-	522	(522)	0	0	-
Police Staffing	1,000	-	1,000	0	1,000	0	1,000
Contingencies	8,737	2,083	10,820	(5,248)	5,572	0	\$5,572
<i>Total Designated Fund Balance</i>	<b>\$21,759</b>	<b>5,608</b>	<b>\$27,367</b>	<b>-\$358</b>	<b>\$27,009</b>	<b>-\$3,624</b>	<b>\$23,385</b>
<b>Total Reserved and Designated</b>	<b>\$32,587</b>	<b>4,215</b>	<b>\$36,802</b>	<b>-\$1,778</b>	<b>\$35,024</b>	<b>-\$4,419</b>	<b>\$30,605</b>

It should be noted that the above June 30, 2012 estimated balance for Economic Uncertainty will meet 60% of Council policy for that point in time. Council policy for Economic Uncertainty is to set aside an amount equal to 10% of that fiscal year's operating budget, which would be \$11.3 million in FY2012. All other designations are estimated to meet their appropriate levels for June 30, 2012. The recommended budget for FY 2012 contains a recommendation to use \$4.4M to help bridge the budget gap. It is also highly likely that a similar amount or more may be needed in FY2013.

### INTERNAL SERVICE FUNDS - RESOURCE & OUTLAY

Internal Service Funds obtain their resources from charges for service distributed throughout City departments and enterprise activities. The goal is to provide services that are common and best

served from a centralized organization, or to provide a mechanism for common City costs to be appropriately allocated. The best models provide enhanced services at a reduced cost by offering economies of scale for a large organization such as the City of Hayward.

Below are four major Internal Service funds along with key financial information.

Technology Services:

	<u>Resource</u>	<u>Outlay</u>
FY2009 Actual:	\$3.8 million	\$3.8 million
FY2010 Actual:	\$4.5 million	\$6.4 million
FY2011 Estimated:	\$4.8 million	\$4.8 million
FY2012 Recommended Budget:	\$4.2 million	\$4.3 million

Technology Services became an Internal Service Fund in 2009. Their primary purpose is to provide technology support and solutions throughout the City and its organizations. Most of the cost is employee service expense, but there are expenses for server and Voice-Over IP (VOIP) projects. The spike in Outlays for FY2010 reflects a \$2.2 million transfer out to the Capital Improvement Program Budget for the purchase of Computer Aided Dispatch Records Management System (CAD/RMS).

Maintenance Services:

	<u>Resources</u>	<u>Outlay</u>
FY2009 Actual:	\$ 7.5 million	\$ 7.4 million
FY2010 Actual:	\$ 8.9 million	\$ 8.2 million
FY2011 Estimated:	\$11.1 million	\$10.6 million
FY2012 Recommended Budget:	\$ 8.5 million	\$ 8.2 million

The Internal Service Maintenance Budget consists of both the Facilities Management Fund and the Fleet Management Fund. This fund had increased activity during FY2011 due to the receipt of loan proceeds used for the lease / purchase of various trucks and public safety vehicles. These internal service funds are responsible for building maintenance for the various City of Hayward property and all City vehicles. The Maintenance Department has made several reductions during the economic slowdown to help control City-wide costs. These include reducing non-essential services to facilities, deferral of any non-safety related replacements/repairs at City facilities, and continued deferred purchasing of City vehicles until revenues recover.

Employee Benefits & Workers Compensation Funds:

	<u>Resources</u>	<u>Outlay</u>
FY2009 Actual:	\$6.8 million	\$7.5 million
FY2010 Actual:	\$7.7 million	\$7.7 million
FY2011 Estimated:	\$8.6 million	\$8.5 million
FY2012 Recommended Budget:	\$9.4 million	\$8.5 million

Effective FY2011, retiree medical activity was moved to this internal service activity whereby annual estimated costs will be allocated to the departments and transferred to this internal service fund for disbursement.

Costs associated with the City's self-funded program are budgeted in the Workers' Compensation Internal Service Fund, which is adopted annually and included as part of the General Fund Budget. Each fiscal year, departments are charged an internal service fee, which is a percentage of total program costs by job type and calculated based on a prior three year utilization average. The fees collected are used for costs associated with in-house staff who oversees the program management, Third Party Administrator services, medical expense, legal services, salary continuation, claims expense, staff and organizational training related to the program and ergonomic equipment. The expected increases to the program are primarily due to the rising costs of healthcare and the medical expenses associated with work injuries.

Both of the above activities are administered by the City's Human Resources Department.

Risk Management:

	<u>Resources</u>	<u>Outlay</u>
FY2009 Actual:	\$2.6 million	\$4.4 million
FY2010 Actual:	\$5.2 million	\$3.5 million
FY2011 Estimated:	\$3.3 million	\$2.9 million
FY2012 Recommended Budget:	\$3.5 million	\$2.6 million

This activity is administered by the City Attorney's Office. In late FY09 and early FY10, the City settled and/or paid two substantial lawsuit settlements and paid a judgment in a third case -- a perfect storm, so to speak, because these three cases were either uninsured employment practices matters or eroded the City's self-insured retention. The cumulative impact of these payments exceeded the amounts budgeted in the Risk Fund and the Risk reserve account, necessitating the one-time transfer out of the General Fund in the amount of \$1 million. The City Attorney's Office has since taken steps to better manage claims and litigation, and the City Attorney's Office in conjunction with the Finance Department have initiated steps to re-fund the Risk reserve fund.

ENTERPRISE FUNDS - RESOURCE & OUTLAY

Water:

	<u>Resource</u>	<u>Outlay</u>
FY2010 Actual:	\$27.3 million	\$28.9 million
FY2011 Estimated:	\$29.2 million	\$32.5 million
FY2012 Recommended Budget:	\$33.8 million	\$39.3 million

The Water Fund is impacted by several factors requiring the use of the fund balance to cover expenditures. Most significantly, the San Francisco Public Utilities Commission (SFPUC), the City's sole water supplier, has approved a 38.4% increase in the wholesale water rate, effective July 1, 2011, with the potential for a further 3.4% increase on January 1, 2012 if water purchases are below a certain threshold. The SFPUC wholesale rate adjustments are part of a multi-year rate strategy to implement the regional water system improvements. The wholesale cost of purchasing water represents nearly 60% of the entire Water Fund budget.

The Water Fund is also affected by customer consumption, which has decreased in recent years. While the reasons for this decline in water use are not fully understood, contributing factors may include multiple years of drought conditions and consumer conservation, followed by significant precipitation in the last two years, and reduced business activity, as well as the higher cost of water. The water use reduction has resulted in lower water sales. In response, staff has implemented cost efficiency measures, which enables the City to reduce staffing levels by three positions, all of which are currently vacant. Full funding of the Landscape Architect position, will be eliminated from the Water Fund, but the position will be retained by the City, with only a portion of the cost being paid by the Water Fund.

The City Council will be considering water rate adjustments on July 12, 2011. In order to mitigate the impacts of the wholesale rate increase and reduced consumption, staff has proposed rates that would result in approximately 20% increases in FY2012 and FY2013.

Wastewater:

	<u>Resource</u>	<u>Outlay</u>
FY2010 Actual:	\$22.2 million	\$22.6 million
FY2011 Estimated:	\$21.2 million	\$21.7 million
FY2012 Recommended Budget:	\$21.7 million	\$23.1 million

The Wastewater Fund is likewise affected by changes in business activity and decreased water consumption, and will also require use of the fund balance to cover the cost of providing service. The volume of wastewater discharge, on which non-residential billings are based, has decreased with at least one major customer ceasing operations since sewer service rates were last adjusted. In order to lessen the impact, staff has proposed that four positions, all presently vacant, be eliminated from the budget.

On July 12, the City Council will be considering proposed sewer rate adjustments of 3% each year in FY2012 and FY2013.

Stormwater:

	<u>Resource</u>	<u>Outlay</u>
FY2010 Actual:	\$2.7 million	\$2.3 million
FY2011 Estimated:	\$2.6 million	\$2.6 million
FY2012 Recommended Budget:	\$2.5 million	\$2.5 million

One position, currently vacant, is proposed to be eliminated in order to stabilize the Stormwater Fund. Funding is maintained for future added costs as a result of new Regional Water Quality Control Board Stormwater Permit requirements.

Airport Operations:

	<u>Resource</u>	<u>Outlay</u>
FY2010 Actual:	\$2.9 million	\$2.6 million
FY2011 Estimated:	\$3.1 million	\$3.2 million
FY2012 Recommended Budget	\$3.1 million	\$3.8 million

The airport has continued to see increased corporate jet operations and activity with a corresponding increase in jets being based at the Hayward Airport. As a result, revenue to both the Airport Fund and the General Fund (from Aircraft Personal Property taxes) has been increasing. Several new developments have also been approved on the airport including plans to redevelop the Air National Guard site. The recent update of the Airport Layout Plan includes significant capital projects needed to accommodate safety requirements associated with the larger and faster aircraft, much of which will require FAA Funds.

Context for FY2012 Redevelopment Agency and Housing Authority Budget Preparation

At the end of December 2010, the Redevelopment Agency Director retired after a long tenure with the City. Currently, the Assistant City Manager serves in the Interim Director role. In January 2011, the newly elected Governor proposed the elimination of redevelopment agencies throughout the State as part of his budget plan. In simplistic terms, this plan proposed to eliminate redevelopment agencies, create successor entities that would distribute property tax dollars to pay off existing agency debt obligations, and then reallocate the remaining tax increment dollars based on the existing State formula for distribution of property tax. In FY2012, the State estimated that this would add \$1.7 billion to State tax coffers and would provide much needed additional property tax funding for schools in the succeeding years of the proposal. The State legislature failed to adopt the Governor’s proposal by one vote in April and there are now several alternative proposals and reforms proposed for redevelopment agencies in the State.

For much of the second half of FY2011, Agency staff was focused on understanding the implications of the Governor’s plan and developing strategies for protecting the Agency’s assets and meeting existing obligations. One of the strategies the Council authorized during FY2011 in response to the Governor’s proposal was to reactivate the City’s Housing Authority and to transfer Low-Moderate Income Housing funds stemming from property tax increment revenues to the Housing Authority. Although the Authority is a separate legal entity, staff has presented the FY2012 Housing Authority budget as part of the City Manager’s Office budget to accurately reflect organizational reporting structures. In a structure similar to the Redevelopment Agency, the City Manager serves as the Executive Director of the Housing Authority and the Authority remains closely tied to the Redevelopment Agency for organizational reporting purposes.

One of the other strategies authorized by Council was the repayment of Agency loans from various other City funds. The Agency paid off loans from the Sewer and Water Enterprise Funds in FY2011 totaling approximately \$1.9 million. The Agency also paid the annual installment on its loan from the General Fund of \$800,000 and partially repaid an unpaid previous payment of \$620,000, resulting in total payments from the Agency to the General Fund of \$1.42 million in FY2011. These payments were made from fund balance in the Redevelopment Agency during FY2011. The Agency had been budgeting annual repayment amounts in its operating budget for these loans. With the repayment of the sewer and water loans, the FY2012 Agency budget no longer reflects the approximate \$1 million annual payment to these two funds. The FY2012 Agency budget does still reflect the \$800,000 payment being made to the General Fund and this payment continues through the ten-year financial forecast for the Agency.

As of the printing of the draft budget document, there has been no resolution to the redevelopment agency question. As such, staff has proposed Agency and Housing Authority budgets for FY2012 that assume continued receipt of property tax increment revenues and expenses consistent with those funded in FY2011 for redevelopment and housing activities. The budgets will only fund staffing, ongoing obligations and contracts, required debt service, and pass through payments with no new projects proposed. If the State takes further actions to eliminate or modify redevelopment agencies, staff will return to Council separately to present a plan for addressing the budgets of the Agency and the Housing Authority at that time.

### REDEVELOPMENT AGENCY (RDA)

#### Agency Resources

During FY2011, the total annual property tax increment revenue remained at significantly lower levels. The Agency saw a 19% reduction in revenue (a \$2.7 million decline) between FY2009 and FY2010. The dramatic drop off of revenues has stopped but the Agency is still estimated to receive approximately \$100,000 less in revenues for FY2011 versus FY2010. The reduction is attributed to the continued effects of the economic recession.

The Alameda County Assessor's office has estimated that assessed values will grow by approximately 0.753% for the next year, resulting in total estimated property tax increment of approximately \$11.1 million. Of that amount, 20%, or approximately \$2.1 million is set aside for the Low/Moderate Income Housing fund in the Housing Authority. Staff is projecting that tax increment will remain at current levels with limited to no growth over the next two years followed by moderate growth (around 3.5%) beginning in FY2014.

In addition, the Agency made the final payment in FY2011 to the State as required by Assembly Bill 26, which authorized extraction of Supplemental Educational Revenue Augmentation Fund (SERAF) payments from redevelopment agencies statewide in the total amount of \$2.05 billion over both FY2010 and FY2011. The Hayward RDA paid \$4.4 million in FY2010 and \$910,000 for FY2011. While the California Redevelopment Association has legally challenged this State action, no verdict had been rendered by May 10 of this year, when the second payment for FY2011 was due.

Other significant Agency revenues include a projected “withhold” of \$146,700 from the Hayward Unified School District tax increment pass through payment under the Burbank School/Cannery Park Public Facilities Development Agreement. The Agency will also see an uptick in reimbursements from school and park impact fees, estimated at \$591,000, as a result of renewed development activity in the Burbank area. This is up from \$410,000 in FY2010. The Agency receives these revenues also as part of the Burbank School/Cannery Park Public Facilities Development Agreement. The following section provides a summary of significant expenditure categories identified in the proposed FY2012 budget for the Agency. Even though staff is proposing a “status quo” budget (pending further State action), the elimination of a vacant Redevelopment Project Manager position is proposed in order to present a balanced Redevelopment Agency budget in Fund 451 for FY2012. The Agency’s FY2012 year-end balance in Fund 451 is currently projected to be approximately \$1.1 million.

Agency Outlays

*Recommended RDA Operating Expenditures – Fund 451*

- Agency Bond Debt Service - \$4.02 million
- Pass-Through Payments to Taxing Entities - \$1.44 million
- Agency Administration, and Indirect Cost Allocation - \$1.22 million
- Loan Repayment to General Fund - \$800,000
- Predevelopment Activities - \$103,000
- Public Art, Community Promotions, Downtown BIA - \$220,000
- Property Maintenance - \$169,000

*Recommended RDA Project Activities:*

- Downtown Retail Attraction Program/Foothill Boulevard - \$294,000

Total Agency Resources and Outlays (Not including housing funds):

	<u>Resources</u>	<u>Outlays</u>
FY2009 Actual:	\$14.3 million	\$14.9 million
FY2010 Actual:	\$12.4 million	\$15.0 million
FY2011 Estimated*:	\$9.9 million	\$14.2 million
FY2012 Recommended Budget:	\$9.0 million	\$8.3 million

\* As mentioned above, the Agency incurred significantly higher outlays in FY2011 in order to repay loans from the Sewer and Water Enterprise Funds and the General Fund.

**HAYWARD HOUSING AUTHORITY**

As was mentioned above in the discussion about the Redevelopment Agency, one of the strategies the Council authorized during FY2011 in response to the Governor’s proposal to eliminate redevelopment agencies was to reactivate the City’s Housing Authority and to transfer Low-Moderate Income Housing funds stemming from property tax increment revenues to the Housing Authority.

Given this new structure, future 20% set-aside funds from property tax increment revenues will flow into the Housing Authority. This amount will total approximately \$2.1 million for FY2012 in the Low/Moderate Income Housing fund of the Housing Authority. Staff is projecting that tax increment will remain at current levels with limited to no growth over the next two years followed by moderate growth (around 3.5%) beginning in FY2014.

Housing Authority staffing levels will remain constant and no major projects are proposed for FY2012. The FY2012 budget does reflect a transfer to the Capital Improvement Program for the affordable housing component of the South Hayward BART mixed use development. Given the uncertainty surrounding State budget actions, the developers have adjusted the affordable housing component of the project budget to assume that they will receive no additional funding from the Housing Authority. However, the FY2012 Housing Authority budget still reflects additional funds being appropriated to the South Hayward CIP, which will be reallocated as the project costs for the project are finalized.

The following section provides a summary of significant expenditure categories identified in the proposed FY2012 budget for the Housing Authority.

#### Authority Outlays

##### *Recommended Housing Authority Low/Moderate Housing Operating Expenditures – Funds 241 & 247*

- Administration and Indirect Cost Allocation - \$404,000

##### *Recommended Low/Moderate Housing Activities:*

- First Time Homebuyer Loans City-wide - \$600,000
- Minor Home Repair Program - \$250,000
- South Hayward BART TOD Affordable Housing - \$1.1 million (transfer to CIP)

It should also be noted that in FY2011, the Housing Authority loaned \$1.48 million to the General Fund for administrative expenses related to the Route 238 settlement agreement. This loan will be repaid from proceeds of the sale of properties within the 238 corridor and repayment is reflected in FY2013 and FY2014 of the Authority's ten-year financial forecast.

## **PUBLIC CONTACT AND SCHEDULE**

The FY2012 Recommended Operating Budget is currently available for public review in the City clerk's Office at City Hall, at the Main Library and the Weekes Branch, and on the City's website at: <http://www.hayward-ca.gov/departments/finance/sfinanceFY2012ROB.shtm>.

A schedule of the FY2012 Recommended Operating Budget work sessions, including a tentative schedule of departments to be discussed at each session, is available for public information on the City's website at:

<http://www.hayward-ca.gov/departments/finance/sfinanceFY2012ROB.shtm>

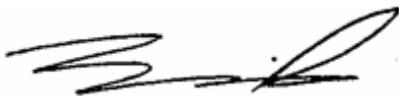
A formal public hearing is scheduled for the June 14, 2011 City Council meeting. At that meeting, time will be specifically set aside to receive public input regarding the operating budgets for the General Fund, Redevelopment Agency and the Housing Authority. The meetings of June 21 and 28 are available to Council and Agency and Authority Boards to continue the discussion. The budget must be approved and adopted no later than June 28, 2011.

*Prepared by:*

Susan M. Stark, Interim Director of Finance  
Kelly McAdoo Morariu, Assistant City Manager  
Robert Bauman, Public Works Director

*Recommended by:* Susan M. Stark, Interim Director of Finance

Approved by:



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Fran David, City Manager, Agency, and Authority Director

ATTACHMENT: There are no attachments to this report, but readers are referred to the companion document, "The FY2012 Recommended Budget"

**DATE:** May 31, 2011  
**TO:** Mayor and City Council  
**FROM:** Development Services Director  
**SUBJECT:** Update on Efforts to Develop a Residential Energy Conservation Ordinance (RECO) for Single-Family Homes

### **RECOMMENDATION**

That Council reads and comments on this report, and provides direction to staff to not prepare a RECO for adoption at this time.

### **SUMMARY**

Staff has been working with the City Council Sustainability Committee (Sustainability Committee) to develop the major components of a draft Residential Energy Conservation Ordinance (RECO) since February 2010. At its meeting on March 2, 2011, the Sustainability Committee recommended and staff recommends that the Council not move forward with adoption of an ordinance, but direct staff to focus on voluntary energy efficiency efforts and incentives and participate in the development of a countywide model ordinance. Minutes from the March 2 meeting are included as Attachment I. Staff is presenting this report to the Council to provide an update on the topic and to give the Council the opportunity to confirm or modify the direction provided by the Sustainability Committee, with which staff concurs.

A RECO, if it were to be adopted by Council would require energy efficiency improvements in some existing single-family and duplex homes, and would provide for a variety of options for homeowners to comply. Two of the three primary compliance options would for the most part be consistent with what is required to earn a rebate through PG&E's existing incentive programs. The third compliance option would allow a homeowner to take credit for work already completed and would include improvements that may be installed by a homeowner. Cost caps would be included to limit a homeowner's financial obligation to comply with a RECO. Exemptions would be provided for low-income households, disabled homeowners, distressed property sales (foreclosures and short sales), and households using 15% less energy than the average Hayward home.

Background information about the RECO, including previous reports to the Sustainability Committee, are available on the RECO webpage<sup>1</sup> on the City's website.

## BACKGROUND

*What is a RECO?* - A Residential Energy Conservation Ordinance (RECO) would require that energy efficiency improvements be made – or be shown to have been made previously -- to existing single-family and duplex homes in Hayward. A RECO consists of four major components:

- **Triggers** – An event that triggers the requirement to comply with a RECO may be a transfer of ownership, a significant remodel or addition to a home, or a date certain (a fixed deadline by which homes must be in compliance). All three such triggers are proposed for the Hayward RECO, with a “point after sale” trigger of two years after a property sale.
- **Measures** – Energy conservation measures (ECMs) are improvements or upgrades that result in more energy efficient homes. ECMs considered as options for compliance with a RECO include: attic, wall, and floor insulation; duct sealing; replacement of water heaters and furnaces; and air sealing. Air sealing is the practice of reducing air leakage in areas such as gaps in the roof, exterior walls, window frames, etc.
- **Cost caps** – ARECO would include cost caps or the maximum amount of money a homeowner would be required to spend to comply. If the required efficiency improvements cannot be completed for less than the applicable cost cap, then the owner may obtain a partial or full exemption.
- **Exemptions** – A RECO would provide exemptions for low-income households, disabled homeowners, distressed sale transactions, and households using 15% less energy than the average Hayward home.

Very few cities in the United States have RECOs. As indicated in a research paper titled *Options for Hayward's Residential Energy Conservation Ordinance* by Kali Steele<sup>2</sup>, the other cities with RECOs in California are: Berkeley; Palo Alto; Rohnert Park; Roseville; and San Francisco. Marin County also has a RECO, as do the cities of Boulder CO and Burlington VT. The existing RECOs vary in design and enforcement. Staff is not aware of any existing RECO that uses a date certain trigger. Staff members from other cities in the Bay Area are following the development of the RECO in Hayward and have expressed interest in adopting a similar ordinance. If the City were to adopt a RECO with the transfer and date certain triggers, additional research would be warranted to ensure compliance with Proposition 26 and the Due Process clauses of the California and Federal constitutions.

*Why Develop a RECO in Hayward?* – The California Public Utilities Commission's Long Term Energy Strategic Plan includes a goal to reduce energy consumption in existing homes by 20 percent by 2015 and by 40 percent by 2020, listing RECOs as a role for local governments in

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<sup>1</sup><http://www.hayward-ca.gov/forums/RECO/recoforum.shtml>

<sup>2</sup>Kali Steele's paper is available at [http://www.hayward-ca.gov/forums/RECO/documents/2010/June%202%20Att.%20III%20-%20Steele\\_Kali\\_RECO\\_Report.pdf](http://www.hayward-ca.gov/forums/RECO/documents/2010/June%202%20Att.%20III%20-%20Steele_Kali_RECO_Report.pdf)

reaching this goal. Hayward's Climate Action Plan<sup>3</sup> (CAP), adopted by the City Council on July 28, 2009, is Hayward's primary policy document regarding reducing greenhouse gas emissions and responding to climate change. The CAP sets the following goals, which align with the targets identified in California's Global Warming Solutions Act of 2006 (AB32) and Executive Order S-3-05, signed by then Governor Schwarzenegger in 2005:

- Reduce greenhouse gas emissions 12.5 percent below 2005 levels by 2020
- Reduce greenhouse gas emissions 82.5 percent below 2005 levels by 2050

The CAP recommends RECOs for both single-family and multiple-unit homes. . Table 1 in the CAP lists the RECO as a relatively high priority (11 and 12 out of 25 community-wide actions). Priorities were determined, as explained in Appendix D of the CAP, by considering factors such as the ease of implementation, the potential to reduce emissions, and the cost of implementation. The top ten actions include four actions related to financing energy efficiency and renewable energy improvements and three actions related to the City's existing Green Building Ordinance. Efforts to establish property assessed clean energy (PACE) financing programs for residential properties have been significantly impacted by the position of Federal Housing Finance Agency (FHFA) and concerns with the debt associated with energy efficiency improvements being senior to the property mortgage. The remaining three top ten actions are either currently being addressed by staff or will be considered by the Sustainability Committee in 2011.

The CAP estimated that implementation of a RECO for single-family homes could save 639 metric tons of carbon dioxide equivalent<sup>4</sup> (CO<sub>2</sub>e) annually by 2020 and 39,304 metric tons of CO<sub>2</sub>e per year by 2050. As indicated in Appendix B of the CAP, these estimated emission savings represent 0.4 percent of the City's overall 2020 target and 3.7 percent of the 2050 target. As provided in Appendix C of the CAP, the following assumptions were made when RECO energy savings were estimated:

**Phase 1** (2012 – 2017) – The goal of the first phase is to reduce electricity use by 1% and reduce natural gas use by 2.5% on average in participating single-unit homes. The goal is to get **12.5%** of residential units that were constructed before the City's Green Building Ordinance took effect to participate in the program by the end of the phase.

**Phase 2** (2018 – 2030) – The goal of the second phase of this program is to reduce electricity and natural gas use by 20% on average in participating single-unit homes. The goal is to get **45%** of residential units that were constructed before the City's Green Building Ordinance took effect to participate in the program by the end of the phase.

**Phase 3** (2031 – 2050) – The goal of the third phase of this program is to reduce electricity use by 100% and reduce natural gas use by 75% on average in participating single-unit homes. The goal is to get **100%** of residential units that were constructed before the City's Green Building Ordinance took effect to participate in the program by the end of the phase.

*Previous Sustainability Committee Meetings* – Staff and consultants provided the Sustainability Committee with an introduction to RECO on February 3, 2010 and then with updates on research needed for the development of a RECO during the June 2, 2010 and September 1, 2010 meetings. A community meeting was held on August 11, 2010 and a special meeting of the Sustainability Committee was held on October 25, 2010 to discuss the components of a RECO. The RECO has also been discussed at the October 2010, December 2010, January 2011, and February 2011 meetings of the Climate Action Management Team (CAMT). Staff incorporated input received during those meetings to draft *potential* ordinance provisions presented in Attachment I of this report and in a similar report presented to the Sustainability Committee on March 2, 2011. Input from these meetings resulted in a variety of suggested changes to any RECO proposed in Hayward, including, for example, development of an exemption for those households that use 15% less energy than the average Hayward home. All reports and presentations for these meetings are available on the City’s RECO webpage<sup>5</sup>.

## **DISCUSSION**

### Sustainability Committee Actions

Twenty-three members of the public spoke against adoption of a RECO at the March 2, 2011 Sustainability Committee meeting. Comments addressed issues such as the cost of compliance; the current economy and high unemployment; that the City should be focused on other initiatives; that the ordinance would drive away potential buyers of real estate; and that real estate values would decline.

The Sustainability Committee recommended that energy efficiency should be voluntary for now, that staff should work with Stopwaste.org and the other cities in Alameda County to pursue development of a County-wide model ordinance; and that the City should emphasize education, outreach, and incentives. Also, the Sustainability Committee encouraged staff to monitor and measure the success of voluntary efforts. Minutes from the March 2 meeting are included as Attachment I.

The Sustainability Committee recommended time to allow homeowners an opportunity to take advantage of existing energy efficiency rebates and incentives and to allow staff to analyze the cost-effectiveness of the various energy efficiency measures implemented through these programs. On January 25, 2011, the City Council adopted a resolution obligating approximately \$750,000 of the City’s Energy Efficiency and Conservation Block Grant (EECBG) funds for three energy efficiency incentive programs. One of the incentive programs is targeted for single-family homes and will enable the collection of data to confirm the cost-effectiveness of the measures that may be included in a draft RECO. Information about incentives currently being offered by the City is available on the City’s website<sup>6</sup>.

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<sup>5</sup><http://www.hayward-ca.gov/forums/RECO/recoforum.shtm>

<sup>6</sup><http://www.hayward-ca.gov/forums/EnergyIncentive/EnergyResidential.shtm>

## A Future RECO Ordinance

For Council's information, the following is a discussion of the major components and considerations of a RECO staff developed prior to the March 2, 2011 Sustainability Committee actions.

*Cost-Effectiveness of Potential RECO Energy-Efficiency Measures*– An August 2010 report prepared by Mike Gabel of Gabel Associates, LLC, titled *Research Report on a Hayward Residential Energy Conservation Ordinance (RECO)* and available on the City's RECO webpage, evaluated the cost-effectiveness of a variety of potential energy efficiency improvements. According to the report, for the average Hayward home of 1,292 square feet, the average cost of RECO compliance would be in the range of approximately \$2,500 to \$3,000. Using a computer model, Mr. Gabel provided estimates of the potential energy and GHG savings associated with various energy efficiency/conservation measures in the average Hayward home. Data from actual home retrofits will be available in the next year or two as homeowners install energy efficiency measures and participate in the City's incentive program (discussed below in the Economic Impact section).

The report recommended a number of combinations of retrofit measures with the following attributes:

- an installed cost of \$3,000 or less;
- a payback period of approximately 30 years, where the cost of installations would be recovered with energy cost savings (applying PG&E and/or Hayward incentives would result in shorter payback periods);
- GHG emission reduction in the range of 8 to 9 percent; and
- a Home Energy Rating System (HERS 2) score improvement of more than 10 percent, meaning an overall energy efficiency improvement of 10%.

The Gabel report also recommends including low-cost mandatory improvements (such as water-efficient toilets and faucets as well as weather stripping). Finally, in recognition of the potential that mandatory improvements might impose a financial burden on homeowners, the report recommended a limit or cap on the cost of required retrofit measures.

*Proposed Triggers* – In an effort to advance the City's CAP goals of achieving GHG emissions reductions by the years 2020 and 2050, staff developed a schedule of "Trigger" events to be included as part of any adopted RECO, which would require a homeowner to make energy efficiency improvements. Trigger events presented were:

- 1) *Remodel Trigger*– The homeowner makes substantial remodel improvements to the home that would exceed \$30,000 in valuation. Based on the historical average of 100 remodel permits per year that exceed \$30,000, a RECO with a remodel trigger alone would achieve approximately 40 percent of the City's 2020 goal for emissions savings related to a RECO. The \$30,000 threshold would exempt costs associated with repair of fire and water damage or other eminent life/safety repairs, as well as re-roofs that would not entail replacing underlying roof support elements.

- 2) *Transfer Trigger* - The transfer of a home from one entity to another. Such a trigger would occur upon the sale or exchange of a home or within two years after sale, allowing for either the seller or buyer to complete improvements required by a RECO. Foreclosures and short sales would be exempt from the transfer trigger. The residential real estate community expressed the opinion that the imposition of the costs and duties associated with a RECO could negatively affect home sales, impact financing, and decrease home values at the date of sale.
- 3) *Date Certain Trigger* - A fixed date by which compliance must be achieved. To ensure that a RECO would result in a sufficient number of homes being upgraded to contribute to timely GHG reductions, staff considered a series of deadlines by which all homes built prior to 1978 would have to comply with RECO. This trigger would only apply to homes built prior to 1978, which is when California's first energy code (Title 24) became effective.

Text for a draft RECO was presented to the Sustainability Committee on March 2, 2011. Staff envisions in the future, when Council is ready to adopt a RECO, the draft ordinance would include the following sections:

- Standards for Compliance
- Applicability
- Energy Conservation Measures
- Maximum Required Expenditure
- Compliance Documentation and Deadlines
- Inspections
- Exemptions
- Penalties (would potentially link to the City's existing *Administrative Citation Ordinance*)

*Potential Effectiveness of a RECO* – Assuming a total of 40% of homes would qualify for exemptions under the low-income<sup>7</sup>, low energy use, or disability provisions, then staff estimates that 60%, or 11,702, of the pre-1978 homes would have to comply with a RECO. As shown in the following table, assuming the average home complying with a RECO would result in a reduction of 905 pounds per year (or 371.96 metric tons) of CO<sub>2</sub>e, by 2024, which is the latest compliance deadline per the Date Certain trigger, a total of 4,681 metric tons of CO<sub>2</sub>e would be saved annually, which is 7.3 times the CAP's 2020 target, but is only approximately 12 percent of the 2050 target. Remodels would result in a very small number of additional homes retrofitted as a result of a RECO. Sales and transfers would affect homes built in or after 1978, but many will likely already comply with required measures.

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<sup>7</sup> Low-income households would be identified using U.S. Department of Health and Human Services guidelines.

*Possible Total Greenhouse Gas Savings as a Result of RECO for Pre-1978 Homes*

Year Structure Built	Approximate Number of Single Family/Duplex Homes in Hayward	Recommended Compliance Deadlines	Homes in Category to Meet RECO	Average CO <sub>2</sub> e Reduction (Metric Tons per Year)
1949 and Earlier	3,074	2018	1,844	757
1950 - 1959	7,483	2020	4,490	1,842
1960 - 1969	4,700	2022	2,820	1,157
1970 - 1977	4,246	2024	2,548	1,045
Total Subject to RECO Pre-1978 Homes	19,503		11,702	4,801
Total Homes in Hayward	27,805			

**ECONOMIC IMPACT**

If adopted, a RECO would require improvements that, without incentives, may take 30 to 35 years before the energy cost savings exceed the initial investment. As mentioned previously in this report, an August 2010 report prepared by Mike Gabel of Gabel Associates, LLC, evaluated the cost-effectiveness of a variety of potential energy efficiency improvements.

**FISCAL IMPACT**

Administration of a RECO would require significant staff resources. This could include: setting up a database for tracking compliance of homes subject to a RECO; reviewing Notices of Completion; issuing Certificates of Compliance; tracking real estate transactions; notifying homeowners of RECO requirements; enforcement actions for non-compliance; and fielding questions from owners, contractors, and realtors. If an ordinance is recommended for adoption in the future, staff would prepare a more complete estimate of the staff time and costs necessary to administer a RECO.

**PUBLIC CONTACT**

Since February 2010, a RECO has been discussed at eleven public meetings. At the February 2, 2011 Sustainability Committee meeting, the Committee directed staff to find additional means of raising community awareness about a RECO. Starting the week of February 21, 2011, an insert was delivered with each City of Hayward water bill. Due to the billing cycle, it took approximately two months for all Hayward water accounts to receive a copy of the notice. In addition, since the February 2 Sustainability Committee meeting, staff has and will continue to attend all Neighborhood Partnership meetings prior to the scheduled June 9 Planning Commission work session to summarize a RECO and to announce this meeting and upcoming work sessions. Also, staff has created a link from the City’s homepage directly to the RECO

webpage. A newspaper article about the RECO appeared in *The Daily Review* newspaper on February 11, 2011, which was attached to the March 2, 2011 Sustainability Committee report.

On January 10, 2011, staff received a letter from David Stark of the Bay East Association of Realtors with questions and comments regarding the August 2010 Gabel Associates report referenced in this staff report. Mr. Stark's letter and Mike Gabel's response are attached to the March 2, 2011 Sustainability Committee report. Finally, since the March 2, 2011 Sustainability Committee meeting, staff has received several phone calls, emails and letters (see Attachment II) – most in opposition to a RECO.

## **NEXT STEPS**

Staff will continue to participate in a technical working group convened by Stopwaste.org to explore the development of a RECO that may become a model ordinance that could be adopted by cities throughout Alameda County, and will continue to promote the energy efficiency rebate/incentive programs offered by the City and PG&E.

*Prepared by:* Erik J. Pearson, AICP, Senior Planner

*Recommended by:* David Rizk, AICP, Development Services Director

Approved by:



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Fran David, City Manager

Attachments:

- Attachment I Minutes from the March 2, 2011 Sustainability Committee Meeting
- Attachment II Letters and Emails

CITY COUNCIL SUSTAINABILITY COMMITTEE MEETING  
Hayward City Hall – Council Chambers  
777 B Street, Hayward, CA 94541-5007

March 2, 2011  
4:30 p.m.

**MEETING MINUTES**

I. Call to Order – Meeting called to order at 4:35 p.m. by Mayor Sweeney.

II. Roll Call

**Members:**

- Michael Sweeney, Mayor
- Olden Henson, Council Member
- Bill Quirk, Council Member
- Dianne McDermott, Planning Commissioner
- Sara Lamnin, Planning Commissioner
- Al Mendall, Planning Commissioner
- Doug Grandt, Keep Hayward Clean and Green Task Force (Absent)

**Staff:**

- Fran David, City Manager
- David Rizk, Development Services Director
- Bob Bauman, Public Works Director
- Erik Pearson, Senior Planner
- Marc McDonald, Sustainability Coordinator
- Katy Ramirez, Administrative Secretary (recorder)

**\*Others:**

- Mike Gable, Gable Associates, LLC
- Bachi Brunato, Ultimate Home Performance
- Simon Wong, Government Editor, Tri-City Voice Newspaper
- Florine Banks
- Otto Catrina, Bay East Association of Realtors
- Michael Chaney
- Cynthia Chiasson, Realtor
- Jeffrey Conner, Attorney
- Fadi Dib, Resident
- Mary Ann Falle, Resident
- Alex Hicke
- Kim Huggett, Hayward Chamber of Commerce
- Miroslav Kulas, Resident
- Angie LaPlante, Resident

- Rich LaPlante, Resident
- Jan Lebby, Realtor
- Rodney Loché
- Timothy May, Rental Housing Owners Association
- Rene Mendieta, Legacy Real Estate
- Lyman Menger, Realtor
- Murline Monat, Coldwell Banker
- Luis Munoz, Resident
- Clyde Nazareth
- Teresa Nazareth
- Laura Owen, Coldwell Banker/Realtor, Resident
- Craig Ragg
- Heather Reyes
- Victoria Rodriquez, BEAR
- Jane Rowson, Realty World Neighbors
- Elizabeth Schultz
- David Stark, Public Affairs Director, Bay East Association of Realtors
- Carrol Stegall, Resident
- Judy Virgin, Resident
- Patrick Virgin, Resident
- Wade Winblad, Realtor
- John White

*\*There were other attendees in the audience that did not sign in.*

Mayor Sweeney welcomed everyone and explained that because there is a special City Council meeting this evening, the Sustainability Committee meeting will have to be finished by 6:00 pm to allow set-up for the Council meeting. Mayor Sweeney indicated that the Committee normally meets in Conference Room 2A; however, since we anticipated a large audience, this meeting was moved to the Council Chambers so that everyone would be comfortable.

### III. Public Comments

Mayor Sweeney said that since there are so many people speaking, and without objection from the Committee, he is going to allow each speaker two minutes for their public comment. This will help to get through all the speakers and for staff discussion and questions. There were no objections from the Committee.

Miroslav Kulias, resident, said that he has owned his house in Hayward since 1972. Mr. Kulias said that he is surprised that the City is going to force homeowners to do unnecessary improvements; and if the improvements are not done, there will be a penalty should the homeowner decide to sell their house. He said that he believes the cost of the house is determined by its features, and if the house is not up-to-date, the selling price would be lower and the homeowner would be punished as a result. Mr. Kulias said that

the current housing market in Hayward is down by 50 percent of the original price, and with the required upgrades, the homeowners would be punished twice.

Elizabeth Schultz, resident, distributed a document to the Committee. Ms. Schultz said that she owns property on Tyrrell Avenue and invited the Committee to come down to one of the vacant lots on Manon or Shephard Avenues and hold a meeting there. She asked the Committee to look at the pictures in the document and see the real Hayward outside of City Hall, which is in a nice location with marble steps, litter free lawn, and trimmed trees. Ms. Schultz said that litter is typical in the area along West Tennyson Road and South Hayward, and said that you will find it everywhere if you walk the streets rather than drive by on the freeway. There are fences in disrepair, litter strewn over various properties, vacant lots, and on the sidewalks, along fences, and that garbage is a sanitation hazard and attracts vermin and rats. She said there are overflowing dumpsters, and the City's own garbage cans are overflowing on a constant basis. Ms. Schultz said that the Sanitation Department comes out and picks up when asked; however, within 24 hours the garbage can is filled and overflowing once again. Ms. Schultz said that there are tarps instead of roofs, cardboard instead of fences, and said it is like a shanty town, unlike City Hall. Ms. Schultz said that she would like the Committee to come and walk these streets before imposing a tax on owners and occupants who need to do desperate work to their houses just to bring it up to minimal standards. She said that additional tax is the last thing they need on the work and repairs that they try to do on their property to keep up with other problems in the neighborhood.

Mayor Sweeney commented that he was walking up and down Tyrrell Avenue the past Saturday picking up trash with some students from the Keep Hayward Clean and Green Committee. He said to Ms. Schultz that he did not see her there helping out and told her that she is always welcome to join in and help. Mayor Sweeney indicated that the Keep Hayward Clean and Green Committee generally meets on the fourth Saturday of the month and they go out and pick up trash and paint out graffiti. Mayor Sweeney invited Ms. Schultz to bring her friends along, that the Committee would appreciate the help.

Cynthia Chiasson, resident, said that she has attended most of the Sustainability Committee meetings and has spoke regarding RECO. Ms. Chiasson said that she is most concerned about timeliness of what the City is trying to do. She said that she is not objecting to the concept and the passion of what Hayward is trying to do; it is the manner in which it is being done. She said that she would like to suggest pushing out this wonderful idea to 3-5 years. Ms. Chiasson said that we are in a no job recovery time and this idea is bad for Hayward, bad for homeowners, and bad for business. She said she use to be a realtor full time but is now a realtor part-time, and works for her son's company on a full-time basis, which is located in Hayward. She said she is very passionate about making RECO a fair thing, cleaning up Hayward, helping Hayward, but not doing it on the backs of the people during this hard time.

Patrick Virgin, resident, said that he is in disagreement with the need for a RECO, and has his personal views about global warming which he expressed at the last

Sustainability Committee. He said that one of the things that he does not like about RECO is the government imposing it on him. Mr. Virgin said that he was reviewing the City's permit fees schedule and wonder if the 1 percent or 5 percent as proposed in the RECO goes towards the cost. Mr. Virgin continued by providing many examples of permit fee costs associated with upgrading a house (i.e., to fix a chimney and insulation would cost \$240.00; installation of a solar system, \$300.00; stucco siding permit, \$503.00, etc.), and noted that of the \$5,000, you could spend \$2,500 on permit fees. Mr. Virgin said that this is not fair and asked if the permit fee expenses are the owner's responsibility, because he cannot afford it.

Mayor Sweeney noted that Mr. Virgin raised a good issue and asked David Rizk, Development Services Director, to address it when this item is later discussed on the agenda, on whether permit fees go towards the cost or not.

Judy Virgin, resident, said she has been a homeowner in Hayward for almost 47 years. She said that she has seen Hayward go up and go down, and said that if she could figure out a way to move from here, she would be the first one to sell. She said that she got a quote on Facebook from a young man that was born, raised, and educated in Hayward and who has now moved to Marysville. She said that the young man indicated to her that between dealing with Mission Boulevard and the Building Department when trying to get a permit for a solar system, he thinks he will keep his jobs in the valley; she said that she hears this repeatedly. Ms. Virgin said that they needed a new sidewalk in front of their home and they did everything accordingly, went to the Building Department, paid for it, etc. She said that when the City inspector came to approve the work, he indicated that he does not like the color of the cement and said they will have to change it. She said that her husband asked the inspector if he likes the color of the cement across the street, and the inspector replied no, that he would not have approved that color either. Ms. Virgin said that her husband said to the inspector that the City installed the cement and color across the street, which is the same color that they have; the inspector approved their cement project.

Heather Reyes, resident, said that she is pleased to be part of a community that wants to improve; but asked if the timing is right. Ms. Reyes said that she is speaking on behalf of the homeowners that she recently spoke with to get their thoughts on RECO and first of all, they were unaware of the proposed RECO. Ms. Reyes asked if in making the RECO mandatory, is the Committee taking into account the current state of the economy in California. She said that the economic stability within Hayward proves that the unemployment rate is up by at least 10 percent; at least 1 out of 8 people are looking for a job. She asked if we really think these people are going to be concerned about energy efficiency on their homes. Ms. Reyes said that she has had multiple friends lose their homes due to foreclosures; there were 1,500 plus foreclosures over the last year, and asked if these foreclosed homes are going to fall under RECO as well. She said that she would like Hayward to become a green city, but at what cost? Ms. Reyes asked why the Sustainability Committee meetings begin at 4:30, when so many homeowners work. She said that she works in San Francisco and had to find two baby sitters and leave work

early to attend this meeting. Ms. Reyes proposes for the meeting to begin at 7:00 pm, same as Planning Commission, in order to make it more available for the homeowners to attend and speak.

Victoria Rodriguez, real estate broker, said that she has been doing business in Hayward for 35 years, and currently has an interest in a couple of properties with clients in the area. Ms. Rodriguez said that Hayward has many amenities to offer and among the ones that she emphasizes to her clients are convenient location, weather, and affordability. She said that the most obvious objections that she has to address to her clients are the school district, gang activity, and crime. Ms. Rodriguez said her experience has been that the majority of the buyers are choosing affordability, that most of her buyers are barely able to put together the required down payment and, consequently, will often seek assistance from the seller with credit for closing costs. Ms. Rodriguez said that the affordable cities in the area are Hayward, San Leandro, San Lorenzo, and Castro Valley. She said that if she knows in advance that she will be asking a seller for a reduction in their net proceeds because of a RECO, in addition to selling a home at foreclosure cost, her first option would be to eliminate Hayward and work with neighboring cities. She said that with all the good intentions, the City would be pounding the last nail on Hayward's value coffin. Ms. Rodriguez said that as a member of the Hispanic community, she is very aware of the struggles that we are facing during this economy. Ms. Rodriguez handed a letter to staff for distribution to the Sustainability Committee.

Luis Munoz, resident, said that he is concerned about the RECO requirements; that it will create a very destructive cycle with the three options that are being presented. For the remodel trigger, Mr. Munoz said that it does not take much to rack up \$30,000 in remodeling expenses and said that he knows this because of the type of work that he does. He said for the folks that will try to get away with not having to deal with the issue, the problem with unpermitted improvements will get even bigger than what it is now. Mr. Munoz said that if you look at the transfer trigger, just because you postpone it does not mean that low and moderate-income families will be able to afford it later. If they do not do the upgrades, then they are going to rack up fines and make it worst. Finally, a base certain trigger – again, it doesn't change the math if you don't have the money, unless you are very clear how you define low income, then you will have folks that are not able to do it, try and circumvent it, etc., so it really won't address what you are trying to accomplish. Mr. Munoz said that he supports the concept but not the way it is being presented.

David Stark, Bay East Association of Realtors, noted that page two of the staff report references how priority was given to the various measures presented in the Climate Action Plan. He said the criteria included ease of implementation with potential for reduced emissions and the cost of implementation. Mr. Stark said that based on the information provided today, it is easy to conclude that the latest version of the RECO would be difficult to implement, would not reduce greenhouse gas emissions, and would be expensive for the City and for Hayward homeowners. He said that the Sustainability Committee still does not know if Hayward homeowners and homebuyers can afford to

pay the upfront cost to retrofit, and simply stating there are grants available to pay for mandatory requirements is naïve. Mr. Stark said that the Committee does not know if the measures described in the staff reports will reduce energy use in homes located in Hayward. He said that the Committee does not know the unintended consequences from adopting a RECO ranging from health impacts, to the impact that the RECO will have on homeowners securing a mortgage. It is okay to conclude that a RECO is not good for Hayward or for reducing greenhouse gas emissions. Mr. Stark indicated that the Committee does not have to recommend the adoption of a RECO. He said that state law does not require the City of Hayward to adopt a RECO and, according to City staff, the Energy Efficiency Grants Programs available to the City of Hayward does not require adoption of a RECO; and the Climate Action Plan does not mandate the adoption of a RECO. Mr. Stark said that the push to adopt the RECO has put the cart before the horse. He would like to ask the Committee to first promote voluntary programs and energy efficient incentives; study the effectiveness of energy retrofits on real homes in Hayward, owned by real Hayward residents; and then use that data to make informed decisions about adopting a RECO.

Michael Chaney, resident, said that he is a realtor and property manager. He said that he thinks the approach that the Committee is making is not fair to the residents and homeowners. He said it should be approached from a different aspect by using the incentives and working with banks to give the proper loan incentives to make it happen; otherwise, the banks are going to look at this as a major problem. Mr. Chaney said that this is a big concern for him, his clients and renters. He asked the Committee if they have considered this approach, same as PG&E's offer to lower-income homeowners. Mayor Sweeney responded that this will be addressed later in the meeting.

Timothy May, Executive Director for the Rental Housing Owners Association, thanked the Committee for offering him the opportunity to speak before them today. Mr. May said that he hopes the Committee received the correspondence that he sent via email the other day. He said that he would like to reaffirm the fact that the California Apartment Association and their local do believe in conservational resources, that it is one of their primary tenants. Mr. May said he is concerned that the proposed RECO may affect the smaller rental property owners in Hayward. He indicated that some of their members are rental owners that are not necessarily landlords by choice, that they have been put in this position for various reasons, and the time certain trigger can really put a serious burden on these owners. Mr. May said that the good news is cities like Dublin and Union City have managed to create Community Climate Action Plans without RECOs, using incentives and education in very positive ways that have helped those communities hit the targets that have been put before them. Mr. May said that he is asking Hayward to consider a similar approach using incentives and education and continue to work to provide a positive business model for people who want to live and work in Hayward.

Rich LaPlante, resident, said that he stands in support of the concept of what the City is trying to do throughout Hayward with clean and green and environmental improvements; however, he totally stands in opposition to the enactment of a RECO. Mr. LaPlante said

that he is currently responsible for a family home that was put up for sale in July of 2010. He said the home was offered at a fair price and had up to \$40,000 in improvements, and he has not received a single offer despite lowering the price twice. Mr. LaPlante said that due to foreclosures situations in Hayward and in his neighborhood, real estate is pathetic. He said that he does not need a real estate profession to tell him that Hayward is near the bottom of the real estate market in Alameda County, and Alameda County is near the bottom for the counties in the Bay Area. He said that he does not need the City to make it more difficult to sell homes and this is not the time to impose more construction costs to those of us that are trying to move more homes, nor the time to impose more government fees; a fee is a tax. He said that he does not support a government process that wants to protect him from himself. Mr. LaPlante said that he stands in opposition to a process that has yet to conduct an extensive outreach to the homeowners in Hayward. He said yes, he has a copy of the water bill insert that was just received, and he has a copy of the February 12 Daily Review article that talks about this topic, and he has read all the minutes from all the meetings that have been conducted. Mr. LaPlante asked which of you elected leaders has sponsored a neighborhood meeting to engage affected homeowners that don't have what I have. Mr. LaPlante said that he supports increased education regarding RECO, for as long as it will take.

Craig Ragg said that he lives in Castro Valley, has a real estate business and owns property in Hayward. Mr. Ragg said that he is concerned about different parts of the RECO, one being the transfer of sale. He said that in theory, if the seller cannot afford to pay for upgrades, then the buyer negotiates and has two years to complete the upgrades. Mr. Ragg said that most of the buyers are buying with a minimum down, and bank and FHA fees are going up, so there will be very little money left over. He said that if they go in assuming that the costs are a certain amount based on the numbers that day, and they still have the two years, the homeowner would be chasing the numbers and that is a potential problem. Mr. Ragg said that his other concern is about the homes that were built over the last 10 years that met the Title 24 codes, that are being updated constantly, but the older homes are being sold and not updated until date certain. Mr. Ragg said that it seems crazy to have to continue to update homes that were built with high standards at the time; and not deal with the older homes. Mr. Ragg said it seems like a bad way to deal with this process and that he agrees with the speakers about education and doing it on a voluntary basis.

Laura Owen, resident, said that she has lived in Hayward for 21 years and her mother-in-law has lived in her Hayward home for 52 years. Ms. Owen said that she is a real estate agent and has been selling homes in Hayward for 18 years and is very concerned about Hayward taking a hit on home prices. She said that transferring and selling properties by trigger would hurt the community, would bring it down in value and, as already discussed, there is the cost of obtaining permits. Ms. Owen said that her income has taken a hit over the last couple of years and she is worried about the expense involved with doing a RECO. She said her mother-in-law is 75 years old and retired; how will she and other homeowners be able to afford these upgrades. She said that she strongly

believes that Hayward is one of the lowest communities in the Bay Area and has already taken a huge hit. Ms. Owen said that some investors do not want to purchase in Hayward because of the every 2 to 3-year inspections. Ms. Owen said that she is against RECO through the transfer.

Clyde Nazareth said that he has a real estate office in Hayward and has been selling homes in the Hayward area for over 20 years. Mr. Nazareth said that he would like to address the most important point that the City should be focusing on right now. He said that we are looking at a community that is the starter area for the Bay Area, and we do not need more hindrances placed in the way of selling homes. Mr. Nazareth said that Berkeley is the only other community that has an active RECO law and Hayward does not need to emulate them. He said that the real estate industry has enough competition for home sales in the surrounding areas, and the surrounding areas do not have the restrictions that a RECO will bring. He said that we are talking about people who suffer greatly, much more than other people in the Bay Area as far as proportional drop, and the City does not need to add more to it. Mr. Nazareth encouraged the Committee to not set a deadline to try to enact a RECO in the future; at this point, it is better to suspend an action of this law and look at sustaining home equity. Mr. Nazareth said that Berkeley is a community at 28 percent above the average income for California; Hayward is 17 percent below. Everything the City does will have an impact, and it will impact it greatly.

Teresa Nazareth, broker at Century 21 for over 20 years, said that she would like to bring to the Committee's attention a letter addressed to the editor of the Daily Review from Jim Ferry, where he talks about the RECO's costly retrofits. Ms. Nazareth said that if the RECO is in the interest of the community, the homeowners do not know about it. She said everybody is trying to hold a job and 4:30 for this meeting is not a viable time. Ms. Nazareth said that a lot of audience is opposed to it; that if we educate the public, she is sure the Committee will have a lot more people telling you what they think about RECO. Ms. Nazareth suggests that we educate people, homeowners, and low-income people, with a little flyer in the electric or water bill.

Rene Mendieta said that he lives in San Leandro and is a local real estate agent. Mr. Mendieta said that he agrees with what the City is trying to achieve and especially addressing the issues of global warming, which in his opinion is definitely creating catastrophic climate change. He said that this legislation does not even put a close dent on the issue; however, he thinks it is still good legislation, but misguided. Mr. Mendieta said that Mr. Clyde Nazareth made an excellent presentation of his opposition to this legislation. Mr. Mendieta said he would like to point out that the exempt foreclosure and distressed sales represent about 70/30 percent of the transactions, which already shows that it is misguided. He said this will deter people from wanting to remodel their homes and deter them from wanting to sell their homes. Mr. Mendieta said that he is not an advocate real estate agent; he is here because he thinks it is unfair for local homeowners and, again, it is misguided.

John White, resident, asked to what degree the Committee has looked at other possibilities and programs like a RECO, whereby the incentive may be, for example, the City of Hayward doing an energy audit or better than that, the CPU City utilities do an energy audit. Mr. White asked how can we piggyback on all of those programs to get more leverage without building a bureaucracy to go out and do the audits. He said they exist now and there has to be opportunities, again, to partner with the utilities, CPUC to get to the goals that we are trying to achieve in saving energy. Mr. White asks to what degree have we given consideration to the new homes being built in the City of Hayward; what degree would those homes allow us to achieve our goals without the expense on the existing homes. Mr. White said third and final thought, perhaps the city can put an “E” stamp on an incentive if you are selling your property, that this home is energy efficient, and that might give some leverage for a few extra dollars as well.

Jan Leby, resident, said that she owns two homes and has lived in Hayward for 34 years. She said they have enjoyed their home and have done many upgrades to maintain their property. Ms. Leby asked if we are going to bring homeowners to live and enjoy Hayward, what is there to offer. She said there have been upgrades to some areas, along B Street, and a new theater, and these type of upgrades will bring people to Hayward. Ms. Leby said to bring them in under this RECO is a negative thing, and if the seller cannot afford to make the improvements, then the buyer is going to have to do this. She said right now home prices are low enough to bring in more people, especially with the starter homes, people will be able to make their improvements as they go along and raise their families. Ms. Leby said that we do not want to discourage anyone so we need to do whatever we can to help people come to Hayward. She said that if Hayward does not offer affordability and if there isn't a reason to come to Hayward, then Pleasanton and Dublin are 10 minutes down the road, and they have a lot to offer there.

Mary Ann Falle, resident, said that she has lived in Hayward for about 20 years. Ms. Falle said that sustainability and being kind to the environment are values that she holds near and dear to her heart; that this is how she chooses to live her life and these are choices that she makes for herself. However, she said that when she heard about RECO yesterday for the very first time, it felt very disrespectful to her as a homeowner. She said it should be up to her on how she chooses to make her home energy efficient; that it should be her decision based on how much money she makes. Ms. Falle said that now is not the time for a mandatory law and suggests that the City look into something voluntary. She explained, for example, to set a goal for people and say, “we as a City want to achieve these goals; these are some things that you can do in your home to help us achieve these goals,” and then people can make the choices that are right for them. Ms. Falle said that if the Committee does decide to recommend a RECO, she would like to ask that the whole section on the shower fixture, sink faucet, lavatory faucet, and toilets be omitted, because the reality is that you don't get any savings on gas and electricity by changing those things. She said energy efficiency comes from changing your water heater, wrapping your water heater, wrapping your pipes, and if we are already asking people to do those things, it is not fair to ask them to do these other

things. Ms. Falle said that the goal is to reduce energy efficiency with this proposal, not to preserve water, and for the City to stick to its goal.

Wade Winblad, resident, said that he does not have a problem with new construction, energy efficiency, or extensive remodels, but forcing people to retrofit when they are not ready is not called for these days. Mr. Winblad said there are many people in attendance tonight that are not represented, and those are the people that he hopes he can speak for. People that are still at work, people on assembly lines and at hospitals, and he bets the people in the audience can probably buy insulation for their attic, but the people that aren't here, might not be able to afford it. Mr. Winblad said that the mandatory requirement to retrofit houses is totally wrong, and asked if the Committee are public servants or our rulers, which is it?

Otto Catrina, property owner in Hayward and President of Bay East Association of Realtors, said that he is involved with a transaction in Alameda where they have a point-of-sale on a sewer lateral. Mr. Catrina said that he is a big advocate for this because of the toxic leaks in the sewer lateral getting into the high water cable and the adverse affect it would have on the community. He said that Bay East Association is advocating on the proposed RECO incentives; however, they want to make sure that it is not mandated and that it is voluntary. He said that it is unfortunate that a lot of the community is not in attendance; there is a population of 158,000 in Hayward and only about 50 people are in the audience. Mr. Catrina said that the communication and collaboration with the community in trying to identify and resolve a solution is missing, and needs to be addressed.

Fadi Dib, resident, said that four years ago he remodeled his home and went the extra mile to make his home more efficient. He said that some of the items disclosed in the RECO indicate that he would have to do some of these things again. Mr. Dib said that he went through a lot with the City in dealing with permits, licensing, inspectors, and other horrible things that were mentioned earlier in the meeting, and he is not willing to do that again. Mr. Dib said that if incentives are offered, then basically, homeowners would achieve what they need to achieve.

Mayor Sweeney closed the Public Comments session and thanked the speakers for their comments.

- IV. Approval of Minutes of February 2, 2011 - minutes approved with minor revisions from Planning Commissioner, Al Mendall.
- V. Residential Energy Conservation Ordinance (RECO)

David Rizk, Development Services Director, said there has been a lot of effort in the last several months to develop the framework for a potential RECO for Hayward. Based on the direction from the Sustainability Committee, staff has tried to balance the adopted goal of reducing greenhouse gas emissions associated with energy use in existing homes

while minimizing the cost to homeowners. Mr. Rizk said that since the February Sustainability Committee meeting, staff has made revisions to potential components of the future RECO to provide more flexibility for compliance, more exemptions, and as many incentives as possible to encourage homeowners to reduce energy use, which will all be addressed by Erik Pearson during the presentation.

Mr. Rizk said that he would like to take a moment to introduce and acknowledge the team that has been working on the proposed RECO. First, Erik Pearson, Senior Planner, has been the lead on developing many of the components of the RECO. Second, a tremendous amount of work has been done by Mike Gable of Gable and Associates, who not only developed the RECO report for Hayward, but also developed a cost effective study that was used by Hayward and other cities in the Bay Area related to adopting Green Building Ordinances for new construction. Third, Marc McDonald of QuEST and the City's Sustainability Coordinator, who is on contract through the end of next year. He said that Mr. McDonald will be the lead on rolling out the three energy efficiency incentive programs that total about \$750,000 in Federal Energy Efficiency and Conservation Block Grants funds, and of that amount, \$250,000 relates to rebates for improvements in existing homes. Mr. Rizk also introduced Bachi Brunato, who has been doing general contracting and construction work for over 30 years and has worked on hundreds of homes involving remodels and retrofits, and worked on homes with the current utility program incentives and energy efficiency installations. He said that Mr. Brunato is here to answer any questions in terms of cost and construction and any questions related to his contracting experience.

Mr. Rizk said that Mr. Pearson will be providing a PowerPoint presentation and overview of the proposed RECO, and will explain what a RECO is and why the City has been spending time in trying to develop a RECO. Mr. Rizk said that Mr. Pearson will also be providing the Committee with some options to consider as they move forward to the City Council, which is scheduled for Work Session on May 31.

Mr. Pearson said that he will be providing a few of the basis for a RECO, focus on some of the major components that might go in the RECO, and focus on some of the changes that have been made since the last Sustainability Committee meeting in February.

Mayor Sweeney asked Mr. Pearson if he may interrupt for a moment, and continued by saying that the Committee has heard from many people this evening, and now he sees that people are walking out. Mayor Sweeney said that it is a little disingenuous for folks to tell the Committee what they don't like, and then when the information is about to be shared, for them to walk out of the room. Mayor Sweeney offered the suggestion to the other audience members to encourage the folks that walked out to come back in and listen to the presentation. He said that it is unfortunate for people to talk about certain things they don't like without hearing what the program is and what the ordinance might actually include. Mayor Sweeney indicated he is just making a suggestion and that he is sure the rest of the Committee members would appreciate this, as well. Mayor Sweeney apologized to Mr. Pearson for the interruption and asked him to proceed.

Mr. Pearson indicated that the State adopted the Global Warming Solutions Act in 2006, which includes greenhouse gas emissions reduction goals and that it includes Hayward's goals. In addition, the California Public Utilities Commission released a Long-Term Energy Efficiency Strategic Plan that includes goals for reducing energy use in existing homes, and that plan recommends that local governments adopt RECOs. Mr. Pearson said that Hayward's Climate Action Plan was adopted in 2009, and includes emission reduction goals to those of the State. He said that a RECO is one of the recommended options in the Climate Action Plan, which estimates savings of 639 metric tons annually by 2020, and 39,000 metric tons annually by 2050.

Mr. Pearson provided a brief overview of the schedule of Sustainability Committee meetings that were held in 2010 and 2011, and noted there were a couple of special meetings outside of the regular meeting schedule, as well as several meetings with the Climate Action Management Team. He indicated that all meeting agendas are posted to the website; email notifications have been sent out; and inserts were included with the water bill accounts. Mr. Pearson said there is background information and reports on the RECO page of the website and you may visit it by clicking on the Green Hayward link located on the website page.

Mr. Pearson said that the main components of the RECO are the retrofit measures triggers, cost caps, and exemptions, and proceeded to explain each of these components. Details are available in the March 2 Staff Report.

Mr. Pearson said that staff plans to provide a draft ordinance to City Council on May 31, and has drafted several options that the Sustainability Committee may want to recommend to City Council, as outlined below:

1. Adopt a RECO consistent with today's report (effective approximately 2 years after adoption);
2. Adopt a RECO that differs with today's report (effective approximately 2 years after adoption);
3. Delay adoption of a RECO until a County-wide model ordinance is developed;
4. Don't adopt a RECO and amend the City's Climate Action Plan; or
5. No recommendation at this time.

Mr. Pearson said that this concludes his presentation.

Bill Quirk, Council Member, thanked everyone for being at the meeting tonight, and clarified that they are not rulers, they are representatives. Mr. Quirk said that he thinks it is critical that we fight global warming; however, the Committee is losing the argument with the community, and thinks they should begin with a voluntary program. Mr. Quirk said that they are partly losing the argument because they should have removed the change on sale; this has all the realtors talking with the community, and also it doesn't make sense with the status of the current market. Mr. Quirk said that we should start

with a model ordinance and a lot of education, and also educate the community about the problems with global warming. Mr. Quirk indicated that Berkeley put a measure on the ballot asking the community to come up with a goal for reducing greenhouse gases, and they did and it brought the community out and a lot of the discussion forward. He said that as a member of Hayward Area Shoreline Planning Agency, they brought forward a plan to deal with sea level rise, and if something is not done we are going to lose part of Hayward's industrial district and the City's sewage treatment plant. Mr. Quirk said he thinks we need to start with something that is voluntary and that he doesn't see them proceeding any other way at this time; however, he wants to hear what his colleagues have to say.

Olden Henson, Council Member, thanked everyone for attending the meeting and for their interest, and thanked staff for all their hard work. Mr. Henson wanted to point out that staff is not initiating, staff is moving forward at the directive of the Sustainability Committee, who wanted to see how we can address some of the issues that are relative to reduction in carbon footprint. Mr. Henson said that the key to any adopted program are incentives; and to have a major program without any incentives or funding mechanisms, will probably be a failure up front. He said that one of the things that he has done in the past year or so is to represent the City on the Stopwaste.org board, which is the waste authority for the County. Mr. Henson said that he had a couple of opportunities to look at RECO audiences in that venue as well, and asked that staff to look at Hayward proposals and what could be done, in lieu. Mr. Henson said that he just learned from the Executive Director of Stopwaste.org, that his concern with Hayward's RECO at this moment, is that another program was recently unveiled called Energy Upgrade California, which is an incentive program. He said if Hayward were to move forward with a RECO, there might be confusion with the mandatory programs and the incentive programs, such as the PG&E incentive programs, many of which are forthcoming, and this would offset some of the RECO actions. Mr. Henson indicated that the main program that Stopwaste.org staff has been working on over the last year is with the Department of Energy on major grants that might make the RECO unnecessary. In addition to that is the PACE program with Fannie Mae and other agencies, and it may be that the many incentive programs along with the City of Hayward's program, may offset that need, however, we do not know that yet. Mr. Henson said that he is suggesting, as one member of the Committee, to wait for a model ordinance from the entire County, so that Hayward is not stepping out and providing another City an unfair advantage over Hayward.

Mr. Henson said there are a number of recommendations from staff, and then asked staff for their recommendation. Mr. Rizk responded that he thinks there are valid reasons for delaying in order to allow for several things to happen, such as education and outreach, full utilization of incentives, including any future incentive programs, and the ability to collect data to see how efficient some of these improvements would be for those who do take advantage of the incentives. Mr. Rizk said the final thought is to have staff review their analysis on what the capacity is of City staff, including future staffing levels, would be to administer and oversee this type of ordinance and implementation. Mr. Henson

said that his suggestion, more specifically, is to look at what all the other cities are doing and to come under one umbrella, and approach it this way. He said that he thinks it is critical to educate the community. Mr. Henson addressed Mr. Stark in asking that his organization do their part as well. He asked that when the incentive programs roll out, that Mr. Stark make sure that these incentive programs are out there and indicated that there is an education component that is needed on his part, as well. Mr. Henson said to Mr. Stark that he has asked something of the Committee, and the Committee is asking something of him, and he fully expects that to go into play.

Sara Lamnin, Planning Commissioner, said that she also wants to add her thanks to everyone that has done work on this, including the community and that they attended this meeting and are speaking out. Ms. Lamnin said the government's role is to manage and to protect, that is what people were appointed for, and that is what people were voted for; but not to do what the community does not want. She said there must be community involvement and community engagement, so the question is whether we move forward. Ms. Lamnin said that she heard some good support and good ideas about delay in terms of what else could happen. She thinks that focusing on education and making sure that the incentives get out through homeowners groups and community networks in the City, and giving people the tools that they need to make sure we are all taking care of each other, that energy conservation will provide for us. Ms. Lamnin said that she is hesitant because 2020 is nine years away, so if we delay for everybody to get together on the same page, we are never going to get there. She said she is wondering if instead of a prescriptive measure where people have to do these things, that we talk about a date certain home energy audit, with solid information that helps to make sure that what is happening in a home, is what needs to happen, to allow people flexibility with a really clear goal. Ms. Lamnin said in addition, to clarify that this is where we are trying to get to; here is what the City has already done to try and meet its requirements; here are the next steps; and here is the role that we are asking everybody in the City to do. Ms. Lamnin asked that we do not exempt people who are low income or have disabilities from participating. She said that she does not mean we add extra burden to people who are already burdened; she means that we do not eliminate the opportunity for everybody to participate. She said there are many free programs and ways to mitigate costs to share burdens; however, if someone is living in substandard housing, that could be a huge burden to the environment and if we do not address that, she thinks we are doing a disservice to the community, as well.

Al Mendall, Planning Commission, said that this is very difficult for him and there is no doubt in his mind that we need to do this. He said that global warming is real and it is getting worst every year, and many speakers tonight acknowledge that we need to do something to combat global warming. He said when the green building ordinance came before the Committee, the builders came and said yes, we need to do something about global warming, but not with new construction. If we have something that is going to affect businesses, the business owners will come down and say we need to do something, but do not affect businesses. Mr. Mendall said if we all take that approach, then we get paralyzed and do nothing. He said that doing nothing is not acceptable. Mr. Mendall

said that he lives three miles in from the bay and his house is 16 feet above sea level. Mr. Mendall said that global warming is going to affect Hayward first; 20 percent of the town is approximately 10 – 15 feet above sea level or less. He said that we just can't hope for the best and do nothing. Mr. Mendall said that he cannot disagree with what some of his colleagues are saying regarding trying to force something down the community's throats; it is not the right way to do it, even though he knows it the right thing to do. Mr. Mendall said that he is left in a little bit of a pickle; to do nothing is wrong; to force something that the community is opposed to is wrong; and that he honestly does not have an answer, except move to higher grounds.

Dianne McDermott, Planning Commissioner, thank everyone for their various opinions and observations. She said she works in a financial investors office and is familiar with lenders, FHA, conventional, Freddie Mac, etc., and it does concern her with the timing, and we need to do something. She said that Hayward is suffering a decline in market value and it is difficult to sell a home. She said that some folks have already done work to improve heating and conservation and now, according to what is being required, it would have to be certified and an inspector would have to come and look at it. Ms. McDermott said she is not against the fact that we need something to come into place, she just doesn't think, based on the timing, if we can do it, or not. She said she believes that we should make incentives available for those people that want to do upgrades voluntarily, and measure the success of those improvements to see how significant they really are. Ms McDermott said that in taking a look at implementation, we don't really have proper staffing at this point; it would require hiring and right now we have budget concerns and we are losing funding. Ms. McDermott said that she feels education is important and that we continue to do our best to make the public aware of what is going on with education.

Mayor Sweeney said that it appears that the consensus of the Committee is to start with a voluntary program, look at the County-wide model ordinance, when available, and emphasize education and outreach.

Mr. Quirk said that he would like to add that the community has said that all we need is a voluntary program to get the improvements, and we need to see that happen. Mr. Quirk said that once we have a loan program and we have shown that payments on the loan are going to be saving energy, then we can move forward with the mandatory program. Mr. Quirk said that all those things need to happen first and we are still going to need to sell it to the community before we can move forward.

Mr. Mendall said that those incentive programs have been in place for a long time and they have not worked. He said that we have new incentives and different programs now and that he is not optimistic that they will work. Mr. Mendall said that for those of you that don't want to see something mandatory, he will challenge you, encourage you, plead with you, to help us to make the voluntary path work. He said that if we can do it in a voluntary way to meet the goals that we need to meet, then great. He asked the audience to help the City to get different results this time or when we come back in three or four

years, we may end up with a different result and a difficult kind of RECO that would not be as friendly.

Mayor Sweeney said that Mr. Mendall's point is a good one. Mayor Sweeney addressed Mr. Rizk and said that this leads to another element of some sort of monitoring to track and see if the walk is matching the talk. Mayor Sweeney said if it does not match the talk, then of course the next logical step would be the sort of steps that Mr. Mendall is suggesting. Mr. Rizk responded that they anticipate monitoring the program and part of the requirements for participating in our program for rebates, is to provide data and allow PG&E to submit that data. He said it would help track our overall greenhouse gas emissions and update our inventory.

Mayor Sweeney asked if there were further questions; there being none, Mayor Sweeney closed the RECO discussion.

#### IV. Summary of Last Climate Action Management Team Meeting

Mr. Mendall said that many of the items that were discussed tonight were discussed at the last CAMT meeting. There was general approval for the staff recommendations with one descent from Mr. Stark who wanted it said that the RECO could have a negative effect on a buyer's ability to qualify for purchase financing.

#### V. General Announcements and Information Items from Staff

Mr. Rizk said that the City Council is going to have a Work Session on the RECO on May 31. Also, there will be a Green Expo in the rotunda on March 11, from 12:00 – 7:00 pm, and everyone is invited to that event. Mr. Rizk said that staff would continue to attend the Neighborhood Partnership meetings and get the word out on the various incentive programs, including the cities that are getting ready to launch.

Mayor Sweeney said that Mr. Rizk has been attending the meetings and does an excellent job in presenting the program. Mayor Sweeney thanked Mr. Rizk, Mr. Pearson, Mr. Gable, and everyone for their good work.

#### VI. Committee Referrals and Announcements – none.

#### VII. Next Meeting: Wednesday, April 6, 2011

Update on Food Scraps Programs

Senate Bill 7 – Water Conservation

Annual Review of CAP Implementation and Priorities

#### VIII. Adjournment: Meeting adjourned at 6:18 p.m.

Public Comments on the Residential Energy Conservation Ordinance

# CHERRY CREEK

MORTGAGE COMPANY

*John  
Mullam*

4301 Hacienda Drive, Suite 120  
Pleasanton, California 94588  
(925) 828-7057

March 1, 2011

RE: Residential Energy Conservation Ordinance (RECO)

To Whom It May Concern:



The purpose of this letter is to explain our policy, as required by our investors, regarding "holdbacks" for repair/improvement and credit for future repairs. I am afraid that the inspections and repairs the City of Hayward is considering will only serve to decimate the home values in Hayward even more. If people cannot get loans for the reasons stated below, they will be driven to purchase property in other cities that do not have such repair requirements. With the housing recovery so fragile, I think this is exactly the wrong policy to implement. While a noble idea, mortgage lending rules will not support such requirements at this time.

03/08/11 09:57 CLK

Our investors will not allow:

- 1) Credit towards repairs – only credit for closing costs
- 2) Holdback of funds for repairs to be completed after close of escrow

In addition, a limit is imposed on the amount of credit towards closing costs. If the credit exceeds the allowable limit, the additional funds will be returned to the seller and cannot be used towards repairs.

I just cannot see how the City of Hayward's thoughts on home repairs could be implemented without seriously damaging the value of property in Hayward even more than it already has been.

Should additional information be required, please contact me at 925-474-1115.

Thank you.

A handwritten signature in cursive script that reads "Claudia Kim".

Claudia Kim  
Loan Officer  
CA-DOC 295059

## Erik Pearson

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**From:** Miriam Lens  
**Sent:** Thursday, March 03, 2011 12:10 PM  
**To:** Barbara Halliday; Barbara Halliday; Bill Quirk; Francisco Zermeno - Forward; Mark Salinas; Marvin Peixoto; Michael Sweeney; Mike Sweeney; Olden Henson; Olden Henson  
**Cc:** Fran David; Joanne Burkman; David Rizk; Erik Pearson  
**Subject:** Re: Residential Energy Conservation Ordinance

Dear Mayor and Council Members:

At the bottom of this e-mail you will find a message from Julie Machado regarding the RECO report, which was presented to the City Council Sustainability Committee meeting on March 2, 2011.

Thanks,

Miriam

*Miriam Lens, CMC MPA*

**City Clerk**

777 B Street, 4th Floor  
Hayward, CA 94541  
Phone: 510-583-4401  
Fax: 510-583-3636

[www.hayward-ca.gov](http://www.hayward-ca.gov)

[City Clerk's Blog: www.hayward-ca.gov/cityclerk/](http://www.hayward-ca.gov/cityclerk/)



Apply for Passports at the Office of the City Clerk

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**From:** Julie Machado [mailto:juliemac@pacbell.net]  
**Sent:** Thursday, March 03, 2011 6:43 AM  
**To:** CityClerk  
**Subject:** Fw: Fwd: Residential Energy Conservation Ordinance

----- Forwarded Message -----

**From:** Francisco Zermeno <fzermeno@chabotcollege.edu>  
**To:** juliemac@pacbell.net  
**Sent:** Thu, March 3, 2011 6:05:30 AM  
**Subject:** Re: Fwd: Residential Energy Conservation Ordinance

Hola,  
thank you for your enote  
good points  
please send it to your City Clerk, Miriam Lens so that they will be taken into account  
have a good upcoming weekend!  
Teach on!

>>> Julie Machado <[juliemac@pacbell.net](mailto:juliemac@pacbell.net)> 03/02/11 6:48 PM >>>

According to the report on the City's website for today's meeting on RECO, it doesn't look to me like they are addressing historical houses in an adequate way. This ordinance appears to put the burden on the homeowner to know that there's a historical building ordinance and to prove it to staff that they should be allowed to follow it instead of these new RECO guidelines.

I am concerned that the upshot will be anyone with a historical house will just go ahead and replace windows, etc, compromising the integrity of their building, not knowing any better and feeling forced to meet the RECO requirements. (Many contractors also don't know how to honor historical aspects of a structure while making improvements, so relying on the contractors won't help, either.)

While I am a big fan of putting in insulation and reducing global warming, we also have to be sensitive to our historical resources. And replaced windows are a big problem in historic homes, as the types of windows put in are frequently not appropriate to the design of the structure. This can completely ruin the historical integrity of a structure. And to a trained eye, the aesthetic results can also be disastrous.

I am hopeful that this will be a voluntary ordinance. Even better, this aspect of the ordinance regarding historic structures should be cleaned up and clarified--for the benefit of homeowners, staff, and contractors.

Thank you,

Julie Machado

## Erik Pearson

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**From:** FLORENCE SAMUELS [flosamuels@msn.com]  
**Sent:** Tuesday, March 15, 2011 4:52 PM  
**To:** Erik Pearson  
**Subject:** RE: RECO - Samuels on 3-15

Being that information on this proposal has never been disseminated to property owners for the entire year it was under consideration I was not at the meeting. And being that the minutes of that meeting were not part of the .pdf on the Hayward website when I saw the info on the RECO, I was doubly not aware of it.

Just a suggestion but you guys really need to publicize things a lot better. The majority of home owners do not take the Daily Review nor do they check the Hayward website. I only saw it because I am on CAC and was looking for something related to paratransit. Now about 50 of my neighbors are ready to tar and feather the council members. Had this whole process been made known to homeowners way back last year, I and a lot more others would have probably been at the meeting where it was decided not to do so.

Flo Samuels

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From: Erik.Pearson@hayward-ca.gov  
To: flosamuels@msn.com  
Date: Tue, 15 Mar 2011 15:55:09 -0700  
Subject: RE: RECO

Ms. Samuels,

The RECO that has been discussed would not apply to condos. It would only apply to single-family homes and duplexes. The ordinance would apply to all single-family homes and duplexes regardless of whether they are rental properties or if they are owner-occupied.

As you may be aware, the Sustainability Committee, at their March 2 meeting, decided to recommend that the City Council not move forward with adoption of a RECO. Staff will be presenting that recommendation, along with a summary of previous discussions related to the RECO, at the May 31 Council meeting.

Please let me know if you have any other questions. Thanks.

Erik J. Pearson, AICP  
Senior Planner  
**City of Hayward**  
777 B Street  
Hayward, CA 94541  
tel: 510-583-4210  
fax: 510-583-3649  
[erik.pearson@hayward-ca.gov](mailto:erik.pearson@hayward-ca.gov)  
[www.hayward-ca.gov](http://www.hayward-ca.gov)

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**From:** FLORENCE SAMUELS [mailto:flosamuels@msn.com]  
**Sent:** Tuesday, March 15, 2011 1:40 PM  
**To:** Erik Pearson  
**Subject:** RECO

Erik

I recently learned about the proposed RECO ordinance and the fact that I learned about it one year after the City started spending money on investigating it does not go over well. However, because my neighbors want me to address this issue with the City Council as soon as possible, I need some information that I haven't been able to find. (Actually, after

plowing through all the info from the last meeting, I don't want to plow through any more.)

First, will RECO apply to condos?

Second, what is currently in effect that requires rental owners to meet the specifics of the proposed ordinance? Or are they considered as single family residence owners just by the fact that the property is a SFR/duplex?

Thanks, Flo Samuels

## Erik Pearson

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**From:** shrtmem@aol.com  
**Sent:** Monday, March 21, 2011 4:29 PM  
**To:** Erik Pearson  
**Subject:** Energy efficiency ordinance

Hello Eric,

I spoke with you on the phone, you told me you would pass this message along.

To Whom It May Concern:

I received notice of the proposed Energy Efficiency Ordinance in my water bill. There was a meeting regarding this proposal on March 2, but I did not receive my bill till last week! It is not fair to schedule a meeting, have the meeting and then invite the people this ordinance will effect AFTER the meeting.

I would like you to know that at this moment I am against this proposal. I am like many other home owners in Hayward. Just trying to make ends meet. At this time I could not afford to make any energy efficiency improvements on my home. I know I could save money in the long run with improvements, but I just cannot afford this at this time. Imposing this would be a hardship for many people in Hayward like myself. What would be the consequences if you create this ordinance and then people like me cannot comply?

Please rethink this proposal. At this time, it is not a good idea.

Janice McCready

## Erik Pearson

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**From:** Thegirlsrn@aol.com  
**Sent:** Thursday, March 24, 2011 4:37 PM  
**To:** Erik Pearson  
**Subject:** Energy efficiency ordinance--from Maureen Bessette

Do not agree that compliance should be required--would rather it be recommended. Some people could not afford the cost of compliance.

Maureen Bessette  
24881 Yoshida Drive  
94545

## Erik Pearson

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**From:** David Rizk  
**Sent:** Tuesday, April 12, 2011 10:55 AM  
**To:** Erik Pearson  
**Subject:** FW: RECO

FYI

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**From:** Fran David  
**Sent:** Tuesday, April 12, 2011 8:51 AM  
**To:** David Rizk  
**Subject:** FW: RECO

FYI

**FRAN DAVID**  
City Manager  
City of Hayward  
510.583.4300

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**From:** Bill Quirk [mailto:BillQuirkForHayward@comcast.net]  
**Sent:** Monday, April 11, 2011 9:41 PM  
**To:** 'Daniel Breaud'  
**Cc:** List-Mayor-Council  
**Subject:** RE: RECO

Dear Betty and Daniel,

The recommendation of the sustainability committee to the council is that the program be voluntary.

Richard Muller has complained about some exaggeration of global greenhouse science.

He testified to congress yesterday and I heard him say on the radio today that global warming is occurring and that a part of it is caused by humans. His research project is to find out how much is human induced and how much may be from other factors such as fewer volcanic eruptions or an increase in solar radiation.

Here is some of what was said on the radio program:

NEAL CONAN, host:

After they won the majority in the House of Representatives last November, Republicans promised new questions on climate change. Last month, the Committee on Science, Space and Technology called a panel of three scientists, a lawyer and an economist to testify, essentially to answer this question posed by ranking member Eddie Bernice Johnson, a Democrat from Texas.

Representative EDDIE BERNICE JOHNSON (Democrat, Texas): There seems to be some attitudes that there is an elaborate hoax orchestrated by the scientific community on global change. Based on your work, the three of you, do you agree that the global temperatures are rising and will continue to rise, and that greenhouse gas concentrations are at least partly to blame?

CONAN: Those at the witness table that day included Richard Muller, a professor of physics at Berkeley, considered by some as a climate skeptic. When he responded in the affirmative to both those questions, he found himself in the middle of a debate where emotion and politics intersect with science

You can read the transcript of the interview or listen the interview at:

<http://www.npr.org/2011/04/11/135320209/climate-change-skeptic-says-warming-is-real?ft=1&f=5>

I was doing modeling of global climate in the 1970s. The only thing wrong with our predictions on warming and that it is happening faster than we predicted, because of positive feedbacks in the earth atmosphere system that we could not model at the time.

## Bill

Bill Quirk  
26420 Parkside Drive  
Hayward CA 94542  
Home Phone 510-581-5498  
Email [BillQuirkForHayward@comcast.net](mailto:BillQuirkForHayward@comcast.net)

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**From:** Daniel Breaud [mailto:dbreaud@sbcglobal.net]  
**Sent:** Monday, April 11, 2011 5:52 PM  
**To:** List-Mayor-Council@hayward-ca.gov  
**Subject:** RECO

Dear Mayor Sweeney and City Council Members:

We are writing to vehemently oppose implementing RECO. We own our home and property. Should we decide to sell it then the RECO items should be considered. Government should not be allowed to demand changes to existing property. It's up to the property owner, the Government doesn't own our home.

We suggest you read Physics for Future Presidents (author Richard A. Muller) and the section on Climate Change/Greenhouse gas emissions. You're going down the wrong path!!

Thank you for your attention.

Betty Tatsuno Breaud  
Dan Breaud

1729 Osage Ct  
Hayward

April 11, 2011

To:

Mayor Sweeney, City Planner Eric Pearson and Hayward Sustainability Committee.

On reading the article "Hayward's green effort has a price" in the Daily Review I had to write. Then a few days later it seemed that Hayward came to their senses, and decided not to force homeowners to make costly changes to our homes. This week I received in my water bill that this ordinance is back on the agenda, so here is my letter.

In an ideal world this would be a wonderful plan. Everyone would have the money to pay for very costly permits, products and installers to make everyone in Hayward energy efficient.

This is not an ideal world!!  
Do any of the people running our city realize there are many people without jobs, without steady income, people losing their homes, people taking

Cuts in pay, people taking forced furlough days (another paycut), seniors living on fixed incomes with no extra money to pay for costly work on their old homes?

I think this is one more ordinance that will cause people not to buy a home in Hayward. Hayward already has more rentals than it needs --- with this ordinance you'll see more homeowners moving out of Hayward. This city needs more homeowners; not less.

Before you start making ordinances that harm our city: try to work to get HUSD to be a district that parents want their children to attend. Get the gang and drug dealers off our streets. Get the criminals that are shooting and attacking and stealing from our citizens and put them in jail.

When we first moved here (forty years ago) Hayward was a nice city; but it's going downhill. I really hate to have to say that.

I think part of the downfall is that too many people in Hayward government don't live in Hayward. They don't really care about our city. The same is true with Hayward fire fighters and police. Years ago, the people that ran Hayward had to live in Hayward. Now that's an ordinance I could agree with!

Thanks for your time and I hope you'll put this green ordinance in the trash can.

Sincerely,  
 A very concerned  
 Citizen of Hayward



**MINUTES OF THE SPECIAL CITY  
COUNCIL/REDEVELOPMENT AGENCY/HOUSING  
AUTHORITY MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, May 3, 2011, 7:00 p.m.**

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**MEETING**

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

**ROLL CALL**

Present: COUNCIL MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,  
Henson  
MAYOR Sweeney  
Absent: COUNCIL MEMBER None

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Lawson reported that Council met with Labor Negotiators pursuant to Government Code 54957.6, with Real Property Negotiators pursuant to Government Code 54956.8, and with Legal Counsel pursuant to Government Code 54956.9, and noted that Council took no reportable action.

**PRESENTATIONS**

**Business Recognition Award**

The May 2011 Business Recognition Award was presented to Fairfield Inn & Suites by Marriott. Located at 25921 Industrial Boulevard, Fairfield Inn & Suites has been opened since 2001 and employs 25 friendly individuals. Fairfield Inn & Suites has contributed to the Hayward community by: locating in Hayward; providing excellent accommodation opportunities for visitors; providing job opportunities to local residents; and contributing to the overall economic well-being of the Hayward community. General Manager Hassan Fallah accepted the award on behalf of Fairfield Inn & Suites. Fairfield Inn & Suites owner, Dilip Dahya, also thanked the City and the Hayward Chamber of Commerce.

**Bike to Work Day**

Mayor Sweeney proclaimed May 12, 2011, as Bike to Work Day. It was noted that the City of Hayward supports increased use of bicycles as a mode of commuting. Mayor Sweeney encouraged employees, residents, and visitors to support Bike to Work Day. Mr. Dave Campbell from East Bay Bicycle Coalition accepted the award and thanked the City for the proclamation and its sponsorship. Mr. Campbell noted that Team Bike Challenge is challenging the City Council and staff to form a team to participate, and at the end of the month the winning team will be rewarded.

## **PUBLIC COMMENTS**

Mr. Doug Ligibel, Grand Terrace resident, thanked City Clerk Lens for helping facilitate public records requests. Mr. Ligibel mentioned that property values in downtown Hayward have been deteriorating due to violent crime, graffiti vandalism and school performance and violence. Mr. Ligibel noted that the Downtown Neighborhood Watch Association submitted quarterly reports regarding the cost to abate graffiti and vandalism and encouraged others groups to do the same. He expressed interest in working collaboratively with the City Council to develop strategies to stop the deterioration of property values.

## **WORK SESSION (60-Minute Limit)**

### **1. Discussion of Proposed FY 2012 and FY 2013 Water and Sewer Rates and Connection Fees**

Staff report submitted by Public Works Director Bauman, dated May 3, 2011, was filed.

Public Works Director Bauman introduced Deputy Public Works Director Ameri who provided a synopsis of the report and highlighted that the public hearing for the proposed fees is scheduled for July 12, 2011.

In response to Council Member Peixoto's inquiry for the reason why costs are increasing at disproportionately higher rates compared to cost of living and inflation, Deputy Public Works Director Ameri said the major reason for the rate increases was that San Francisco Public Utilities Commission (SFPUC) was required to spend about \$4.3 billion on capital improvements. Mr. Ameri clarified that the City has a contractual agreement with the SFPUC to supply water to Hayward and explained that \$7 million from the Water Fund Working Capital balance was used to help defray part of the rate increase for residents and businesses.

Council Member Henson noted the proposed rates are expected to generate about \$17 million in revenue in FY 2012 and asked about the seismic system improvements. Deputy Public Works Director Ameri responded that most of the improvements should be in place by approximately 2016 and rate increases should plateau at \$4.40. Mr. Henson mentioned the Lifeline Program and Mr. Ameri explained there are lower water rates for low-income households, and lifeline and economic rates are lower sewer rates intended to encourage water conservation. Additionally, Mr. Ameri explained Proposition 218 requirements as stated in the report.

Council Member Zermeño stated that his family has been diligent in their water conservation efforts and now they are also faced with a rate increase.

Council Member Halliday sympathized with the proposed increase, but emphasized that the cost of water was attributed to the delivery system, which provides water that is fresh, clean and suitable to be placed back into the environment. Ms. Halliday encouraged continued water conservation measures.



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**CONSENT**

At Council Member Henson's request, item five was removed for further discussion.

2. Approval of Minutes of the Special City Council/Housing Authority Meeting on April 19, 2011. It was moved by Council Member Peixoto, seconded by Council Member Henson, and unanimously carried to approve the minutes of the Special City Council/Housing Authority Meeting of April 19, 2011.

3. Authorization for the City Manager to Execute a Professional Services Agreement for Programmable Logic Controller (PLC) and Supervisory Control and Data Acquisition (SCADA) Programming for the Installation of Emergency Sudden Loss Valves at Various Locations Project

Staff report submitted by Deputy Director of Public Works Ameri, dated May 3, 2011, was filed.

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

Resolution 11-040, "Resolution Authorizing the City Manager to Negotiate and Execute Professional Services Agreement for Programmable Logic Controller (PLC) and Supervisory Control and Data Acquisition (SCADA) Programming for the Installation of Emergency Sudden Loss Valves at Various Locations Project, Project No. 7023"

4. Approval of Professional Auditing Services Contract with Maze & Associates

Staff report submitted by Accounting Manager Gudino, dated May 3, 2011, was filed.

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

Resolution 11-041, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement Between the City of Hayward and Maze & Associates for Audit and Financial Services for the City of Hayward"

5. Assignment of Cinema Place First Amended Ground Lease and Approval of Second Amendment of Lease between Hayward Cinema Place, LLC and Century Theatres, Inc.

Staff report submitted by Assistant City Manager/Interim Redevelopment Agency Director Morariu, dated May 3, 2011, was filed.

Assistant City Manager/Interim Redevelopment Agency Director Morariu confirmed for Council/RA Member Henson that if the Cinema Place was leased to capacity the current value would be about \$15 million and added that the sales threshold of \$24 million was not expected to be reached by April 2014. Ms. Morariu said the major benefit of the amended lease was it secures Century Theatres as a tenant and allows stability for the property while securing the developer's financial investment.

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

Redevelopment Agency Resolution 11-09, "Resolution Authorizing the Executive Director to Execute an Assignment of the First Amended Ground Lease Between the Redevelopment Agency of the City of Hayward and Cinema Place Hayward, LLC, to the City of Hayward"

Resolution 11-043, "Resolution Authorizing the City Manager to Execute an Assignment of the First Amended Ground Lease Between the Redevelopment Agency of the City of Hayward and Cinema Place Hayward, LLC, to the City of Hayward"

Resolution 11-044, "Resolution Approving the Terms of the Proposed Second Amendment of the Lease Between Hayward Cinema Place, LLC, and Century Theaters, Inc."

6. Route 238 Corridor Improvement Project: Approval of a Contract for Adaptive Traffic Management System Software

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 3, 2011, was filed.

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

Resolution 11-042, "Resolution Approving a Contract for Adaptive Traffic Management Software for the Route 238 Corridor Improvement Project, Project No. 5117"

## **PUBLIC HEARING**

7. Master Fee Schedule/Fine and Bail Update - *Continued from April 26, 2011*



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Staff report submitted by Accounting Manager Gudino, dated May 3, 2011, was filed.

Interim Finance Director Stark provided a synopsis of the report and noted that the proposed resolution needs to be corrected to reflect an effective date of July 4, 2011.

Council Member Peixoto asked for the rationale behind Alameda County's proposal to collect an extra \$3.00 surcharge for parking tickets. City Manager David said the surcharge applies to all cities and counties in accordance with State law.

Council Member Salinas relayed a conversation he had with a childcare facility owner regarding fire inspection fees and he asked if there are payment plans available for businesses. City Manager David responded that payment plans are available for hardship cases and efforts are made to accommodate and educate residents.

In response to Council Member Henson's inquiry about infractions for skateboarding on a sidewalk and the revenue generated, City Manager David responded it was covered under the State bail schedule and noted there was a defined split of the fines among the State, counties and cities as defined by State law.

City Manager David confirmed for Council Member Zermeño that staff was not aware of any complaints from the community.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:03 p.m.

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

Resolution 11-045, "Resolution Adopting a Revised Master Fee Schedule, Including a Revised Fine and Bail Schedule, Relating to Fees and Charges for Departments in the City of Hayward and Rescinding Resolutions No. 10-061 and No. 09-085 and All Amendments Thereto"

8. Request to Change the General Plan Designation from Medium Density Residential to High Density Residential and to Change the Zoning from Medium Density Residential to Planned Development to Accommodate Twenty-two Affordable Senior Housing Rental Units Proposed at the Corner of B and Grand Streets - General Plan Amendment Application No. PL-2010-0368 and Zone Change Application No. PL-2010-0369 - Eden Housing (Applicant); Hayward Redevelopment Agency/City of Hayward (Owner) – *Continued from April 19, 2011*

Staff report submitted by Senior Planner Buizer, dated May 3, 2011, was filed.

Planning Manager Patenaude announced the report and introduced Senior Planner Buizer who provided a synopsis of the report and mentioned that two community meetings were conducted on March 30 and April 13, 2011, respectively.

Senior Planner Buizer confirmed for Council Member Halliday that Eden Housing's existing adjacent facility and proposed facility could share the group open space areas. Ms. Halliday emphasized the need for a no parking/drop-off area in front of the entry way of the proposed facility.

In response to Council Member Henson, Senior Planner Buizer confirmed that staff was involved in meetings between Eden Housing and the B Street residents and she spoke about the design changes that resulted from the two meetings. Mr. Henson commented that the redesigned elevations are much improved and echoed Council Member Halliday's comments about the need for a resident drop-off area in front of the proposed senior facility.

Mayor Sweeney opened the public hearing at 8:19 p.m.

Mr. Angel Alegria, South San Francisco resident, spoke on behalf of his parents, Maria and Miguel Alegria who own the property next to the proposed facility. Mr. Alegria noted his parents were agreeable to the changes to the proposed facility, but objected to keeping the tree. Mr. Alegria felt the open space would be more beneficial if the tree was removed and this would be the best time to conduct the tree removal without any impediments.

Mr. Mark Wagter, B Street resident, spoke on behalf of B Street residents and said they were pleased with the design changes. Mr. Wagter commended Eden Housing for their professionalism and noted that over 90% of their concerns were addressed in the new design.

Ms. Nitza Zuppas, B Street resident and developer, noted the B Street residents' appreciation for Council's consideration of the concerns expressed and for Eden Housing's collaboration in addressing and resolving them. Ms. Zuppas also noted this was a disruptive process for all parties involved. She suggested that the notification area for future projects, especially concerning the B Street Design District, should be widened to increase outreach, and that the design proposals that are presented to Council and the community should be ready for review so residents are not tasked with redesigning the projects themselves.

Mr. Woody Karp, Project Developer for Eden Housing, thanked Council and staff for the process and the community for their valuable comments. Mr. Karp noted the issue of the tree should be reevaluated. He indicated there are storm water drainage issues that are complicated and costly to resolve with the tree in place. He agreed with Mr. Alegria that to remove the tree after the facility was constructed would be more complicated and costly. Mr. Karp concurred with Council Member Halliday's suggestion to designate a drop-off location in front of the facility and noted that it would be included in the precise plan that will be presented to staff.



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Mr. Jim Drake, Franklin Avenue resident, spoke about how important it was to make sure senior facilities are single level and or have elevators. He added that he would like to see the tree saved.

Mayor Sweeney closed the public hearing at 8:32 p.m.

Council Member Salinas acknowledged that the collaboration process was successful and thanked the community and Eden Housing for the outcome.

Council Member Halliday thanked the B Street community and Eden Housing for their joint efforts. In reference to noticing meetings, she suggested doing so beyond the legal requirement and utilizing a Neighborhood Partnership groups database and sending notifications via e-mail. Ms. Halliday made a motion per staff recommendation and agreed to preserve the tree as it was a landmark. Council Member Zermeño seconded the item and echoed maintaining the tree.

Council Member Quirk thanked the B Street neighbors and Council for their input and concurred with Council Member Halliday. In response to Council Member Quirk about what can be done in the future to notify neighborhoods and go beyond the minimum 300 feet radius, City Manager David responded staff is researching options to identify Neighborhood Partnership groups and interest groups and to include them into the notification process. She added that the cost of mailing notices and the time to configure a database are challenges. Ms. David mentioned that the Neighborhood Partnership groups have proven to be an effective tool to disseminating information and asked that neighbors continue to partner with the City. Mr. Quirk commented that he would like to see the tree removed as it was a problem for the neighbors and the developer.

Council Member Henson commented the process works when the community gets involved and supported doing more outreach. He suggested retaining the tree as there was a Tree Ordinance in place and supported the motion on the floor.

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

Resolution 11-046, “Resolution Adopting the Negative Declaration and Approving a General Plan Amendment and Zone Change Application Pertaining to a Proposed Twenty-Two-Unit Senior Housing Facility at B and Grand Streets”

Introduction of Ordinance 11-\_, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property at the Southwest Corner of B and Grand Streets in Connection with Zone Change Application No. PL-2010-0369 Relating to a 22-Unit Senior Housing Facility”

## LEGISLATIVE BUSINESS

9. Disposition and Development Agreement Between the City of Hayward and Eden Housing, Inc. ("Eden") for the "B" and Grand Senior Housing Project – *Continued from April 19, 2011*

Staff report submitted by Housing Manager McLaughlin, dated May 3, 2011, was filed.

Assistant City Manager Morariu announced the item and introduced Housing Manager McLaughlin who provided a synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 8:45 p.m.

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

Resolution 11-047, "A Resolution Approving Execution and Negotiation by the City Manager of a Disposition and Development Agreement with Eden Housing, Inc. to Cause the Development of a Very Low Income Senior Housing Project at the Corner of B and Grand Streets"

10. Adoption of Interim Moratorium Ordinance Regarding Supermarkets of 20,000 Square Feet or More or Any Retail Store Containing at Least 20,000 Square Feet of Area Devoted to Sale of Grocery or Non-Taxable Items – *Continued from April 26, 2011*

Staff report submitted by Development Services Director Rizk, dated May 3, 2011, was filed.

City Manager David noted that when staff brought the proposal to Council, there was urgent imminent action proposed at two sites and staff realized there were different elements to be reviewed, but insufficient time. Ms. David added that when staff considered a city-wide moratorium, it resulted in unintended consequences and was in conflict with two Council priorities: to sustain values and the sustainability of the community; and to encourage reasonable and quality businesses coming into the City. She mentioned that the application at Whipple Road had caused the urgent response and noted that currently, the application was going through an administrative process that would be completed in two to three weeks after which time staff could review the elements that concerned Council and discuss further. City Manager David asked Council for guidance regarding the moratorium and noted the urgency no longer existed. Ms. David said staff needed to review other elements which could be conducted through the administrative process without a moratorium, unless Council preferred otherwise.

Council Member Quirk mentioned he was ill, and therefore absent, when the item was initially brought before Council and thanked his colleagues for continuing the item. Mr. Quirk indicated it seemed that staff was not recommending a moratorium at this time and Council did not want to interfere with ongoing negotiations at Southland Mall or place further burden on the Whipple Road



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site. Regarding Mr. Quirk's inquiry about grocery stores and the review process timeline, City Manager David noted that the Whipple Road site would be administratively reviewed in two to three weeks and, in terms of grocery stores at other sites, staff could perform an economic analysis, impact review, sustainability and quality analysis on an independent basis and provide opportunity for Council review.

In response to Council Member Henson's inquiry related to traffic and economic impacts, City Manager David noted they could be made part of the administrative review process that could be strengthened as staff reviews amendments to the existing Zoning Ordinance.

Mayor Sweeney opened the public hearing at 8:53 p.m.

Ms. Deanna Bogue, Poinciana Street resident, spoke about the need for a grocery store in the Southgate neighborhood.

Mr. Edward Bogue, Poinciana Street resident and Southgate Homeowners Association President, noted that over 200 people submitted e-mails and petitions about the need for a grocery store. Mr. Bogue said that a grocery store was a business generating site. Mr. Bogue mentioned that the moratorium would impede negotiations with prospective businesses and would diminish credibility for the neighborhood. He was not in favor of the moratorium and was glad to learn that staff was considering other options.

Mr. Roy Gordon, Stanhope Lane resident, spoke about the importance of creating jobs for Hayward. Mr. Gordon said the supermarkets under negotiations at Southland Mall and Whipple Road would provide much needed jobs in Hayward and shopping opportunities for the neighborhoods. He mentioned that at Southgate Neighborhood Partnership meetings neighbors expressed interest for full-service supermarkets in Hayward. He urged Council to not approve the proposed moratorium as it would have a negative impact on the City, or at minimum, exclude Southland Mall from the moratorium.

Mr. Kim Huggett, Fairview Avenue resident and President of the Hayward Chamber of Commerce, spoke on behalf of the 600 business members of the Chamber in opposition of the proposed moratorium. Mr. Huggett noted the Chamber was working in collaboration with the City to attract businesses to Hayward and asked Council to listen to the community's request for grocery stores. Mr. Huggett asked staff to not hold up progress at any of the sites by way of a moratorium, but instead use the permit review process, which allows for input from the community.

Ms. Veronica Curley, General Manager for Southland Mall, expressed her strong opposition to the proposed moratorium. Ms. Curley asked for Council's support to not approve the moratorium or to at least exclude pre-existing grocery uses. Ms. Curley confirmed for Council Member Peixoto that Southland Mall was in negotiations with a prospective tenant, sales were doing better, and the new policing team was attracting prospective businesses and clientele.

Mr. Wilson Wendt with the Law Firm of Miller, Star and Regalia, representing Hayward 880, LLC, owner of the Whipple Avenue property, referred to copies of materials submitted including the existing 2004 Conditional Use Permit (CUP) and the process in which environmental and economic impacts were analyzed and mitigated. Mr. Wendt urged Council to not adopt the urgency ordinance and was content that staff was not recommending the moratorium at this time.

Mr. Daniel Tempink, Managing Member of Hayward 880, LLC, noted the Whipple Road site currently has an 87% vacancy rate and had been struggling without an anchor tenant. Mr. Tempink said the owners were excited about the opportunity to revitalize this center, reduce blight by attracting new tenants and amenities to the area, provide a much needed full-service grocery store, and also bring tax revenue to the City. He noted that the adoption of the ordinance would deprive the owners of their legal right to use their property and likely force them into foreclosure. Mr. Tempink added that construction and tenant improvements will be over \$3 million, which will generate construction jobs. He urged Council to not approve the proposed moratorium.

Ms. Deborah Perry, real estate broker with Grubb and Ellis and hired by Hayward 880, LLC to market a replacement tenant at the former Circuit City site, opposed the proposed moratorium. Ms. Perry said the full-service grocery store would help support the City, enhance the neighborhood, generate jobs for the community, and increase sales tax revenue. Ms. Perry provided an aerial map of the City that highlighted vacancies which are 20,000 square feet and above.

Mr. John Sechser, Director of Retail Properties for Grubb and Ellis, spoke on behalf of retailers and commercial brokers of Northern California. Mr. Sechser noted that over the last six months he had been involved in conducting sessions for cities on how to attract retailers, enhance their economic basis, and improve job growth. Mr. Sechser urged Council to be proactive in listening to the community. Lastly, he added that communities have embraced successful full-service grocery stores at former Circuit City sites.

Ms. Roxanne Stone, San Jose resident and Wingstop business owner at B Street and Whipple Road said the site at Whipple Road was not safe for the few businesses that remain and noted that it has been a struggle to stay in business and provide a service to the community. Ms. Stone urged Council to not approve the proposed moratorium and allow Hayward's small businesses to survive.

Ms. Cathy Conner, Property Manager for Hayward 880, LLC, mentioned that Mr. Tempkin and his family have been vigilant in keeping the Whipple Road property safe and attractive by hiring security guards. Ms. Conner shared the multiple illegal dumping, graffiti and vandalism that the property had suffered and stressed the importance of having a major tenant at the site.

Mr. Jason Lu, Ono Hawaiian BBQ manager, shared problems with break-ins and vandalism at his establishment as a result of the Circuit City closure. Mr. Lu noted that his employees did not feel safe at night and urged Council to not approve the proposed moratorium.

Mayor Sweeney closed the public hearing at 9:24 p.m.



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Council Member Quirk reported that Council received numerous phone calls, e-mails and reports of phone calls about the proposed moratorium and noted that staff was no longer recommending it.

Mr. Quirk made a motion opposing the interim ordinance and asking staff to continue to study uses in Hayward and issues associated with economic and traffic impacts, and sustainability issues, and to continue processing applications according to existing Zoning Ordinance regulations. Council Member Zermeño seconded the motion.

It was moved by Council Member Quirk, seconded by Council Member Zermeño, and carried unanimously, to oppose the interim ordinance and direct staff to continue to study uses in Hayward and issues associated with economic and traffic impacts, and sustainability issues, and to continue processing applications according to existing Zoning Ordinance regulations.

**COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS**

Council Member Zermeño invited all to the 5 de Mayo Celebration on Saturday May 7, 2011, from 10:00 a.m. to 7:00 p.m., at the City Hall Plaza

Council Member Salinas acknowledged staff for launching the online quarterly newsletter, Hayward Highlights, and encouraged everyone to visit the City's website and subscribe.

Council Member Henson announced a workshop on May 14, 2011, at the Sunol Golf Course to discuss Sustainable Community Strategy hosted by the Metropolitan Transportation Commission, Association of Bay Area Governments and County Transportation Commission.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 9:29 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward  
Chair, Redevelopment Agency/Housing Authority

**ATTEST:**

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Miriam Lens, City Clerk, City of Hayward  
Secretary, Redevelopment Agency/Housing Authority



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**MEETING**

The Police Honor Guard made a presentation of colors. The Meeting of the City Council was called to order by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Lieutenant Mosier.

**ROLL CALL**

Present: COUNCIL MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas,  
Henson  
MAYOR Sweeney  
Absent: COUNCIL MEMBER None

City Attorney Lawson reported that Council met pursuant to Government Code 54956.9 regarding Licata v. City of Hayward, WCAB No. ADJ6701810 and Council unanimously approved the settlement of the case. Mr. Lawson added that Council also met pursuant to Government Code 54957 regarding City Attorney's Performance Evaluation, and pursuant to Government Code 54957.6, regarding labor negotiations, and there were no reportable actions.

**PROCLAMATION**

A short video clip was shown prior to issuing the proclamation.

**National Police Week – May 15 – 21, 2011  
Peace Officers' Memorial Day – May 15, 2011**

In 1962, President John F. Kennedy signed Public Law 87-726 designating May 15 as Peace Officers' Memorial Day. Mayor Sweeney proclaimed the week of May 15 through May 21, 2011, as National Police Week and May 15, 2011, as Peace Officers' Memorial Day. Hayward Police Chief Ace accepted the award on behalf of the Police Department.

**PRESENTATIONS**

**Commission on Accreditation for Law Enforcement Agencies (CALEA)  
Award of Accreditation**

Police Chief Ace noted that Hayward was accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) on March 26, 2011, and introduced Lou Dekmar CALEA Commission Chair and Police Chief of LaGrange, Georgia. CALEA Chair Dekmar, on behalf of CALEA, thanked Council for the invitation and spoke about the standards and benefits of being accredited. He noted that CALEA was created in 1979 as a credential authority through the joint

efforts of the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs' Association, and the Police Executive Research Forum. He noted that the Commission Board is composed of 21 members, 11 of whom are law enforcement practitioners and the remainder selected from the public and private sectors.

Mr. Dekmar presented the award of accreditation to Mayor Sweeney, Police Chief Ace, Lieutenant Mosier, Captain McAllister, and Captain Palermini. Chief Ace accepted the recognition on behalf of the City and thanked the Police Department and City staff. Mayor Sweeney thanked members of the Police Department and acknowledged the contributions of former City Manager Jones and former Police Chief Plummer.

### **Annual Recycling Poster and Essay Contest Awards**

Mayor Sweeney welcomed the winners of the City of Hayward's Recycling Poster and Essay Contest Awards and acknowledged the teachers' support. Mayor Sweeney noted this year marked the 28th Annual Clean-up Days Campaign and thanked the Keep Hayward Clean and Green Task Force for their efforts. He mentioned that there were 595 entries from 29 Hayward schools. He thanked all the students and teachers for their participation and the five judges from the Hayward Arts Council. Council Member Henson noted that the Annual Clean Up event was going to be held on May 21, 2011, at Weekes Park. He congratulated all the participants and acknowledged the various businesses for providing generous contributions. Council Member Henson announced that winners of the Recycling Poster and Essay Contest would receive gift certificates that can be used at variety of stores in Hayward. Third place winners received a \$100 gift certificate, second place winners received a \$150 gift certificate, and first place winners received a \$200 gift certificate. He then acknowledged the teachers of contest winners who received a \$100 gift certificate for first place, a \$75 gift card for second place, and a \$50 gift certificate for third place. He then asked Mayor Sweeney to draw names of students for this year's two bonus prizes of \$200 each. Mawfik Omar was the essay winner and Cleare Abarca was the poster winner. Mr. Henson congratulated all and invited all to enjoy light refreshments in Room 2A.

Mayor Sweeney asked for a recess at 8:02 p.m., and reconvened at approximately 8:07 p.m.

### **PUBLIC COMMENTS**

Mr. Doug Ligibel submitted a speaker card but did not speak.

Mr. Charlie Peters, with Clean Air Performance Professionals, referenced materials provided to Council related to Senate Bill 781, Senator Feinstein's proposed legislation that would significantly reduce the price of gasoline and bring down the price of commodities. Mr. Peters petitioned Council to support Senator Feinstein's efforts. He also directed the audience to the California Department of Motor Vehicles website to obtain clarification about upcoming changes related to smog checks. There was Council consensus for staff to draft a resolution in support of Senate Bill 781 (Feinstein) Ethanol Subsidy and Tariff Repeal Act.



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Mr. Edward Bogue, Poinciana Street resident, invited the public to the Tip A Cop Fundraising event in support of the Special Olympics to be held at Applebee's on May 26, 2011. He encouraged everyone to attend.

Ms. Linda Mandolini, of Eden Housing, presented the City with a World Habitat Award 2010, which was given to Eden Housing for the Walker Landing project for promoting innovative housing policy and practice. Ms. Mandolini mentioned that Hayward's Inclusionary Ordinance is a model for the State of California and jurisdictions throughout the country.

### **CONSENT**

At the request of Council Member Henson, consent item three was removed for further discussion.

1. Approval of Minutes of the City Council Meeting on April 26, 2011

It was moved by Council Member Peixoto, seconded by Council Member Halliday, and carried unanimously, to approve the minutes of the City Council Meeting of April 26, 2011.

2. Sewer Replacement at Linden, Madrone, and Beech Street Easement Areas: Approval of Plans and Specifications and Call for Bids

Staff report submitted by Deputy Director of Public Works Ameri, dated May 17, 2011, was filed.

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

Resolution 11-048, "Resolution Approving Plans and Specifications for the Sewer Replacement at Linden, Madrone and Beech Street Easement Areas Project, Project No. 7547, and Call for Bids"

3. Pavement Rehabilitation – D Street, Huntwood Avenue, Industrial Parkway SW, Second Street: Award of Contract

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 17, 2011, was filed.

In response to Council Member Henson's concern about the construction work along Mission Boulevard and plans to mitigate impacts to the public, Director of Public Works Bauman said the Top Grade Construction and staff will minimize impacts to the public.

It was moved by Council Member Henson, seconded by Council Members Peixoto and Halliday, and carried unanimously, to adopt the following:

Resolution 11-055, “Resolution Awarding Contract to Top Grade Construction, Inc. for the Pavement Rehabilitation - D Street, Huntwood Avenue, Industrial Parkway SW, Second Street Project, Project No. 5138”

Resolution 11-056, “Resolution Amending Resolution 10-084, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2011, Relating to an Appropriation of Funds from the Street System Improvements Fund (Fund 413) to the Pavement Rehabilitation - D Street, Huntwood Avenue, Industrial Parkway SW, and Second Street Project, Project No. 5138”

4. Measure B Pavement Rehabilitation FY12: Award of Contract and Appropriation of Funds

Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 17, 2011, was filed.

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

Resolution 11-049, “Resolution Awarding Contract to Gallagher & Burk, Inc. for the Measure B Pavement Rehabilitation FY12 Project, Project No. 5129”

Resolution 11-050, “Resolution Amending Resolution 10-084, As Amended, the Budget Resolution for Capital Improvement Project for Fiscal Year 2011, Relating to an Appropriation of Funds from the Measure B Tax (Local Transportation) Fund (Fund 211) to the Measure B Pavement Rehabilitation FY12 Project, Project No. 5129”

5. Resolution Summarizing Comments on the Initial Vision Scenario

Staff report submitted by Senior Planner Pearson, dated May 17, 2011, was filed.

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

Resolution 11-051, “Resolution Formalizing the City of Hayward’s Comments on the Initial Vision Scenario”

6. Pavement Reconstruction FY11 - Taxiway “E” and East T-Hangar Zipperlane at Hayward Executive Airport: Approval of Plans and Specifications and Call for Bids



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Staff report submitted by Deputy Director of Public Works Fakhrai, dated May 17, 2011, was filed.

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

Resolution 11-052, “Resolution Approving Plans and Specifications for the Pavement Reconstruction FY11: Taxiway “E” and East T-Hangar Zipperlane at Hayward Executive Airport Project, Project No. 6810, and Call for Bids”

7. Authorization for Approval of the Issuance by the California Statewide Communities Development Authority of Taxable Obligations to Hayward FBO LLC

Staff report submitted by Airport Manager McNeeley, dated May 17, 2011, was filed.

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

Resolution 11-053, “A Resolution of the City Council of the City of Hayward Approving the Issuance by California Statewide Communities Development Authority of Taxable Obligations in an Aggregate Principal Amount Not to Exceed \$7,000,000, for the Facility (As Defined Below), and Authorizing Related Actions”

8. Adoption of Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning Certain Property at the Southwest Corner of B and Grand Streets in Connection with Zone Change Application No. PL-2010-0369 Relating to a 22-Unit Senior Housing Facility

Staff report submitted by City Clerk Lens, dated May 17, 2011, was filed.

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

Ordinance 11- 04, “An Ordinance Amending Chapter 10, Article 1, of the Hayward Municipal Code by Rezoning Certain Property at the Southwest Corner of B and Grand Streets in Connection with Zone Change Application No. PL-2010-0369 Relating to a 22-Unit Senior Housing Facility”

9. Resignation of Carole Bates Peck from the Keep Hayward Clean and Green Task Force

Staff report submitted by City Clerk Lens, dated May 17, 2011, was filed.

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

Resolution 11-054, “Resolution Accepting the Written Resignation of Carole Bates Peck from the Keep Hayward Clean and Green Task Force”

**LEGISLATIVE BUSINESS**

Council Member Quirk requested that items be reordered so Legislative Business item No. 12 could be heard first. Council Members concurred with the request on the floor.

10. Approval to Negotiate Formation of a Joint Powers Authority and a Joint Powers Agreement to Facilitate and Administer Parking around the South Hayward and Downtown Hayward BART Stations

Staff report submitted by Public Works Director Bauman, Project Manager DeClercq, Maintenance Services Director McGrath, and Development Services Director Rizk, dated May 17, 2011, was filed.

Development Services Director Rizk provided a synopsis of the report noting a letter was received from Dr. Sherman Lewis, Hayward Area Planning Association President, in which he promotes the unbundling of parking in the development and a shuttle as one solution to address access to the station. Mr. Rizk noted BART representatives were in attendance and available to answer questions. Mr. Rizk also recommended that Council approve the revised resolution, which was modified by adding the following language, “...that the City Manager will return to City Council for approval of the preliminary Joint Powers Agreement or any document forming the Joint Powers Authority contemplated hereby after completion of initial negotiations.”

In response to Council Member Henson’s inquiry about the structure of the Joint Powers Authority (JPA) at Pleasant Hill, Development Services Director Rizk deferred to BART representatives to address the question.

Council Member Halliday asked how soon paid parking would be implemented at the two Hayward stations. City Manager David responded that the implementation of paid parking will be determined by the JPA and timed in accordance to BART policies.

Council Member Quirk noted that Mr. Lewis’ letter referred to past issues and noted this was the first step in looking at the issue of having paid parking and how parking will be managed throughout the City. Development Services Director Rizk added that the JPA will address parking



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strategies as a whole, which could be related to the parking structure and any modes of access to BART stations.

Mr. Peixoto inquired if residents will be required to pay for parking permits in order to park in front of their homes. City Manager David responded that it was a possibility and that it will be addressed by the JPA with the intent of managing parking in neighborhoods. Mr. Peixoto asked if the City will retain its authority to conduct an impact study and/or public hearing. Ms. David explained this will depend on how the JPA is negotiated. Mr. Peixoto expressed concern about neighborhood residents having a forum for input.

Mayor Sweeney opened the public hearing at 8:57 p.m.

In response to Council Member Quirk's inquiry about how the Pleasant Hill JPA is working, Jeff Ordway, BART Manager of Property Development, mentioned the Pleasant Hill JPA required land transactions and is going well. Mr. Ordway explained the JPA consists of four members, two from the BART Board and two members from local jurisdictions. He expressed the vital importance that both groups are aligned in their objectives and mentioned this process enabled the success at Pleasant Hill.

Council Member Henson asked how BART has addressed the paid parking impacts to neighborhoods. Mr. Ordway noted there has not been any impact to the surrounding neighborhoods since paid parking was introduced at the Bayfair BART Station. Mr. Ordway added that BART's approach is to work with local jurisdictions on parking issues.

Council Member Halliday mentioned the two Hayward BART parking lots are not filled to capacity and asked when and what would cause BART to institute paid parking. Mr. Ordway said BART can institute paid parking when a certain percentage of the lot is full three days a week for three months or when the City wants to institute it.

Council Member Zermeño inquired if BART has conducted studies about increased ridership as a result of paid parking. Mr. Ordway noted that when \$1 a day is introduced, there is a short-term dip in ridership, but it overcomes within weeks. Mr. Zermeño favored public transportation, but noted that paid parking is not perceived positively. Mr. Ordway explained for Mr. Zermeño that the parking charges were instituted specifically to deal with an operating budget problem.

Mr. Ordway confirmed for Mayor Sweeney that after paid parking was introduced at the Union City BART Station there has not been an increase in the demand for parking at the South Hayward BART Station. Mr. Ordway explained the reasoning behind looking at the two Hayward stations together was to ensure any potential impacts were addressed and he confirmed that there have not been any problems at other BART Stations when the low level parking charges were introduced.

Mayor Sweeney clarified for Council Member Salinas that the proposal is to allow the City Manager to negotiate a JPA and bring the results of the negotiations back to Council for acceptance or rejection.

Mayor Sweeney closed the public hearing at 9:07 p.m.

Council Member Henson made a motion to authorize the City Manager to negotiate a Joint Powers Agreement and return all documents to Council for approval. Council Members Quirk and Halliday seconded the motion.

Council Member Quirk expressed support for charging for parking, indicating that when there are no charges for parking, then people who do not drive are subsidizing those who drive.

It was moved by Council Member Henson, seconded by Council Members Quirk and Halliday, and carried unanimously, to adopt the following with an amendment to the resolution by including the following, "... that the City Manager will return to City Council for approval of the preliminary Joint Powers Agreement or any document forming the Joint Powers Authority contemplated hereby after completion of initial negotiations."

Resolution 11-058, "Resolution of the City Council of the City of Hayward Authorizing the City manager to Negotiate a Joint Powers Agreement with San Francisco Bay Area Rapid Transit District ("BART") to Facilitate Parking and Access Strategies Around the South Hayward and Downtown Hayward BART Stations"

#### 11. Introduction of Ordinance Revising Municipal Code Chapter 2, Article 3 – Boards and Commissions and Chapter 2, Article 4 – Employees

Staff report submitted by Human Resources Director Robustelli, dated May 17, 2011, was filed.

Human Resources Director Robustelli provided a synopsis of the report.

In response to Council Member Quirk's inquiry as to how staff can provide assurance that minorities are properly treated during the recruitment process, Human Resources Director Robustelli explained that the Human Resources Department (HR) routinely runs diversity statistics on the recruitment processes and the proposed revisions to the Municipal Code requires HR to regularly update the Commission on diversity statistics. Mr. Quirk expressed concern that with the removal of "Affirmative Action," Council involvement may be necessary to monitor the recruitment process, in terms of recruiting qualified minority groups, and be kept updated on a regular basis. City Manager David noted that staff can provide Council with updated employment statistics on a regular basis.

Council Member Henson assured Council Member Quirk that the proposed revisions address Proposition 209, and required administrative changes, and there would be no reversal to current workforce that reflects the diversity of Hayward's community. Mr. Henson said the Commission is



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strongly committed to diversity and added that the information received from Human Resources is accurate.

Mayor Sweeney suggested that Council be provided with a yearly status report that reflects employee make-up in terms of meeting the City's goals.

Council Member Salinas mentioned requesting data from Police Chief Ace and shared that he was pleased to report that there are many officers who are bilingual and reflect Hayward's community.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 9:21 p.m.

Council Member Henson moved the item per staff recommendation and Council Member Zermeño seconded the item. Council Member Henson commended Human Resources Director Robustelli for bringing this item forward and for the Commission participation. Mr. Henson supported the proposed language changes and noted the appropriateness of requesting a yearly status report.

In response to Council Member Halliday's inquiry about the proposed amendments, Human Resources Director Robustelli noted that the amendments to the Municipal Code, including the Commission's name change to Personnel Commission, accurately reflect the City Charter.

It was moved by Council Member Henson, seconded by Council Member Zermeño, and carried unanimously, to adopt the following with direction for staff to generate an Employee Demographic Profile report on a yearly basis for Council review.

Introduction of Ordinance 11-\_, "An Ordinance Providing for the Revision of the City of Hayward Municipal Code Chapter 2, Article 3: Board and Commissions and Article 4: Employees to Align the Code with the City Charter and to Reflect Changes to Federal and State Anti-Discrimination Laws"

12. Consideration of a Resolution in Support of the Proposal Designating Saint Rose Hospital and San Leandro Hospital as District Hospitals Operating Under the Authority of the Eden Township Healthcare District

Staff report submitted by Assistant City Manager Morariu, dated May 17, 2011, was filed.

Assistant City Manager Morariu provided a synopsis of the report and noted that St. Rose Hospital representatives were available to answer questions.

Mayor Sweeney opened the public hearing at 8:21 p.m.

Mr. Michael Mahoney, Lancaster Court resident and St. Rose Hospital President, was in attendance to answer any questions. In response to Council Member Quirk's inquiry about the Eden Township Healthcare District (ETHD) plan, Mr. Mahoney noted that it was in response to the possible closure of San Leandro Hospital and in consideration of the impact that the closure would have on the St. Rose Emergency Room. Mr. Mahoney added that ETHD wants to attend to the health care needs of local people living within the District and St. Rose Hospital would have the opportunity to receive matching federal funds for the high percentage of indigent they serve. Mr. Mahoney said the vision plan is to have two district hospitals comprised of St. Rose Hospital and San Leandro Hospital operating under the authority of the ETHD with a locally implemented system.

Mr. Mahoney confirmed for Council Member Henson that if the proposal is approved, the ETHD Board would become the governing board for both hospitals. In response to Council Member Henson's inquiry related to the timeline for this proposal, Mr. Mahoney noted that if ETHD is successful in bringing all parties to the table, the proposal to designate district hospitals could be accomplished within the next six months.

Council Member Peixoto mentioned that under the Alameda County Medical Center/Sutter Health Model, San Leandro Hospital, as a rehabilitation facility, would need to be subsidized by Alameda County at a cost of \$3 to \$6 million per year. Mr. Mahoney said the ETHD vision plan requires no County subsidy and the plan is to efficiently operate San Leandro Hospital at full capacity as opposed to a rehabilitation facility.

Council Member Zermeño favored the ETHD vision plan as he saw it as a win-win for everyone: the City, the public, St. Rose and San Leandro hospitals, and the County. He thanked Mr. Mahoney for his leadership and commented on the wonderful service his family has experienced at St. Rose Hospital, stressing the importance of providing good services to the community.

Council Member Halliday thanked Mr. Mahoney for meeting with her to answer questions and asked Mr. Mahoney to address her concerns that St. Rose Hospital could be in jeopardy of closing if financial problems arose in the future. Mr. Mahoney responded that the vision plan will strengthen both hospitals and will give ETHD the size and scope to expand services to meet the healthcare needs of the district community.

Mr. Mahoney confirmed for Council Member Salinas that the ETHD Board will have the same commitment as the existing St. Rose Hospital Board to serve the community. Mr. Mahoney expressed the importance of having people run for the ETHD Board that share the same values.

Mayor Sweeney asked about the litigation between Sutter Health and ETHD and how it might affect the vision plan. Mr. Mahoney mentioned that St. Rose Hospital is not a party to the litigation, but hoped people who share a commitment to quality healthcare will enable both parties to come together to resolve these issues.

Ms. Pam Russo, Castro Valley resident and St. Rose Hospital representative, pointed out that Mr. Mahoney's leadership generates confidence in the medical community because he possesses the skill and expertise to take the proposal forward.



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Mayor Sweeney closed the public hearing at 8:40 p.m.

Council Member Quirk noted that Mr. Mahoney was instrumental in helping St. Rose Hospital become an independent hospital and that the proposed ETHD vision plan can be attributed to his knowledge and leadership. Mr. Quirk noted that with this plan the County can recognize there are options to keep San Leandro Hospital open. Mr. Quirk commented that it is the communities' responsibility to encourage good people to get involved and run for the ETHD Board. Council Member Quirk moved the item per staff recommendation with the amended resolution to reflect its title. Council Member Zermeño seconded the motion.

Council Member Halliday clarified for the public that Council is approving a resolution in support of continuation of dialogue and that there is still more work to be done. She expressed that Council has faith in the St. Rose Hospital leadership, and thanked them and wish them well.

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

Resolution 11-057, "A Resolution in Support of the Proposal Designating Saint Rose Hospital and San Leandro Hospital as District Hospitals Operating Under the Authority of the Eden Township Healthcare District"

### **COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS**

Council Member Salinas reported on his attendance, along with Council Member Henson, to a May 15, 2011, Grand Opening at Aaron Metal Recycling Center. Mr. Salinas also announced events scheduled for Saturday, May 21, 2011: the Hayward Rotary Club - Rowell Ranch Rodeo; 4C'S of Alameda County - Children's Health and Family Faire; and the 25th Anniversary of the Hayward Shoreline Interpretive Center. He also encouraged college students to volunteer this summer in the City of Hayward.

Council Member Henson reported on his attendance, along with Council Member Halliday, to the May 14, 2011, Sustainable Community Strategy workshop. Mr. Henson noted that Hayward had Hayward Area Recreation & Park District, and Hayward Unified School District, representation and noted that more work and resources were identified as items of interest.

Council Member Halliday announced two events for May 21<sup>st</sup>: FESCO Shelter Shuffle to be held at the San Leandro Marina Park, and the SOS Meals on Wheels Spring Luncheon. She also announced the Library's Summer Camp adding it was a good opportunity for college-age students to participate.

Council Member Zermeño announced two clean up events for May 21<sup>st</sup>: the City Wide Clean-Up Event at Weekes Park, and the clean-up event at Mt. Eden High School.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 9:30 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

**ATTEST:**

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Miriam Lens, City Clerk, City of Hayward

**DATE:** May 31, 2011

**TO:** Mayor and City Council

**FROM:** Director of Development Services

**SUBJECT:** Park In-Lieu Fee Request for \$308,912.04 for Fiscal Year 2011 from the Hayward Area Recreation and Park District (HARD)

**RECOMMENDATION**

That City Council adopts the attached resolution allocating to the Hayward Area Recreation and Park District \$113,454.35 for Weekes Community Center accessibility upgrades and \$75,457.69 for Eden Greenway Kaboom Play Area improvements from the Park-in-Lieu account for Zone C; and \$120,000 for Southgate Community Center accessibility upgrades from the Park-in-Lieu account for Zone A.

**BACKGROUND**

The City of Hayward requires all subdivisions and other development of land for residential purposes to set aside land and/or pay in-lieu fees to provide for park and recreational facilities serving the area being subdivided or developed. When park in-lieu fees are collected, they are used only for the purpose of acquiring necessary land and developing new or rehabilitating existing park in the Park Dedication Zone in which the property is located. The City of Hayward collects these fees as part of the development review and approval process. Then, the Hayward Area Recreation and Park District (HARD) makes an annual request for reimbursements for the use of these funds. The City Council must approve HARD's request for use of park in-lieu funds.

**DISCUSSION**

For Fiscal Year 2011, HARD requests \$188,912.04 from Zone C Park In-Lieu Funds for improvements completed at Weekes Community Center and at Eden Greenway, and \$120,000 from the Zone A Park-In-Lieu account for the proposed improvements at Southgate Community Center.

The Weekes Community Center is located in Weekes Park off of Patrick Avenue. It was built in 1964 and provides a number of programs that involve senior citizens and disabled patrons. The Community Center was not compliant with American with Disabilities Act (ADA) requirements. In order to meet these requirements, HARD rebuilt and enlarged the restrooms, and installed automatic

door systems at the restrooms and the main entrance. This enables all residents to participate in the many programs offered at this facility. They also added a new pathway from the parking lot behind the center to the play area and library. HARD is seeking \$113,454.35 in reimbursement from the in-lieu account to help fund this project that cost \$225,234.35 in total.

HARD also installed a new play area in the portion of the Eden Greenway that runs through the Jackson Triangle. It was sponsored in part by KaBOOM, a non-profit organization that helps communities build playgrounds. The project, off of Soto Road, included installing play structures, a picnic area, fencing, irrigation and landscaping. The General Plan, Community Facilities and Amenities Element, Park and Recreation Strategies No.5 supports development of Eden Greenway which states: “*Work with HARD to complete development of the remaining portions of the Eden Greenway corridor underneath the PG&E transmission lines.*” HARD is seeking \$75,457.69 from the Park in-Lieu account for the total cost of this project.

The Southgate Community Center is located off of Chiplay Avenue. It was built in the 1970s and does not comply with the current ADA requirements. In order to meet these requirements, HARD will rebuild the restrooms and the kitchen; install automatic doors systems at the restrooms and main entrance; provide accessible pathways from the center to the play area and from the street to the north entrance; and re-route the pathway to the front entrance. HARD is seeking \$120,000 from the Park-In-Lieu account for Zone A for this project. HARD staff estimates the total cost of the project to be \$240,000.

Staff supports the use of Park-in-Lieu fees for these three projects. There are sufficient funds in the Zone A and C accounts to fund these improvements. In Zone A, there is \$183,676 currently available to fund HARD’s \$120,000 request for the Southgate Community Center improvements, leaving a balance of \$63,676. In Zone C, there is \$1,281,879 currently available to fund HARD’s \$188,912.04 request for the completed improvements at Weekes Community Center and Eden Greenway, leaving a balance of \$1,092,967.

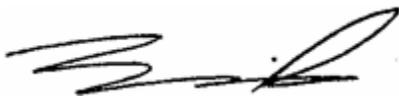
## **FISCAL IMPACT**

No fiscal impact is anticipated to the City. HARD includes funds to cover the remaining cost of the park improvements in their annual budget from other revenue sources.

*Prepared by:* Carl Emura, ASLA, Associate Planner

*Recommended by:* David Rizk, AICP, Development Services Director

Approved by:



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Fran David, City Manager

Attachments:

Attachment I Draft Resolution

Attachment II Letter of Request from HARD for Weekes Community Center, dated  
December 10, 2010

Attachment III Letter of Request from HARD for Eden Greenway Phase 4, dated  
December 10, 2010

Attachment IV Letter of Request from HARD for Southgate Community Center,  
dated March 2, 2011

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

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

RESOLUTION APPROVING REQUEST OF HAYWARD AREA RECREATION AND PARK DISTRICT FOR ALLOCATION OF PARK DEDICATION IN-LIEU FEES FOR THE PURPOSE OF IMPROVING HANDICAPPED ACCESSIBILITY AND ADDING PLAYGROUND EQUIPMENT AND OTHER IMPROVEMENTS AT THREE PARK SITES

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the request of Hayward Area Recreation and Park District for allocation of park dedication in-lieu fees in the amount of \$308,912.04 for the purpose of improving handicapped accessibility and adding playground equipment and other park improvements, to be divided among the following park sites:

- 1. Weekes Community Center ADA Upgrades – In Lieu Zone C - \$113,454.35
- 2. New Eden Greenway Phase 4 Play Area – In Lieu Zone C – \$75,457.69
- 3. Southgate Community Center ADA Upgrades – In Lieu Zone A – \$120,000.00

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

APPROVED AS TO FORM:

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



# HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

December 10, 2010

Richard E. Patenaude  
 Planning Manager  
 City of Hayward  
 777 "B" Street  
 Hayward, CA 94541

**RE: Weekes Community Center ADA Restroom and Pathway Project**

Dear Mr. Patenaude;

The Hayward Area Recreation and Park District (HARD) has completely rebuilt the restrooms and front doors at the Weekes Community Center to meet the Americans with Disabilities Act (ADA) requirements. In addition, a new pathway has been constructed, which now completes the loop pathway for walkers and joggers. The new lighted pathway also allows patrons to walk from the parking lot area and community center to the library. The Park District is seeking **\$113,454.35** from the park in-lieu account (Area C) to help fund this \$225,234.35 project.

The newly enlarged restrooms are fully ADA compliant and have automatic door systems so that all residents can participate in the many programs offered at this facility. The Weekes Community Center provides a number of programs that senior citizens and those that are disabled take part in. The new pathway is very popular with walkers and joggers and provides a safe route to the library.

The Hayward Area C in-lieu account has sufficient funds to fund the new ADA Restroom and Pathway Project. If you have any questions, please call me at (510) 881-6716 or email me at [lepl@haywardrec.org](mailto:lepl@haywardrec.org).

Sincerely,

**Larry Lepore**  
**Superintendent of Parks**

**BOARD OF  
 DIRECTORS**

Louis M. Andrade  
 Paul W. Hodges Jr.  
 Minane Jameson  
 Carol A. Pereira  
 Dennis M. Waespi

**GENERAL MANAGER**

Rita Bedoya Shue

090602 Adobe /WeekesPark



# Hayward Area Recreation and Park District

1099 "E" Street, Hayward, CA 94541

(510) 881-6700

**INVOICE NO. 11-6**

**TO: City of Hayward  
Richard E. Patenaude  
Planning Manager  
777 'B' Street  
Hayward, CA 94541**

**DATE: December 14, 2010**

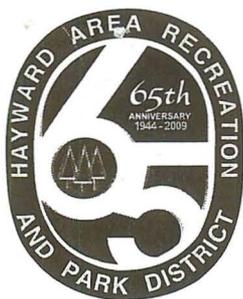
**REQUESTED BY: Karl Zabel  
Operations and  
Dev Supervisor**

DESCRIPTION	AMOUNT
Weekes Community Center ADA Restroom and Pathway Project	<b>\$113,454.35</b>
Park In-Lieu Fees	
<b>REMIT PAYMENT TO:</b>	
H.A.R.D. Accounting, 1099 'E' St, Hayward, CA 94541	
	<b>DUE UPON RECEIPT: \$113,454.35</b>
	<b>DATE PAID:</b>
	<b>RECEIPT #:</b>
	<b>AMOUNT PAID:</b>
	<b>TOTAL BALANCE:</b>

ORIGINAL

# WEEKS COMMUNITY CENTER PROJECT ADA RESTROOM UPGRADE

Asset ID	Suf	Asset Description	Acq Date	Cost	VENDOR NAME
2-102	14	2-102A/TESTNGS MATRLS-ADA RSTRMS UPGRDE	11/06/09	\$308.00	FORENSIC ANALYTIC
2-102	15	2-102A-TSTNG SMPLS/ADA RSTRM UPGRDE	11/18/09	\$176.00	FORENSIC ANALYTICAL
2-102	16	2-102A-ARCHTCTRL SVC 90%	11/18/09	\$23,400.00	GUTIERREZ/ ASSOCIATES
2-102	17	2-102A/CITY OF HAY PLAN CHECK ADA PROJ	12/15/09	\$490.00	NOV 09 CAL CARD K ZABEL
2-102	18	2-102A/ADA BLDG PERMIT FEE	01/31/10	\$1,005.06	CITY OF HAY/K ZABEL JAN 2010 CALCARD
2-102	19	2-102A-LEAD ABTMN-ADA UPGRADE	02/23/10	\$3,440.00	SYNERGY ENTERPRISES
2-102	20	2-102A-PRD END-3/28/10-ADA RSTRM UPGRDES	04/01/10	\$58,595.31	JMA CONSTRUCTIONS
2-102	21	2-102A-PRD END-4/11/10-ADA RSTRM UPGRDES	05/07/10	\$19,199.22	JMA CONSTRUCTIONS
2-102	22	2-102A-PRD END-4/30/10-ADA RSTRM UPGRDES	05/18/10	\$49,950.00	JMA CONSTRUCTION
2-102	23	2-102A-FINAL PRO ARCHTCT SVC RNDRD	05/28/10	\$2,600.00	GUTIERREZ ASSOCIATES
2-102	25	2-102A/EXTERIOR LIGHT PERMIT	06/30/10	\$955.00	KARL ZABEL JUNE 2010 CAL CARD STATEMENT
2-102	26	2-102A/END 6/11/10-CONCRTE	06/30/10	\$29,570.88	JMA CONSTRUCTION
2-102	27	2-102 A IRRIGATION PARTS FRM HYWRD HRDWR	07/31/10	\$8.69	L.LEPORE CAL CARD 7/31/10
2-102	28	2102A-R2013-ADA UPGRDS RSTRMS	08/12/10	\$16,251.03	JMA CONSTRUCTIONS
2-102	29	2-102A-10% RETNTN-R2013-ADA RSTRM UPGRDE	09/01/10	\$19,285.16	JMA CONSTRUCTIONS
<b>2102A TOTAL</b>				<b>\$225,234.35</b>	



# HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

December 10, 2010

Richard E. Patenaude  
Planning Manager  
City of Hayward  
777 "B" Street  
Hayward, CA 94541

**RE: New Eden Greenway Phase 4 KaBoom Play Area Project**

Dear Mr. Patenaude;

The Hayward Area Recreation and Park District (HARD) has completed a new play area in the Phase 4 section of the Eden Greenway in Hayward. This new play area project was sponsored in part by the non-profit KaBoom! organization. The project also included a picnic area, new irrigation, new fencing and turf. The Park District is seeking \$ 75,457.69 from the park in-lieu account (Area C) to help fund this project.

The new play area has become immensely popular with the neighborhood residents and has brought many people of the community together to enjoy the park. The Hayward Area C in-lieu account has sufficient funds to fund the new play area project. If you have any questions, please call me at (510) 881-6716 or email me at [lepl@haywardrec.org](mailto:lepl@haywardrec.org).

Sincerely,

**Larry Lepore**  
**Superintendent of Parks**

090602 Adobe /WeekesPark

**BOARD OF DIRECTORS**

- Louis M. Andrade
- Paul W. Hodges Jr.
- Minane Jameson
- Carol A. Pereira
- Dennis M. Waespi

**GENERAL MANAGER**

Rita Bedoya Shue



# Hayward Area Recreation and Park District

1099 "E" Street, Hayward, CA 94541

(510) 881-6700

**INVOICE NO. 11-7**

**TO: City of Hayward  
Richard E. Patenaude  
Planning Manager  
777 'B' Street  
Hayward, CA 94541**

**DATE: December 14, 2010**

**REQUESTED BY: Karl Zabel  
Operations and  
Dev Supervisor**

DESCRIPTION	AMOUNT
Play Area Development of Phase 4, Eden Greenway Project	<b>\$75,457.69</b>
Park In-Lieu Fees	
<b>REMIT PAYMENT TO:</b>	
H.A.R.D. Accounting, 1099 'E' St, Hayward, CA 94541	
	<b>DUE UPON RECEIPT: \$75,457.69</b>
	<b>DATE PAID:</b>
	<b>RECEIPT #:</b>
	<b>AMOUNT PAID:</b>
	<b>TOTAL BALANCE:</b>

## KABOOM EDEN GREEWAY PHASE IV 2-034A

Asset ID	Suf	Asset Description	Acq Date	Cost	VENDOR NAME
2-034	8	2-034A-EDN GRNWY PHSE IV-TEST SOIL-MATS	4/23/2010	\$37.00	FORENSIC ANALYTICAL
2-034	9	2034A-PLAYSPACE BLD-EDN GRNWY	4/23/2010	\$7,500.00	KABOOM!
2-034	10	2-034A/KABOOM PICNC TBLS,TOILETS,BENCHES	5/31/2010	\$5,731.06	MAY 2010 PARKS CAL CARD EXPENSES
2-034	11	2-034A/BENCHES KABOOM - BELSON USETAX	5/31/2010	\$382.30	E LITTLE MAY 2010 CALCARD
2-034	12	2-034A-EXCVTNG SOIL/INSTLL CNCRTE-KABOOM	6/10/2010	\$22,750.00	ALECKA PAVING INC
2-034	13	2-034A-LAWN ROLLER RENTAL-KABOOM PROJ	6/30/2010	\$22.00	LEWIS RENT INC
2-034	14	2-034A/CAL GOLD FINES KABOOM PROJ	6/30/2010	\$935.11	CLARK'S HOME AND GARDEN
2-034	15	2-034A/KABOOM IRRIG SYSTM/GDS IMPRVMT	6/30/2010	\$4,697.07	JUNE 2010 PARKS CAL CARD STATEMENTS
2-034	16	2-034A-KABOOM DIRECT LABOR JUNE 2010	6/30/2010	\$22,198.80	JUNE 2010 TIMESHEETS-PK STAFF
2-034	17	2-034A-KABOOM-INSTLL CHN LNK FNCE	6/30/2010	\$685.00	BAY AREA FENCE
2-034	18	2-034A/KABOOM PROJ FENCE RENTAL/IRRIG	7/30/2010	\$1,339.34	JULY 2010 PARKS CAL CARD TRANS
2-034	19	2-034A-KABOOM PROJ TRENCHING/PVC PIPE	7/30/2010	\$212.42	JUL 2010 PKS CAL CD-MITCH TRANS
2-034	20	2-034A/IRRIG MATERIALS KABOOM PROJ	8/31/2010	\$1,113.22	E LITTLE AO PKS AUG 2010 CAL CARD
2-034	21	2-034A/KABOOM DIRECT LABOR AUG 2010	9/30/2010	\$3,840.37	M/C LABOR COST AUG 10 TIME SHEETS
2-034	22	2034A-INSTL CHN LNK FNCE-KABOOM--R2152	11/18/2010	\$4,014.00	BAY AREA FENCE CO
<b>2034A TOTAL</b>				<b>\$75,457.69</b>	

## HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758

**RECEIVED**

MAR 07 2011

PLANNING DIVISION

March 2, 2011

Richard E. Patenaude  
 Planning Manager  
 City of Hayward  
 777 "B" Street  
 Hayward, CA 94541

**RE: Southgate Community Center ADA Restroom and Pathway Project**

Dear Mr. Patenaude;

The Hayward Area Recreation and Park District (HARD) is planning to completely rebuild the restrooms and front doors at the Southgate Community Center to meet the Americans with Disabilities Act (ADA) requirements. In addition, a new ADA accessible pathway will be constructed from the center to the play area and from the Center's north entrance to the disabled curb cut at the street. The pathway to the front entrance will be re-routed to meet ADA accessibility requirements. The Center was built in the 1970's and no longer meets the current ADA requirements. The Park District is seeking \$120,000 from the in-lieu account to help fund this estimated \$240,000 project. The plans and specifications are on file at the City.

In order to meet the ADA requirements, the Park District will rebuild and enlarge the restrooms, rebuild the kitchen and will install automatic door systems at the restrooms and the main entrance to the building so that all residents can participate in the many programs offered at this facility. The Weekes Community Center provides a number of programs that senior citizens and those that are disabled take part in.

The Hayward area in-lieu account has sufficient funds to fund the ADA Restroom and Pathway Project. If you have any questions, please call me at (510) 881-6716 or email me at [lepl@haywardrec.org](mailto:lepl@haywardrec.org).

Sincerely,

**Larry Lepore**  
**Superintendent of Parks**

090602 Adobe /SouthgatePark

## BOARD OF DIRECTORS

Louis M. Andrade  
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 Minane Jameson  
 Carol A. Pereira  
 Dennis M. Waespi

## GENERAL MANAGER

Rita Bedoya Shue

**DATE:** May 31, 2011

**TO:** Mayor and City Council

**FROM:** Director of Maintenance Services

**SUBJECT:** Modification to the Preferential Residential Permit Parking Program

**RECOMMENDATION**

That Council approves the attached resolutions that modify the current Preferential Residential Permit Parking Program by amending Section 3.95 of the Hayward Traffic regulations (Attachment I) and the Master Fee schedule, Finance, Section B (8) (Attachment II). These changes will modify the program to change the fee structure from a one-time fee, to a biennial fee of \$50 for up to two permits per residence.

**BACKGROUND**

In 1987, Council adopted a resolution that approved a Preferential Residential Permit Parking Program. The Preferential Residential Permit Parking Program restricts on-street parking to residential permit-holders during posted hours. Residents are required to submit a petition to the Public Works Department, Engineering & Transportation Division, to initiate a parking permit program in their neighborhood. The petition must include signatures from at least fifty-five percent of the residents within the proposed area and include six adjacent block faces.

Engineering & Transportation staff conducts a survey and analysis of the neighborhood to determine if the proposed area meets the Program's requirements. City staff then provides a recommendation to the Director of Public Works who determines whether to recommend a request to the City Council to add the area to the program. Additionally, the Director of Public Works could recommend an area with less than six block faces if the need for Preferential Residential Permit Parking is justified. When an area is added to the program, only residents who live along posted streets may obtain parking permits to utilize on-street parking during the posted hours although they would still be limited to seventy-two hours based on the City's existing parking regulations.

When Council first approved establishment of the program in 1987, permit holders were required to renew their permits annually. In 1995, Council adopted a resolution approving modifications to the program's fee structure, which allowed residents to pay a one-time fee. Modifications to the program to establish a one-time fee were in response to the concerns raised by the Santa Clara Neighborhood Task Force to reduce costs and simplify the renewal process. At the time, the fee for

two parking permits was \$25.00. In 2007, the fee was increased to \$31.00 as part of the Master Fee Schedule review to cover the actual costs of processing each application. Currently, with the \$31.00 one-time fee, residents can obtain one of the following:

1. Two (2) residential permits, or
2. One (1) residential plus one (1) visitor permit, or
3. Two (2) visitor permits

Under the current program, additional permits may be requested for a one-time fee of \$15.00 for a residential permit and \$15.00 for a visitor permit.

There are two areas currently covered by the Preferential Residential Permit Parking Program: (1) residential areas surrounding Chabot College, which is in effect Monday through Friday between 8:00 A.M. and 8:00 P.M.; and (2) Santa Clara Street near Superior Court and the Post Office. Preferential Residential Permit Parking on Santa Clara Street is enforced Monday through Friday (except Holidays) between 8:00 A.M. and 6:00 P.M.

Since the Preferential Residential Permit Parking program was established in 1987, the Revenue Division has issued approximately 100 parking permits in the Chabot College area. The Santa Clara area was added to the program in 1995 and approximately 75 parking permits have been issued in this area. There are approximately 12-15 additional permits issued each year due to changes in residence.

## **DISCUSSION**

Staff has been studying the overall parking programs in the City and the potential for improvements related to the Preferential Residential Permit Parking program, Parking Benefit Districts, and other reforms to parking policies. Improving the City's overall parking programs is vital to achieving reductions in greenhouse gases in the Bay Area region and creating more livable communities. Developing successful parking policies to support the various needs and interests of the City's neighborhoods is complex, as these policies must respond to local conditions as well as the increasing costs associated with establishing any new parking program. They also must be adaptable to changing conditions, including future developments.

Future developments, such as South Hayward BART, will require making efficient use of on-street parking and may impact the existing surrounding neighborhoods. Having a sustainable, updated Preferential Residential Permit Parking program in place will allow the surrounding neighborhoods to request a residential permit parking area be established in their neighborhoods, assuring them on-street parking.

Recently, residents in the University Court and Ocie/Edloe areas have expressed a desire to resolve parking availability concerns within their areas. These requests have been placed on hold pending the City Council's review of this recommendation to modify the parking program.

Several cities within the Bay Area issue residential parking permits. With the exception of Hayward, they all require annual fees that range from \$10.00 to \$35.00.

<i>City</i>	<i>Population</i>	<i>Residential Fee</i>
Hayward	<b>158,421</b>	<b>\$31.00 (one time)</b>
Berkeley	<b>102,734</b>	<b>\$34.50 (annually)</b>
Concord	<b>128,300</b>	<b>\$10.00 (annually)</b>
Oakland	<b>404,155</b>	<b>\$35.00 (annually)*</b>
Sunnyvale	<b>131,760</b>	<b>\$17.60 (annually)</b>

\*Fees range up to \$150 in the Jack London Square Area

Staff is not proposing any changes in the process to request and initiate a new residential permit parking area, but staff is proposing modification to the fee structure and how permits are issued to residents. Rather than the existing one-time permit fee or even an annual fee, staff proposes that residential parking permits in a parking district be issued on a two-year basis and carry an initial and biennial parking permit fee of \$50 for up to two permits per residence. This would be equivalent to an annual fee of \$25.00 and would offset some of the City's costs to administer the program. The average yearly cost of \$25.00 is less than that in Berkeley and Oakland and higher than in Sunnyvale.

The two year residential parking permits would be color coded with pre-printed expiration dates, the license plate of the permitted vehicle, and would be valid from January 1<sup>st</sup> of year one to December 31<sup>st</sup> of the following year. The color coding would simplify enforcement efforts. Each parking district will also have a different letter on the permit. The Revenue Department will send notification and a parking permit application to the residences within the district at either the initiation of a new area or at the appropriate time for renewal. It will be the resident's responsibility to complete and submit the application with the appropriate fee to the Revenue Division. The appropriate permits will be issued at the time the parking permit fee is paid. Permits issued any time during the first year of the two year cycle will be charged the entire biennial fee; permits issued after December 31<sup>st</sup> of the first year will be charged one half of the biennial fee.

The recommended new fee structure is as follows:

Biennial Fee (2 residential or visitor permits)	\$50.00
Renewal Fee (2 residential or visitor permits)	\$50.00
Each additional residential permit (biennial)	\$25.00
Each additional visitor permit (biennial)	\$25.00

The current one-time fee of \$31.00 only covers the City's one-time cost of issuing the permit. It does not cover the cost of the survey, analysis, or the installation of the signs required for a new area or the maintenance of the signs once installed. The biennial fee of \$50.00 is recommended to help recover some of the City's cost of establishing a new Preferential Permit Parking area and the sustainability of the program.

Since the modification to the fee structure would in part cover the cost of adding areas to the program, it is recommended that all existing permit holders be grandfathered into the new program with no additional cost and that their permits remain valid as long as they occupy the property to

which the permit is issued. Any new applicant in the current existing permitted areas will be required to pay the biennial fee to add their vehicles to the program, which should cover the cost of future maintenance of the program and signage in the existing permitted areas.

Traffic enforcement in the residential permit parking areas is a program of the Hayward Police Department; they issued a total of 575 tickets in 2009 and 679 tickets in 2010 for the two existing areas. The "Residential Permit Parking Area" fine is \$64.50 per violation. The program is not a significant source of revenue for the City, nor is this the intention of the program. This is similar to most other jurisdictions contacted, other than the City of Berkeley. The City of Concord is on pace to collect \$9,000 this calendar year. The City of Sunnyvale has averaged 325 citations a year over the last three years and collected \$17,225 a year. The City of Berkeley is the only City that staff contacted that patrols the residential permit areas daily. Berkeley's program generates \$1,700, 000 annually. Other than the City of Berkeley, the municipalities contacted report that preferential residential permit parking is usually complaint driven enforcement and citations written are minimal. At the Eden Gardens neighborhood meeting, the residents spoke positively about the permit parking program. Staff believes this is a successful way to improve parking in mixed use neighborhoods.

The program is voluntary in each Preferential Residential Permit Parking area. Approximately one month prior to the expiration date, notification and a parking permit application will be sent to the residents within the district. If a resident in an approved Preferential Residential Permit Parking area does not want to participate in the program and they wish to park on the street, they must observe the restrictions of a posted street or risk being fined for any parking violations similar to other non-permitted vehicles.

## **ECONOMIC IMPACT**

The new Program will change the fee structure from a onetime fee of \$31.00, to a biennial fee of \$50.00. The biennial fee is equivalent an annual fee of \$25.00. Participants will be required to renew their permits and pay the fee of \$50.00 every two years. As mentioned before, the fee is intended to offset the cost of establishing and maintaining the program. As noted above, the program will be voluntary and residents not wanting to participate need not apply under the new program.

## **FISCAL IMPACT**

The initial cost to establish a Preferential Residential Permit Parking area is approximately \$10,600 as detailed below, which includes the application and permit process, permit parking survey, analysis, recommendation, and the installation of signs. When a petition is submitted to establish a Preferential Residential Permit Parking area, City staff conducts one or two field surveys, analyzes the data, and makes a recommendation to the City Manager, Mayor, and Council. The recommendation to change the fee to an initial and biennial fee of \$50 for up to two permits per participating residence will allow the City to recover the programs initiation and the biennial cost to administer the program over an 8.5 year period (four renewal cycles and assuming 75 residences). The life expectancy of the signs installed is 8-10 years.

There are 124 residences within the existing parking districts (69 residences within the Chabot College area and 55 residences within the Santa Clara area). The fiscal impact to the City is that there will be no revenue generated from the two existing neighborhoods due to the recommendation that they be grandfathered into the program. Currently, there is no renewal process so this is not a current revenue source for the City. As new applicants occupy the properties in these two neighborhoods, they will be required to pay the fee if they choose to participate in the program. And all participants in additional new areas will pay this newly approved fee.

**Initial Cost for Permit Parking Survey, Analysis, Signage, and Permits**

Survey, Analysis, and Recommendation	\$4,000
Installation of Signs For a Six-Block Area*	\$4,800
Application & Permit Process	\$1,800
Initial Startup Costs	<u>\$10,600</u>

**PUBLIC CONTACT**

Existing procedures require a Public Hearing for establishing a new area for permit parking. Residents who want to establish a Preferential Residential Permit Parking area are required to file a petition with signatures from fifty-five percent of the impacted residences. The Director of Public Works provides recommendations to the City Council based on the survey and analysis of the area. The City Council must conduct a public hearing on the proposed Preferential Resident Permit Parking area. Notice of the hearing must be provided to residences and businesses on all block faces proposed to be included in the preferential residential permit parking area at least ten (10) days prior to the hearing. Notice of public hearing will also be provided in a newspaper of general circulation in the City.

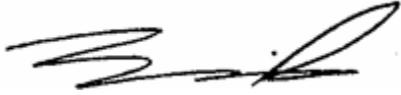
Staff has received requests from two neighborhoods for Preferential Residential Permit parking. The neighborhood near Cal State East Bay on Modoc Avenue and University Court and the neighborhood on Ocie Way and Edloe near the Alameda County Offices on Winton Avenue have expressed interest in a Preferential Residential Permit Parking Program.

Staff has made contact with the residents who have initiated the request at the Edloe and Ocie neighborhood, and the Modoc Ave neighborhood, informing them of the agenda item and the modification to the fee schedule. Feedback from the residents has been supportive. Fliers were also handed out to residents in these proposed neighborhoods, and in current Preferential Residential Permit Parking Program neighborhoods, highlighting the proposed changes to the program. The proposed neighborhoods and City staff are awaiting the modifications to the program before initiating the permit process.

*Prepared by:* Kimberly DeLand, Administrative Secretary

*Recommended by:* Matt McGrath, Director of Maintenance Services

Approved by:



---

Fran David, City Manager

Attachments:

- Attachment I: Resolution Amending the Traffic Regulations
- Attachment II: Resolution Amending the Master Fee Schedule
- Attachment III: Section 3.95 Hayward Traffic Regulations

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Councilmember \_\_\_\_\_

RESOLUTION AMENDING SECTION 3.95 OF THE TRAFFIC REGULATIONS FOR THE CITY OF HAYWARD, CONCERNING THE PREFERENTIAL RESIDENTIAL PERMIT PARKING PROGRAM - REGULATIONS

WHEREAS, the existing Preferential Residential Permit Parking Program as described in the Traffic Regulations for the City of Hayward in Section 3.95, has been amended to require the payment of a biennial fee for residential parking permit in order to manage effectively parking demands in the City and offset the cost of establishing and maintaining Residential Parking Permits Areas.

NOW, THEREFORE, BE IT RESOLVED, that Section 3.95 of the City of Hayward Traffic Regulations, entitled "Issuance of Permit," is hereby amended by adding subsections (e) 6, 7, and 8 as follows:

"6. Reissuance of residential parking permits shall be subject to the same charges and conditions imposed on new permits.

7. Renewal of residential parking permits shall be subject to the charge set forth in the Master Fee Schedule and renewed permits are subject to the same conditions imposed on new permits.

8. Residential parking permits shall be issued with a term of two years from January 1 to December 31 of the following year, regardless of when during the two year term a resident purchases the parking permit. The biennial fee for new permits issued anytime during the first year of the two year term will be the full biennial fee. The fee for permits issued after December 31 of the first year of the two year term will be half the biennial fee."

BE IT FURTHER RESOLVED, that applicants who are in possession of valid Preferential Residential Permit Parking Program permits as of the effective date of this resolution shall be exempt from the requirement to pay the biennial renewal fee, for so long as the applicant occupies the property for which the permit has been issued.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

APPROVED AS TO FORM:

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

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Councilmember \_\_\_\_\_

RESOLUTION AMENDING THE MASTER FEE SCHEDULE FOR THE CITY OF HAYWARD, BY AMENDING FINANCE, SECTION B (8) TO ESTABLISH INITIAL AND BIENNIAL RENEWAL FEES FOR PREFERENTIAL RESIDENTIAL PARKING PERMITS

WHEREAS, the existing Preferential Residential Permit Parking Program as described in Section 3.95 of the Traffic Regulations for the City of Hayward, have been amended to an initial fee and biennial renewal fee of \$50.00 for up to two residential or visitor permits; and

WHEREAS, this requires an amendment to Finance, Section B (8) the Master Fee Schedule pertaining to Preferential Residential Parking Permit fees to conform with the amendments to the Preferential Residential Parking Permit Program – Regulations.

NOW, THEREFORE, BE IT RESOLVED that Finance, Section B (8) of the Master Fee Schedule for the City of Hayward is hereby amended to read as follows:

- "8. Preferential Parking Permit (Reference Hayward Traffic Regulations Section 3.95 and Hayward Traffic Code Section 6.36)
  - a. Initial Fee and Biennial Renewal Fee (for up to two residential or visitor permits) \$50.00
  - b. Each additional residential permit \$25.00
  - c. Each additional visitor permit \$25.00

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

APPROVED AS TO FORM:

---

City Attorney of the City of Hayward

Section 3.95 PREFERENTIAL RESIDENTIAL PERMIT PARKING PROGRAM – REGULATIONS. (As added by Resolution No. 87-349 C.S., adopted November 17, 1987.)

(a) Definitions.

1. "Designated Preferential Residential Permit Parking Area," sometimes referred to as "Residential Permit Parking Area," shall mean any adjacent areas upon which the Council imposes parking limitations pursuant to the authority granted by this section.
2. "Nonresidential vehicle" shall mean a motor vehicle not eligible to be issued a residential parking permit, pursuant to the terms and conditions of this section, for the specific areas in which it is parked.
3. "Parking permit" shall mean a permit issued under this section which, when displayed upon a motor vehicle, as described herein, shall exempt said motor vehicle from parking time restrictions established pursuant to this section.
4. "Visitor" shall mean an individual who calls upon a resident in the designated preferential residential permit parking area with specific intent to spend time in or about that resident's residence for the purpose of social intercourse or to provide a service.
5. "Visitor parking permit" shall mean a parking permit issued pursuant to this section which, when displayed upon a motor vehicle, as described herein, shall exempt the motor vehicle from parking restrictions established pursuant to this resolution for any date within the period indicated upon the face of said permit.
6. "Motor vehicle" shall include automobile, truck, motorcycle, or other motor driven form of transportation not in excess of 9,000 pounds gross weight.
7. "Block face" shall mean any street segment intersected by two other streets; street segments over 800 feet in length, but less than 1,600 feet in length shall be considered two block faces; street segments over 1,600 feet in length shall be considered three block faces.
8. "Resident" shall mean an emancipated minor or any other person 18 years of age or older whose legal residential address is in the designated preferential residential permit parking area.
9. "Business" shall mean an enterprise or establishment used for the purpose of conducting business located in the designated preferential permit parking area.
10. "Person" shall include, but shall not be limited to, individuals, corporations, businesses, partnerships, hospitals, schools, and churches.

(b) Residential Parking Permit Scope.

1. A motor vehicle on which is displayed a valid residential parking permit, as provided for herein, shall be permitted to stand or be parked in the residential permit parking area for which the permit has been issued without being limited by restrictions established pursuant to this section. Any motor vehicle which does not

display such permit shall be subject to the preferential parking regulation and consequent penalties in effect for such area.

2. A residential parking permit shall not guarantee or reserve to the holder thereof an on-street parking space within the designated residential permit parking area.
3. This section shall not be interpreted or applied in a manner which shall abridge or alter regulations established by authority other than this section.
4. This section shall not exempt the permit parking holder from other traffic controls and regulations existing in the designated preferential residential permit parking area.
5. This section shall not permit the permit parking holder to leave standing his or her vehicle for more than 72 hours.

(c) Designation of a Preferential Residential Permit Parking Area.

1. The City Council shall consider for designation as preferential residential permit parking area:
  - (i) Any proposed area for which a petition has been submitted which meets and satisfies the following:
    - A. The petition shall be on a form provided by the City and be completed to the satisfaction of the City.
    - B. The aforementioned petition shall contain in the space provided the signature, printed name, address, and date of signing of the petition by residents qualified under subsection (a)(8) representing at least 55% of the addresses within each proposed area. The petition shall contain a description or map showing the proposed preferential residential permit parking area.
    - C. The proposed residential permit parking areas should include at least six adjacent block faces and at least 80% of the block faces must be residentially zoned under the City's zoning regulations, and at a minimum 75% of all on-street parking spaces within the proposed area must be occupied during any two- one-hour periods between 8:00 a.m. and 6:00 p.m. or such other hours determined appropriate by the Director of Public Works. Both sides of a residentially zoned street should be included in each area.
  - (ii) Or, a proposed area which has been recommended by the Director of Public Works to further the objectives and purposes of this program.
2. Upon receipt by the Director of Public Works a petition as described in subsection (c)(1)(i) of this section, the Director of Public Works shall undertake or cause to be undertaken such surveys or studies deemed necessary.
3. The Director of Public Works shall recommend to the City Council enactment, amendment, or rejection of the proposed area in any manner, including but not

limited to, modification of boundaries of the proposed area and the restrictions imposed on such proposed area. The City Council shall thereafter conduct a public hearing on the proposed preferential residential permit parking area. Notice of the hearing shall be provided to residences and businesses on all block faces proposed to be included in the preferential residential permit parking area at least ten days prior to the hearing. Notice of public hearing will also be provided in a newspaper of general circulations in the City.

4. Following the public hearing the city Council may approve, modify, or deny the establishment of preferential residential permit parking the area specified in a qualifying petition or as otherwise recommended by the Director of Public Works.
- (d) Modifications After Designation of a Preferential Residential Permit Parking Area. Upon satisfaction of the requirements as provided in subsection (c) hereof or upon recommendation by the Director of Public Works, the City Council may, by appropriate resolution, modify a designated preferential residential permit parking area in any manner that would further the objectives and purposes of this program.
- (e) Issuance of Permit. Residential parking permits shall be issued by the Finance Department in accordance with requirements set forth in the subsection (e).
1. Each permit shall be designated to state or reflect thereon the identification of the particular residential permit parking area as well as the license number of the motor vehicle for which it is issued. No more than one residential parking permit shall be issued to each motor vehicle owned or leased for which application is made.
  2. The Finance Department is authorized to issue such rules and regulations, not inconsistent with this section, governing the issuance and display of residential parking permits.
  3. A residential parking permit may be issued for a motor vehicle only upon application of the following person.
    - (i) The applicant must demonstrate that he or she is currently a resident of the area for which the permit is to be issued; and
    - (ii) The applicant must demonstrate that he or she has ownership or continuing custody of the motor vehicle for which the permit is to be issued, as evidenced by registration of the vehicle at the resident's address or some other evidence satisfactory to the Finance Department.
  4. A preferential residential parking permit may, in addition, be issued for any vehicle owned or leased in the area by a person who owns or leases commercial property and engages in business activity within the particular preferential area will be allowed to obtain one permit for each motor vehicle it owns or leases. However, no more than three parking permits may be issued for each business establishment or motor vehicles registered to or under the control of such an establishment. In areas where it appears that the number of permits issued would exceed the number of legal on-street parking spaces, the initial sale would be limited to two or possibly one permit per business.

5. Any person to whom a preferential residential parking permit or a visitor permit has been issued pursuant to this section shall be deemed a parking permit holder. (as amended by Resolution No. 95-183, adopted October 3, 1995.)
  6. Reissuance of residential parking permits shall be subject to the same charges and conditions imposed on new permits.
  7. Renewal of residential parking permits shall be subject to the charge set forth in the Master Fee Schedule and renewed permits are subject to the same conditions imposed on new permits.
  8. Residential parking permits shall be issued with a term of two years from January 1 to December 31 of the following year, regardless of when during the two year term a resident purchases the parking permit. The biennial fee for new permits issued anytime during the first year of the two year term will be the full biennial fee. The fee for permits issued after December 31 of the first year will be half the biennial fee.
- (f) Visitor Permits. The Finance Department shall issue visitor parking permits in accordance with this subsection. A visitor permit shall be used by visitors to a resident of the permit parking area and shall provide the motor vehicle displaying the permit all the rights and privileges of a regular residential parking permit. All references to preferential residential parking permits in subsection (h) of this section and section 6.36 of the Hayward Traffic Code shall apply as well to visitor permits.
- Any person eligible to obtain a residential parking permit pursuant to criteria set forth in subsection (e) is an eligible applicant for a visitor parking permit, but no more than three visitor parking permits per residential unit shall be issued at any one time.
- The Finance Department is authorized to establish rules and regulations, not inconsistent with this section, concerning the issuance and display of visitor parking permits.
- (g) Fees. The fees for each preferential residential parking permit and visitor permit issued will be as set forth in the City of Hayward Master Fee Schedule.
- (h) Revocation of Permit. The Chief of Police is authorized to revoke the preferential residential parking permit of any person in violation of this section or Section 6.36 of the Hayward Traffic Code. There will be no refunds for revoked permits.

Revocations shall be proceeded by written notice of intent to revoke and such notice shall state the grounds for revocation and the date, time, and place set for a hearing at least ten days hence. Persons wishing to contest the proposed revocation must file a written request to do so with the Chief of Police within five days of receipt of the notice of proposed revocation. Failure to do so constitutes a waiver of the hearing. At the hearing, before the Chief of Police or his or her designee, the permittee shall have the right to present evidence and a written or oral argument or both.

The Chief or Police or his or her representative shall not be bound in the conduct of such hearing by the common law or statutory rules of evidence and procedures, but inquiry shall be made in such a manner as to ascertain the substantial rights of the public and the permittee.

No decision shall be invalidated because of the admission into the record and the use of any proof of any fact in dispute of any evidence not admissible under the common law or statutory rules of evidence.

Within five days after close of hearing, the Chief of Police shall enter a decision based upon the record presented and notify the permittee in writing of such decision. The decision of the Chief of Police shall be final. Upon written notification of the revocation, the permittee shall surrender such permit to the Chief of Police. Failure, when so requested, to surrender a residential parking permit so revoked and any visitor permit issued to such permittee shall constitute a violation of this section.

- (i) Penalties. Violations of this section are as provided in Section 6.36 of the Hayward Traffic Code.
- (j) Visitor Parking Permits for Publicly Operated Facilities. Notwithstanding the forgoing, a publicly operated facility within a designated preferential residential permit parking area may apply for and obtain visitor parking permits for its employees provided:
  - (1) At the time of designation of the area the number of off-street parking spaces subject to the facility control, on-site or adjacent thereto, is less than its then current number of employees;
  - (2) The number of visitor permits shall be limited to the difference between the number of employees and parking spaces set forth in the subsection (j)(1) or 15 visitor parking permits, whichever is less.

**DATE:** May 31, 2011

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT:** Opposition to AB 506 (Wieckowski) Local Government Bankruptcy

### **RECOMMENDATION**

That Council adopts the attached resolution opposing AB 506 and authorizing the Mayor and City Manager to send this resolution and consistent letters and correspondence to the appropriate State elected officials as needed to express the City's position on this and related matters.

### **BACKGROUND AND DISCUSSION**

On February 15, 2011, Assemblymember Bob Wieckowski (D-Fremont) introduced AB 506 in the State Assembly. The proposed legislation prohibits local public entities from exercising applicable powers available to them under Federal bankruptcy law unless the entity has participated in mediation proceedings as administered by the California Debt and Investment Advisory Commission. In order to file a petition for bankruptcy in Federal court, the local entity would have to participate in mediation and receive a good faith certification from the mediator verifying one of the following: 1) the local entity reached an out-of-court agreement with all interested parties on a plan of adjustment; 2) the local entity and interested parties were unable to reach agreement and the mediator has certified that the parties participated in good faith; or 3) the local entity initiated mediation and interested parties did not participate.

Existing law allows local public entities in California to file a bankruptcy petition under Federal law without any statewide approval or pre-conditions. Local public entities, as defined under existing Federal bankruptcy law, include cities. Only two cities (and one county) have petitioned for bankruptcy protections since adoption of Chapter 9 of the Federal Bankruptcy Code in 1949: City of Desert Hot Springs (1994); Orange County (1994); and City of Vallejo (2008).

The League of California Cities has expressed its strong opposition to this legislation primarily due to the legislation's attempt to take fiscal control out of the hands of local governments and to give this control to State-appointed mediators. In letters from the League to Assemblymember Wieckowski and Assemblymember Felipe Fuentes, Chair of the Assembly Appropriations Committee, League staff highlighted the following concerns and issues with the legislation as currently drafted:

- *Establishes obstacles rather than assistance on municipal bankruptcy issues.* The legislation, as currently drafted, has the effect of blocking agencies in fiscal distress from seeking the protections of federal bankruptcy court. The purpose of filing for Chapter 9 bankruptcy protection is to grant a stay of financial obligations and suspending payments while a debt readjustment plan can be formulated. The processes established by this legislation create numerous obstacles for local agencies in fiscal distress to seeking relief under Federal bankruptcy laws.
- *State Commission and State-controlled arbitrator are not neutral parties.* As set up in this legislation, a State Commission governed by elected officials subject to political influence would administer the mediation program, creating further hurdles for local agencies to overcome. Judges with no stake in the outcome currently manage bankruptcy proceedings, creating a process outside of the political spectrum. This legislation attempts to interject politics into the bankruptcy process.
- *Contemplates State intervention in local financial and labor disputes.* The legislation poses significant concerns about broader State intervention into local financial and labor disputes. For example, the State Commission would have the ability to convene mediations at its own request or at the request of a “*stakeholder concerned about the financial condition of the municipality.*” This is another example of the State attempting to insert itself into local decision-making processes.
- *Excludes collective bargaining agreements from mediation.* The legislation excludes collective bargaining agreements from the list of items subject to mediation. In most local agencies, collective bargaining agreements are often the majority of an agency’s expenses. This severely limits the scope of options available to local agencies subject to negotiations.

Proponents of the legislation have countered some of the League’s arguments by highlighting the issues faced by Vallejo during their bankruptcy proceedings. These proceedings have gone on for over three years, wasting significant time and legal fees, because Chapter 9 bankruptcy proceedings have no teeth. In these proceedings, judges can either dismiss the case or continue to shepherd the process along while a debt adjustment plan is developed. Proponents basically argue that AB 506 would require the parties to come to the table to develop a plan before heading to bankruptcy proceedings, thereby potentially saving time and legal fees<sup>1</sup>.

AB 506 passed through Committee (Ayes 5, Noes 3) on May 4, 2011 and has been referred to the Assembly Appropriations Committee for consideration. On May 18, the legislation was referred to the Appropriations suspense file.

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<sup>1</sup> *Capitol Weekly*, Opinion: Why bankruptcy is not the answer, <http://www.capitolweekly.net/article.php?xid=zppmyu6v431310>

## **FISCAL AND ECONOMIC IMPACT**

There are no direct fiscal or economic impacts of AB 506 on the City of Hayward. However, this legislation could potentially hinder the City Council's authority to make responsible and timely fiscal decisions on behalf of the City. The legislation has the effect of usurping local governing body authority to make the decisions that they were elected to make.

*Prepared by:* Kelly McAdoo Morariu, Assistant City Manager

Approved by:



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Fran David, City Manager

Attachments:

Attachment I: Resolution Opposing AB 506 (Wieckowski) Local Government Bankruptcy

HAYWARD CITY COUNCIL  
RESOLUTION NO \_\_\_\_\_

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

A RESOLUTION OPPOSING AB 506 (WIECKOWSKI) LOCAL GOVERNMENT  
BANKRUPTCY

WHEREAS, the City of Hayward, as a Charter City in the State of California, strongly endorses the concept of local control; and

WHEREAS, AB 506 is a recent measure introduced in the State Assembly that would prohibit local public entities from exercising applicable powers available to them under Federal bankruptcy law unless the entity has participated in mediation proceedings as administered by the California Debt and Investment Advisory Commission, a State Commission comprised of elected officials; and

WHEREAS, local entities only begin bankruptcy proceedings under the most dire of financial circumstances - only two cities (and one county) have petitioned for bankruptcy protections since adoption of Chapter 9 of the Federal Bankruptcy Code in 1949; and

WHEREAS, this legislation, as currently drafted, has the effect of blocking agencies in fiscal distress from seeking the protections of Federal bankruptcy court and creating numerous obstacles for local agencies to seeking relief under Federal bankruptcy laws; and

WHEREAS, judges with no stake in the outcome currently manage bankruptcy proceedings, creating a process outside of the political spectrum; and

WHEREAS, this legislation would allow a State Commission, governed by elected officials and subject to political influence, to administer the mediation program proposed and would exclude collective bargaining agreements from mediation, thereby limiting the scope of options available to local agencies for cost reductions; and

WHEREAS, this legislation poses significant concerns about broader State intervention into local financial and labor disputes; and

WHEREAS, the City Council is strongly opposed to any proposed actions by the State Legislature that reduces local control and authority over fiscal decision making.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hayward expresses its opposition to AB 506 (Wieckowski) as currently authored.

BE IT FURTHER RESOLVED that the City Council authorizes the Mayor and the City Manager to forward this resolution and consistent letters and correspondence to the appropriate State elected officials as needed to express the City's position on this and related matters.

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

**DATE:** May 31, 2011  
**TO:** Mayor and City Council  
**FROM:** Assistant City Manager  
**SUBJECT:** Support of S. 781 (Feinstein) Ethanol Subsidy and Tariff Repeal Act

### **RECOMMENDATION**

That Council adopts the attached resolution supporting Senate Bill 781 and strongly encouraging members of the U.S. Senate Finance Committee to approve the bill and forward the legislation to the full Senate for consideration.

### **BACKGROUND**

On May 2, 2011, U.S. Senator Dianne Feinstein (D-Calif.) joined Sen. Tom Coburn, M.D. (R-Okla.) to introduce the Ethanol Subsidy and Tariff Repeal Act (S. 781), which will fully eliminate the Volumetric Ethanol Excise Tax Credit (VEETC) and fully repeal the tariff on imported ethanol. The bill has been sent to the Senate Finance Committee where it is awaiting debate.

“Ethanol is the only industry that benefits from a triple crown of government intervention: 1) its use is mandated by law, 2) it is protected by tariffs, and 3) companies are paid by the federal government to use it. Ethanol subsidies and tariffs sap our budget, they’re bad for the environment, and they increase our dependence on foreign oil. It’s time we end subsidies that we cannot afford and tariffs that increase gas prices,” Sen. Feinstein said.<sup>1</sup>

### **DISCUSSION**

Corn-based ethanol has been America's leading bio-fuel for more than thirty years and has blossomed into a thriving business.<sup>2</sup> American farms and refineries now generate half of all ethanol produced around the globe. A diverse group of critics - including meat producers, anti-hunger activists, taxpayer advocates, free-market groups, and environmental organizations - argue the subsidies are unnecessary and expensive. The Ethanol industry has received Federal government incentives and mandates for the past thirty years.

<sup>1</sup> [http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord\\_id=B7BFDCB4-5056-8059-766D-4EA48CCE735D](http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=B7BFDCB4-5056-8059-766D-4EA48CCE735D)

<sup>2</sup> <http://sweeteralternative.com/blog/after-30-years-of-federal-subsidies-ethanol-can-go-it-alone>

Factors driving the ethanol market include: 1) high oil prices; 2) national energy security considerations; 3) ethanol tax incentives; 4) improved technology - lower costs of ethanol production; and 5) climate change concerns.<sup>3</sup>

Arguments in support of this legislation (to eliminate the tax credit and tariff) include:

- 1) Taxpayer Savings - \$6 billion dollars would be saved in annual Federal subsidies.
- 2) Increased Competition – Current trade tariffs provide U.S. producers with a cost advantage, which does not promote competition and lower prices. Elimination of tax credits and tariffs would allow for global market-based competition, providing for competitive pricing.
- 3) Lower Food Prices - Corn is a primary food ingredient, and using nearly forty percent of the U.S.'s corn supply for ethanol production drives up food prices.<sup>4</sup> Two recent studies, including one from the EPA, estimated that government subsidies for ethanol are directly responsible for raising corn prices by seven to eight percent, and this doesn't include the additional twenty-two percent increase in prices due to supply and demand pressures as corn is diverted for use in ethanol blending.<sup>5</sup>
- 4) Decrease in Ethanol Fuel Prices - Americans currently pay an estimated \$6 billion annually for ethanol production through tax credits, while a tariff limits foreign competition by keeping ethanol costs high. Ending the subsidies would reduce ethanol prices by twelve cents per gallon in 2011 and thirty-four cents per gallon in 2014. Because most gas sold in the United States contains fifteen percent ethanol<sup>6</sup> - lower, non-subsidized ethanol prices would lead to modest savings at the pump.<sup>7</sup>

Arguments against this legislation (against eliminating the tax credit and tariff) include:

- 1) Elimination of U.S. jobs - The Center for Agricultural and Rural Development at Iowa State University recently estimated that a one-year extension of the ethanol subsidy and tariff would lead to 427 additional direct domestic jobs.<sup>8</sup>
- 2) Ethanol Production will Decline –Expanded mandates under the Renewable Fuel Standard Program<sup>9</sup> provide ethanol and biodiesel producers a guaranteed future market at volumes that exceed what they have produced in the past.<sup>10</sup> The Energy Policy Act of 2005<sup>11</sup>, followed by the Energy Independence and Security Act of 2007<sup>12</sup> mandates an

<sup>3</sup> <http://www.marketresearchanalyst.com/2008/01/26/world-ethanol-production-forecast-2008-2012/>

<sup>4</sup> <http://newsandresearch.metisresources.com/2011/04/26/epa-stands-by-biofuels-despite-high-corn-prices/>

<sup>5</sup> <http://teaparty.einnews.com/pr-news/414066-letter-of-support-coburn-feinstein-ethanol-subsidy-and-tariff-repeal-act-s-871>

<sup>6</sup> <http://preview.bloomberg.com/news/2011-01-21/u-s-epa-said-to-allow-15-ethanol-fuel-mix-for-cars-made-in-2001-or-later.html>

<sup>7</sup> <http://sweeteralternative.com/blog/after-30-years-of-federal-subsidies-ethanol-can-go-it-alone>

<sup>8</sup> [http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord\\_id=B7BFDCB4-5056-8059-766D-4EA48CCE735D](http://feinstein.senate.gov/public/index.cfm?FuseAction=NewsRoom.PressReleases&ContentRecord_id=B7BFDCB4-5056-8059-766D-4EA48CCE735D) <http://www.epa.gov/otaq/fuels/renewablefuels/index.htm>

<sup>9</sup> <http://www.epa.gov/otaq/fuels/renewablefuels/index.htm>

<sup>10</sup> <http://www.card.iastate.edu/publications/synopsis.aspx?id=1125>

<sup>11</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-109publ58/content-detail.html>

increase in bio-fuels (usually ethanol), from 13 billion gallons today to 36 billion gallons by 2022. Elimination of the tax credit and tariff will reduce the incentives for production of ethanol generally and to meet these mandates specifically.

- 3) Expand foreign oil imports –Eliminating the tax credit and tariff will increase competition and lower the price for ethanol. Lowering the cost for this bio-fuel will promote demand by consumers while lowering the supply. This may lead to increased use of other more traditional energy sources, namely foreign oil.

## **FISCAL AND ECONOMIC IMPACT**

There are no anticipated negative or positive impacts of this Federal legislation directly on the City of Hayward. Senator Feinstein has estimated that the elimination of the tax credit would save the Federal government \$6 billion in annually tax credits. A repeal of the tariff would improve competition, lowering the cost of ethanol to the consumer.

*Prepared by:* Denise Blohm, Administrative Analyst II

*Recommended by:* Kelly McAdoo Morariu, Assistant City Manager

Approved by:



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Fran David, City Manager

Attachment:

Attachment I: Resolution in Support of S. 781, Ethanol Subsidy and Tariff Repeal Act Currently Being Considered in the U.S. Senate Finance Committee

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<sup>12</sup> [http://en.wikipedia.org/wiki/Energy\\_Independence\\_and\\_Security\\_Act\\_of\\_2007](http://en.wikipedia.org/wiki/Energy_Independence_and_Security_Act_of_2007)

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

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

A RESOLUTION IN SUPPORT OF S. 781 (FEINSTEIN) THE ETHANOL SUBSIDY AND TARIFF REPEAL ACT

WHEREAS, continuing to subsidize oil companies to blend ethanol -- which they are already required to do by the Renewable Fuels Standard -- is wasteful and unnecessary; and

WHEREAS, at a time of record Federal deficits coupled with rising food prices, it is time to end the 30 years of taxpayer subsidies afforded to the corn-based ethanol industry, which is costing taxpayers approximately \$6 billion per year; and

WHEREAS, two recent studies estimate that government subsidies for ethanol are directly responsible for raising corn prices by 7 to 8 percent and, in turn, artificially inflating prices of food produced using corn and corn ingredients; and

WHEREAS, by eliminating the Volumetric Ethanol Excise Tax Credit and the import tariff, the bill would serve as a first step in eliminating unnecessary Federal support for corn ethanol; and

WHEREAS, the Ethanol Subsidy and Tariff Repeal Act would fully eliminate the Volumetric Ethanol Excise Tax Credit (VEETC) and repeal the tariff on imported ethanol, thereby generating approximately \$6 billion in savings to taxpayers annually.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hayward expresses its support for the Ethanol Subsidy and Tariff Repeal Act and encourages the U.S. Congress to pass this important legislation and President Obama to sign it into law.

BE IT FURTHER RESOLVED that the City Council directs the City Manager to forward this Resolution to the appropriate Federal elected officials.

IN COUNCIL, HAYWARD, CALIFORNIA May 31, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:

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City Clerk of the City of Hayward

APPROVED AS TO FORM:

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City Attorney of the City of Hayward



**DATE:** May 31, 2011  
**TO:** Mayor and City Council  
**FROM:** City Clerk  
**SUBJECT:** Adoption of Ordinance Providing for the Revision of the City of Hayward Municipal Code Chapter 2, Article 3: Board and Commissions and Article 4: Employees to Align the Code with the City Charter and to Reflect Changes to Federal and State Anti-Discrimination Laws

**RECOMMENDATION**

That the City Council adopts the Ordinance introduced on May 17, 2011. The Ordinance was introduced with direction for staff to generate an Employee Demographic Profile report on a yearly basis for Council review.

**BACKGROUND**

The ordinance was introduced by Council Member Henson at the May 17, 2011, meeting of the City Council with the following vote:

<b>AYES:</b>	Council Members:	Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson
	Mayor	Sweeney
<b>NOES:</b>	Council Members:	None
<b>ABSENT:</b>	Council Members:	None
<b>ABSTAIN:</b>	Council Members:	None

The ordinance was published in the Hayward Daily Review on Saturday, May 28, 2011. Adoption at this time is therefore appropriate.

*Recommended by:* Miriam Lens, City Clerk

Approved by:

\_\_\_\_\_  
Fran David, City Manager

Attachment: Draft Ordinance Published on May 28, 2011

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE  
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

AN ORDINANCE PROVIDING FOR THE REVISION OF THE CITY OF HAYWARD MUNICIPAL CODE CHAPTER 2, ARTICLE 3: BOARD AND COMMISSIONS AND ARTICLE 4: EMPLOYEES TO ALIGN THE CODE WITH THE CITY CHARTER AND TO REFLECT CHANGES TO FEDERAL AND STATE ANTI-DISCRIMINATION LAWS

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

Section 1. Provisions. The City of Hayward Municipal Code, Chapter 2, Article 3: Board and Commissions and Chapter 2, Article 4: Employees and all amendments thereto are hereby repealed and replaced with the revised City of Hayward Municipal Code, Chapter 2, Article 3: Board and Commissions and Chapter 2, Article 4: Employees, hereby enacted to read as follows:

ARTICLE 3  
BOARDS AND COMMISSIONS

Section	Subject Matter
PLANNING COMMISSION	
2-3.00	PLANNING COMMISSION. MEMBERS
2-3.01	PLANNING DEPARTMENT
2-3.02	POWERS AND DUTIES
BOARD OF ADJUSTMENTS	
PERSONNEL COMMISSION	
2-3.10	PERSONNEL COMMISSION. MEMBERS
2-3.11	HUMAN RESOURCES DEPARTMENT
2-3.12	POWERS AND DUTIES
PUBLIC SERVICES/INDUSTRIAL COMMISSION	
AIRPORT COMMISSION	
ENVIRONMENTAL QUALITY COMMISSION	
LIBRARY COMMISSION	
2-3.50	LIBRARY COMMISSION. MEMBERS
2-3.51	LIBRARY DEPARTMENT
2-3.52	POWERS AND DUTIES
INDUSTRIAL COMMISSION	
HUMAN SERVICES COMMISSION	
2-3.70	POLICY
2-3.71	HUMAN SERVICES COMMISSION. MEMBERS
2-3.72	HUMAN SERVICES DEPARTMENT
2-3.75	POWERS AND DUTIES
SOCIAL DEVELOPMENT COMMISSION	
CITIZENS ADVISORY COMMISSION	

- 2-3.85 POLICY
- 2-3.86 CITIZENS ADVISORY COMMISSION. MEMBERS
- 2-3.87 HUMAN SERVICES DEPARTMENT
- 2-3.88 POWERS AND DUTIES

ARTICLE 4  
EMPLOYEES

Section	Subject Matter
2-4.00	PERSONNEL SYSTEM. PURPOSE
2-4.01	UNCLASSIFIED SERVICE
2-4.02	CLASSIFIED SERVICE
2-4.03	PERSONNEL SYSTEM. APPLICATION
2-4.10	ADMINISTRATION, HUMAN RESOURCES DIRECTOR
2-4.11	PERSONNEL RULES AND REGULATIONS
2-4.12	RULES AND REGULATIONS. MANNER OF ADOPTION
2-4.20	CLASSIFICATION PLAN
2-4.21	CLASSIFICATION PLAN. MANNER OF ADOPTION
2-4.22	CLASSIFICATION PLAN. REVISION
2-4.30	SALARY PLAN
2-4.31	SALARY PLAN. MANNER OF ADOPTION
2-4.32	SALARY PLAN. REVISION
2-4.40	EXAMINATIONS
2-4.41	PROMOTIONS
2-4.42	PROVISIONAL APPOINTMENTS
2-4.43	TEMPORARY APPOINTMENTS
2-4.44	PART-TIME APPOINTMENTS
2-4.45	REGULAR APPOINTMENTS
2-4.50	EMPLOYMENT REGISTERS
2-4.51	EMPLOYMENT REGISTERS. ORDER OF PRIORITY
2-4.52	EMPLOYMENT REGISTERS. ADMINISTERING
2-4.53	EMPLOYMENT REGISTERS. APPOINTMENTS
2-4.60	PROBATION
2-4.61	PROBATIONARY PERIOD. WORK EVALUATION
2-4.62	EMPLOYEES. REGULAR STATUS
2-4.70	HOURS OF WORK
2-4.71	RULES ADOPTING AGE LIMITS
2-4.80	REMOVAL - SUSPENSION - FINE
2-4.90	EMPLOYEES. LAY-OFF

Section 2. Severance. Should any part of this ordinance be declared by a final decision of 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. Effective Date. 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 meeting of the Hayward City Council held May 17, 2011, the above-entitled ordinance was introduced by Council Member Henson.

This ordinance will be considered for adoption at the next meeting of the Hayward City Council, to be held on May 31, 2011, at 7:00 p.m., in the Council Chamber, 777 B Street, Hayward, California. The full text of this ordinance is available for examination by the public in the Office of the City Clerk.

Dated: May 28, 2011

Miriam Lens, City Clerk  
City of Hayward

**DATE:** May 31, 2011

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** City Councilmember Call-Up of Planning Director's Approval of *Administrative Use Permit PL-2011-0024 for an Exempt Transfer Facility at 30989 San Clemente Street in the Industrial Zoning District for Hazardous and Non-Hazardous Materials – David Buckner of Heritage Environmental (Applicant) / Robert Coussan (Owner)*

## **RECOMMENDATION**

That the City Council adopts the attached resolution (Attachment I) approving the request to operate a hazardous materials transfer facility at 30989 San Clemente Street, subject to the attached Conditions of Approval (Attachment V), and finding that the proposed project is Categorical Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities.

## **SUMMARY**

On March 23, 2011, the Planning Director administratively and conditionally approved a request to allow an exempt transfer facility for hazardous and non-hazardous materials at 30989 San Clemente Street in the Industrial (I) Zoning District, based on certain findings and conditions of approval<sup>1</sup>. On April 6, 2011, the Mayor requested review of the application by the City Council pursuant to Hayward Municipal Code Section 10-1.2845f - *City Councilmember Call-Up* (Attachment VI). Planning staff believes the required findings to approve an Administrative Use Permit can be made, as reflected in the attached resolution, based on the revised conditions of approval, which include requirements for ensuring the facility will be operated in a safe manner, and providing certain community benefits (see especially condition #30 in Attachment V).

## **BACKGROUND**

Heritage Environmental Services, LLC (Heritage)<sup>2</sup> provides hazardous waste management services. The company also provides transportation and logistics services through its fleet of vehicles, rail

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<sup>1</sup> Note: The Findings for Approval dated May 31, 2011 (Attachment IV) are incorporated into the attached resolution (Attachment I) and replace the original Findings for Approval dated March 23, 2011 (Attachment III). In addition, new conditions were added to the original Conditions of Approval. The new conditions are highlighted in bolded text (Attachment V).

<sup>2</sup> www.heritage-environ.com

cars, and third-party barge carriers. In addition, it offers groundwater monitoring, testing, and sampling services through its laboratory, as well as web-based electronic data management services. The company was founded in 1970 and is headquartered in Indianapolis, Indiana. It has facilities in Arizona, California (Signal Hill), Indiana, Illinois, Kentucky, Minnesota, Missouri, North Carolina, New York, Ohio, and Oklahoma.

Recent business growth in California has necessitated locating an exempt transfer facility (one at which containers may not be opened) in the San Francisco-Sacramento corridor, which would be the second exempt transfer facility operated in California by Heritage; the other is located in the City of Signal Hill in southern California, which has been in operation for ten years. This growth has been spurred by fines levied by the California Attorney General and various District Attorneys on large retailers for illegally disposing hazardous waste in their dumpsters, which is then transferred to local landfills.

One of those large retailers, Target Corporation, was cited with numerous violations of California's hazardous waste disposal laws. In 2009, then-Attorney General Edmund G. Brown, the Los Angeles City Attorney and twenty District Attorneys filed legal action against Target to block the retailer from illegally dumping hazardous waste in local landfills or pouring it down drains. Target operates approximately two hundred retail stores (two in Hayward) and seven distribution centers in California, and carries and handles hundreds of items with hazardous properties, including bleach, paints, pesticides, batteries, aerosol products, light bulbs, oven cleaners, and automotive products. In March 2011, Target agreed to pay \$22.5 million to end the lawsuit. Included in the agreement is that they must employ a licensed hazardous waste transporter and file uniform hazardous waste manifests before transferring hazardous wastes for off-site handling, storage, or disposal. Although Heritage is prohibited from publicly disclosing the names of clients it serves, such lawsuits have generated a greater degree of awareness by California companies and businesses and a greater need for businesses like Heritage.

Under California laws, retailers are responsible for properly disposing of products that are damaged during shipping or stocking, returned to the store by customers, or removed from stock because they are past their expiration date. They are also required to hire a licensed hazardous waste transporter to pick up the waste and transport it to an authorized hazardous waste disposal facility. This ensures that hazardous waste will not end up at local landfills where toxic chemicals can seep into California's water supplies or emit dangerous gases. The laws are applicable to all large retailers such as Costco, Home Depot, Kmart, Safeway, Lucky, CVS Pharmacy, and Walgreens, just to name a few of the businesses located in Hayward impacted by these regulations.

Heritage noted that the Attorney General actions led to an increase in the demand for its services by large retailers. To handle the increase and to make their operation efficient, Heritage would like to operate an exempt transfer facility at 30989 San Clemente Street to handle its northern California region and retailer contracts. Currently, all the hazardous waste picked up in northern California is hauled to the Signal Hill transfer facility where it is consolidated onto semi-trailer trucks before it is transported to its facility in Coolidge, Arizona, or other authorized facilities, where it is disposed, recycled or reused. Though retailers comprise the largest share of the customer base, Heritage also provides their services to universities, commercial laboratories, industrial and manufacturing facilities, and energy companies.

The property is located at the northwest corner of San Clemente and Zephyr Avenue, in the Industrial Zoning District amongst a mixture of uses, including research and development, warehouse, manufacturing, and office facilities. It is approximately 2,000 feet from the nearest residential property. The facility would occupy 13,500 square feet, in a multi-tenant property. Also, the proposed facility would not entail Class A hazardous materials, which would require a conditional use permit and include such materials as explosives and blasting agents, reactive materials, unstable materials, radioactive materials, poisonous or toxic materials, and corrosive, poisonous, or unstable gases.

## **DISCUSSION**

An exempt or consolidated transfer facility is a facility where a hazardous waste transporter may transfer shipments to different vehicles in order to redirect them to their final destination. The Department of Toxic Substances (DTSC) authorizes only the transfer of properly containerized hazardous wastes that remain in the containers when they arrive at an exempt transfer facility. Once at the exempt transfer facility, DTSC requires that the containers remain closed and that they not be opened for sampling, handling and/or consolidation into larger containers. Furthermore, waste cannot be held for more than ten working days when located in an industrial district (six working days when located in a commercial district). Only a transporter registered by the DTSC with a valid Environmental Protection Agency (EPA) identification number may operate an exempt transfer facility in California. While in transit, the hauler must comply with the Department of Transportation (DOT) regulations, which require that hazardous waste be carried out via the most direct route, using State or interstate highways whenever possible.

Heritage would transport materials that are classified as Group B and C hazardous materials according to the Zoning Ordinance. Group B materials include: flammable liquids and solids; oxidizing gases; and corrosive materials. Group C materials include: combustible liquids and inert gases. Approval of an Administrative Use Permit is required for storage and/or handling of Group B and/or Group C hazardous materials that exceed the following thresholds at any one time:

### Group B

- 5,000 pounds of solids,
- 550 gallons of liquids, or
- 2,000 cubic feet of gases at standard temperatures and pressures

### Group C

- 50,000 pounds of solids,
- 5,500 gallons of liquids,
- 20,000 cubic feet of gases at standard temperatures and pressures

To determine if these thresholds would be exceeded, Heritage submitted to the Hayward Fire Department a Chemical Inventory Summary of the largest volume collected in one week over the period from November 2009 to December 2010. The Fire Department reviewed the summary from Heritage and determined that the proposed facility would exceed these thresholds, requiring an application for an Administrative Use Permit.

Summary of Proposed Facility Operations - Heritage would pick up the hazardous waste from the generator after the waste has been packed in containers approved by the Department of Transportation (DOT). They would then deliver the containers by smaller trucks to the proposed transfer facility, where the containers would be weighed, bar-coded, and staged and then loaded directly onto a semi-trailer truck. There are four loading docks; three would be dedicated to the “cross docking” of containers from the smaller trucks to the semi-trailer trucks. The fourth one has a ramp and would be used for building access but not for the loading or unloading of trucks. No containers would remain in the building at the end of the day. All containers would be secured in the semi-trailer trucks at the close of business each day.

The size of the containers would range from five to fifty-five gallons with most of the containers not exceeding thirty gallons. No leaking containers, drums with loose lids, or structurally damaged boxes can be removed from a generator’s site. All materials from the generator must be packed in DOT approved containers. No containers can be opened and no hazardous materials can be consolidated into larger containers. In addition, containers cannot be held for more than ten working days at the exempt transfer station even if the transporting semi-trailer truck is not full. The semi-trailer truck must depart when the oldest container reaches the ten-day limit. All containers are tracked from receipt at the exempt transfer facility to delivery at Heritage’s Coolidge, Arizona facility, or other authorized facility, for treatment, storage, recycling, and/or disposal.

The risk from accidents, illegal dumping, and burglaries would be minimal. A secondary containment area would be provided as required by the City’s Hazardous Material Storage Ordinance. The facility has an interior fire sprinkler system and, as conditioned, exterior fire sprinklers would be added. Heritage has established operating procedures in place based on its Signal Hill operations and Heritage’s staff in Hayward would be trained in these procedures. Personal protective equipment would be on hand should an accident occur. In addition, the semi-trailer trucks would be secured behind a six-foot high chain-link fence, video monitoring equipment would be installed inside and outside the building, and a security guard would provide surveillance during non-operating hours.

Staff has verified with the Los Angeles County Fire Department Certified Unified Program Agency (CUPA) that the Signal Hill exempt transfer facility has operated without any incidents since they started providing services there ten years ago. In addition, staff received letters from the City Manager and Fire Chief of the City of Coolidge, Arizona, praising Heritage for its professional management and proactive safety measures of its facility there (Attachment VIII & IX). In addition, the Town of Florence, Arizona’s Deputy Town Manager commented favorably on Heritage’s assistance with the Town’s annual Community Clean-Up Days (Attachment X). Heritage indicated to staff that they are willing to provide assistance with Community Clean-Up Days for Hayward as well, which is reflected in revised condition number #30 in Attachment V.

Findings for Approval of the Administrative Use Permit Application -

Staff is of the opinion that the following administrative use permit findings can be made:

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

The exempt transfer station, as conditioned, is desirable for the public welfare in that it provides large retailers, research and development firms, and manufacturing facilities in Hayward with a convenient location to transport their hazardous materials to authorized facilities instead of depositing them in landfills or pouring them down drains. Also, as reflected in the attached recommended conditions of approval (condition #30), Heritage has offered to be a sponsor for an annual Community Clean-Up Day in Hayward and to provide a monetary donation and/or materials. In addition, Heritage would provide free laboratory packing and disposal services for waste laboratory chemicals for one Hayward Unified School District High School per year and free laboratory packing and disposal of household hazardous waste for abandoned homes in Hayward.

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

The exempt transfer facility for hazardous materials, as conditioned, will not impair the character or integrity of the Industrial District and surrounding area in that the facility and operation would complement other warehousing and manufacturing facilities in the Industrial District that transport material and products to and from their site.

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

The exempt transfer station for hazardous materials will not be detrimental to the public health, safety or general welfare in that the facility, as conditionally approved, will be required to properly regulate the operating procedures and activities associated with the use as regulated by California Building Code standards and all Hayward Fire Department requirements in addition to the Department of Toxic Substances Control (DTSC) and Department of Transportation (DOT) regulations. The DTSC and DOT regulations require that the hazardous materials must be transported in DOT approved containers, must remain in the containers received from the generator and cannot be opened until it arrives at an authorized disposal, recycling, or reuse facility. Additional safety measures will be in place as conditioned, including requiring providing secondary containment at the loading dock, requiring that loaded semi-trailer trucks shall be inside the locked gate area at all times, providing video cameras inside the building and the dock area and providing a security guard during non-operating hours.

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

The exempt transfer station is permitted subject to an administrative use permit and that the use as proposed is consistent with the General Plan and applicable City regulations. The transfer station is in harmony with the General Plan, Conservation and Environmental Protection Element, Hazardous Materials, Strategy No. 2 stating, “*Maintain a suitable buffer zone between industrial firms involved with hazardous materials and residential areas.*” The proposed transfer facility is approximately 2,000 feet from the nearest residential property.

Staff recommends approval of the exempt transfer facility, as conditioned. The transfer station allows for the consolidation of containers, some of which are collected from local retailers, for transport to an authorized disposal, recycling, or reuse site. The risks to the City and the immediate area are minimal and, as conditioned, measures are in place to prevent and address any incidents should one occur. The containers are not allowed to be opened and the materials cannot be kept at the transfer station for more than 10 working days. Equipment and supplies are on site to handle any accidents or spills, a security guard would survey the facility during non-operating hours, and the hazardous material would be stored in a semi-trailer which would be in a gated area. Finally, large retailers as well as manufacturing and research and development facilities in Hayward would have a transfer facility conveniently located to handle their hazardous waste. This would contribute to reducing hazardous material that could otherwise end up in landfills or poured down drains.

### **ECONOMIC IMPACT**

Although the facility is proposed to generate/involve three to five jobs, there is no known direct substantial economic impact to Hayward at this time.

### **FISCAL IMPACT**

The City would receive minimal tax revenue from the rental of the facility. Per Hayward Municipal Code Chapter 3, Article 9: *Hazardous Material Recovery Cost*, and as conditioned (refer to condition #21 in Attachment V), Heritage Environmental would be responsible for any cost incurred by the City as a result of clean-up or abatement activity should an accident occur at the facility.

### **PUBLIC CONTACT**

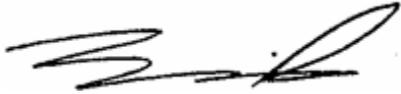
On February 3, 2011, an Official Notice of the request to allow a 10-day transfer station was sent to every property owner and occupant within 300 feet of the subject site. As a result of the notice, staff received two responses requesting more information and two responses that opposed the transfer station expressing health and safety concerns. Copies of the project narrative (Attachment XI) were sent to all four respondents and Environmental Heritage followed up to address any questions they may have had.

On March 23, 2011, a Notice of Decision was mailed to surrounding property owners and occupants, and to interested parties, that the Planning Director had approved the application. No appeals were received; however, the application was called up for the City Council's review by Mayor Sweeney on April 6, 2011. On May 20, 2011, a Notice of Public Hearing for the City Council hearing was mailed to every property owner and occupant within 300 feet of the subject site.

*Prepared by:* Carl Emura, Associate Planner

*Recommended by:* David Rizk, Development Services Director

Approved by:



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Fran David, City Manager

Attachments:

- |                 |  |
|-----------------|--|
| Attachment I    | Resolution   |
| Attachment II   | Area and Zoning Map  |
| Attachment III  | Findings for Approval from Administrative Approval of March 23, 2011   |
| Attachment IV   | Findings for Approval (revised)  |
| Attachment V    | Conditions of Approval (revised)   |
| Attachment VI   | Email dated 4/6/11 from Mayor Sweeney calling up the Planning Director approval  |
| Attachment VII  | Email dated 4/6/11 to Mayor Sweeney from Mr. David Buckner, Heritage Environmental Western Region Vice President                     |
| Attachment VIII | Letter from Robert F. Flatley, City Manager of City of Coolidge, Arizona   |
| Attachment IX   | Letter dated March 21, 2011 from Mickey McHugh, Fire Chief, City of Coolidge, Arizona to Terry Baer, Heritage Environmental Services |
| Attachment X    | Letter dated April 11, 2011 from Jess Knudson, Deputy Town Manager Town of Florence, Arizona   |
| Attachment XI   | Heritage Environmental Project Narrative/Standard Operating Procedures   |

HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member

RESOLUTION APPROVING ADMINISTRATIVE USE PERMIT APPLICATION PL-2011-0024, CONCERNING A REQUEST TO ALLOW AN EXEMPT TRANSFER STATION AT 30989 SAN CLEMENTE STREET IN THE INDUSTRIAL ZONING DISTRICT FOR HAZARDOUS AND NON-HAZARDOUS MATERIALS "IN TRANSPORT" TO TREATMENT /STORAGE/DISPOSAL FACILITIES

WHEREAS, the Planning Director approved Administrative Use Permit No. PL-2011-0024 on March 23, 2011;

WHEREAS, the application was called up to the City Council by Mayor Sweeney on April 6, 2011; and

WHEREAS, the City Council finds and determines that:

1. The approval of Administrative Use Permit No. 2011-0024, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from CEQA under Section 15301 (Existing Facilities).
2. The exempt transfer station, as conditioned, is desirable for the public welfare in that it provides large retailers, research and development firms, and manufacturing facilities in Hayward with a convenient location to transport their hazardous materials to authorized facilities instead of depositing them in landfills or pouring them down drains. Also, as reflected in the conditions of approval, Heritage has offered to provide assistance with Hayward Community Clean-Up Days by providing a monetary donation and/or materials. In addition, Heritage would provide free laboratory packing and disposal services for waste laboratory chemicals for one Hayward Unified School District High School per year and free laboratory packing and disposal of household hazardous waste in abandoned homes in Hayward.
3. The exempt transfer facility for hazardous materials, as conditioned, will not impair the character or integrity of the Industrial Zoning District, or the surrounding area, in that facility and operation would be compatible with other

warehousing and manufacturing facilities in the Industrial District that transport material and products to and from their sites.

- 4. The exempt transfer station for hazardous materials will not be detrimental to the public health, safety or general welfare in that the facility, as conditionally approved, will be required to properly regulate the operating procedures and activities associated with the use as regulated by California Building Code standards and all Hayward Fire Department requirements in addition to the Department of Toxic Substances Control (DTSC) and Department of Transportation (DOT) regulations. The DTSC and DOT regulations require that the hazardous materials must be transported in DOT approved containers, must remain in the containers received from the generator and cannot be opened until it arrives at an authorized disposal, recycling or reuse facility. Additional safety measures will be in place as conditioned, including requiring providing secondary containment at the loading dock, requiring that loaded semi-trailer trucks shall be inside the locked gate area at all times and providing video cameras inside the building and the dock area.
  
- 5. The exempt transfer station is permitted subject to an administrative use permit approval and that the use as proposed is consistent with the General Plan and applicable City regulations adopted under the City of Hayward Municipal Code. The transfer station is in harmony with The General Plan, Conservation and Environmental Protection Element, Hazardous Materials, Strategy No. 2 states, *“Maintain a suitable buffer zone between industrial firms involved with hazardous materials and residential areas.”* The proposed transfer facility is approximately 2,000 feet from the nearest residential property.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings and conditions of approval, the City Council of the City of Hayward hereby approves Administrative Use Permit PL-2011-0024 to allow a exempt transfer facility for hazardous and non-hazardous materials “in transport” to treatment/storage/disposal facilities.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

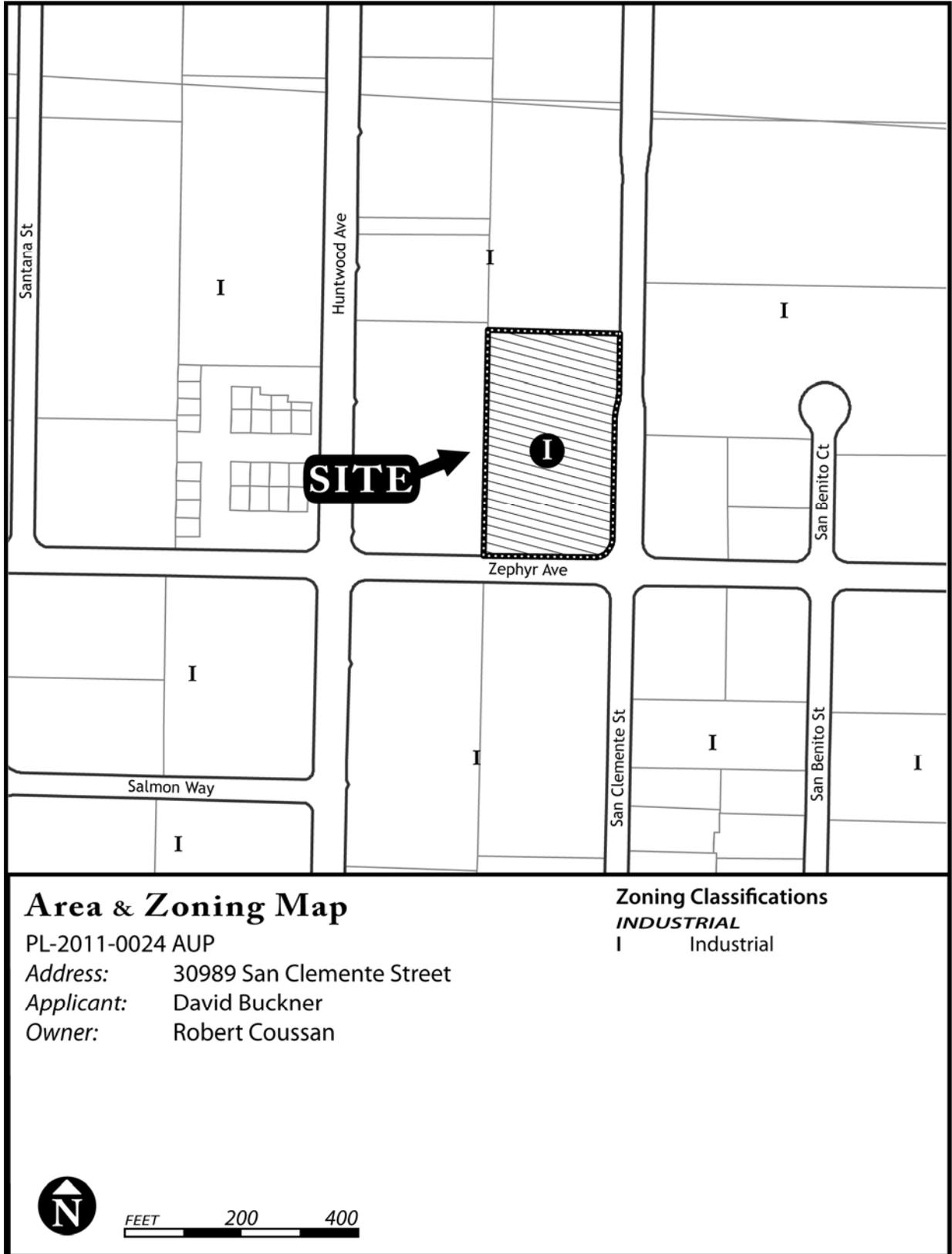
ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

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

APPROVED AS TO FORM:

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



**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
March 23, 2011**

**ADMINISTRATIVE USE PERMIT APPLICATION NO. PL-2011-0024** –David Buckner (Applicant)/Robert Coussan (Owner) – Request to allow a transfer facility for hazardous and non-hazardous materials “in transport” to treatment/storage /disposal facilities.

The project location is 30989 San Clemente Street, at Zephyr Avenue, in the Industrial (I) Zoning District, APN 475-0174-011-05

**FINDINGS FOR APPROVAL:**

- A. The approval of Administrative Use Permit No. 2011-0024, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City’s independent judgment and is exempt from CEQA under Section 15301 (Existing Facilities).
- B. The transfer station, as conditioned is desirable for the public welfare in that it is part of a system to keep hazardous material out of landfills, storm drains and sewer systems. It also reduces the carbon foot print by reducing the number of miles traveled to transport these hazardous materials to disposal, recycling or reuse facilities.
- C. The transfer station for hazardous materials, as conditioned, will not impair the character or integrity of the Industrial Zoning District or surrounding area in that at no time will the hazardous materials exceed the maximum allowable quantities under the CA Fire Code.
- D. The transfer station for hazardous materials will not be detrimental to the public health, safety or general welfare in that the facility will be conditionally approved to properly regulate the operating procedures and activities associated with the use as regulated by California Building Code standards and all Hayward Fire Department requirements.
- E. The transfer station for hazardous materials is permitted subject to an administrative use permit approval and that the use as proposed is consistent with the General Plan and applicable City regulations adopted under the City of Hayward Municipal Code.

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT  
March 23, 2011 (Revised)**

**ADMINISTRATIVE USE PERMIT APPLICATION NO. PL-2011-0024** –David Buckner (Applicant)/Robert Coussan (Owner) – Request to allow a transfer facility for hazardous and non-hazardous materials “in transport” to treatment/storage /disposal facilities.

The project location is 30989 San Clemente Street, at Zephyr Avenue, in the Industrial (I) Zoning District, APN 475-0174-011-05

**FINDINGS FOR APPROVAL:**

- A. The approval of Administrative Use Permit No. 2011-0024, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City’s independent judgment and is exempt from CEQA under Section 15301 (Existing Facilities).
- B. The exempt transfer station, as conditioned is desirable for the public welfare in that it provides large retailers, research and development, industrial and manufacturing facilities in Hayward with a convenient location to transport their hazardous materials to authorized facilities instead of depositing them in landfill or pouring them down drains. Also, as reflected in the conditions of approval, Heritage has offered to provide assistance with Hayward Community Clean-Up Days by providing a monetary donation and/or materials. In addition, Heritage would provide free laboratory packing and disposal services for waste laboratory chemicals for one Hayward Unified School District High School per year and free laboratory packing and disposal of household hazardous waste in abandoned homes in Hayward.
- C. The exempt transfer facility for hazardous materials, as conditioned, will not impair the character or integrity of the Industrial District or surrounding area in that facility and operation would blend in with other warehousing and manufacturing facilities in the Industrial District that transport material and products to and from their site.
- D. The exempt transfer station for hazardous materials will not be detrimental to the public health, safety or general welfare in that the facility will be conditionally approved to properly regulate the operating procedures and activities associated with the use as regulated by California Building Code standards and all Hayward Fire Department requirements in addition to the Department of Toxic Substances Control (DTSC) and Department of Transportation (DOT) regulations. The DTSC and DOT regulation require that the hazardous materials must be transported in DOT approved containers, must remain in the containers received from the generator and cannot be opened until it arrives at an authorized disposal, recycling or reuse facility. Additional safety measures will be in place as conditioned including requiring providing secondary containment at the loading dock,

requiring that loaded semi-trailer trucks shall be inside the locked gate area at all times and providing video cameras inside the building and the dock area.

- E. The exempt transfer station is permitted subject to an administrative use permit approval and that the use as proposed is consistent with the General Plan and applicable City regulations adopted under the City of Hayward Municipal Code. The transfer station is in harmony with The General Plan, Conservation and Environmental Protection Element, Hazardous Materials, Strategy No. 2 states, “*Maintain a suitable buffer zone between industrial firms involved with hazardous materials and residential areas.*” The proposed transfer facility is approximately 2000 feet from the nearest residential property.

**CITY OF HAYWARD  
PLANNING DIVISION  
ADMINISTRATIVE USE PERMIT**

**May 31, 2011**

**(Revised from Administrative Approval of March 23, 2001 – additions shown in bold type)**

**ADMINISTRATIVE USE PERMIT APPLICATION NO. PL-2011-0024** –David Buckner (Applicant)/Robert Coussan (Owner) – Request to allow an exempt transfer facility for hazardous and non-hazardous materials “in transport” to treatment/storage /disposal facilities.

The project location is 30989 San Clemente Street, at Zephyr Avenue, in the Industrial (I) Zoning District, APN 475-0174-011-05

This approval is void three years after the effective date of approval unless substantial improvements have been made as determined by the Planning Director. Improvements shall be installed per the approved plan labeled Exhibit “A.” Violation of the conditions of approval and any related permit requirements may result in revocation at a public hearing before the Planning Commission. Any modification to this permit shall require previous review and approval by the Planning Director.

**CONDITIONS OF APPROVAL**

1. Building and electrical permits are required for any tenant improvements. Building construction shall meet the 2010 California Building Code (CBC) and all other applicable codes, standards and ordinances adopted by the COH Building Department at the time of application.
2. The applicant shall be responsible for graffiti-free maintenance. Graffiti shall be removed within 48 hours after occurrence.
3. The trash **and recycling bin, if required**, shall be stored within the building.
4. Prior to final inspection, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
5. Violation of any of the conditions of approval of this administrative use permit may constitute grounds for revocation pursuant to Section 10-1.3260 of the Zoning Ordinance.

**Fire Department**

6. All onsite fire protection features shall be maintained.
7. The swing gate for the secure dock area shall not intrude onto the fire apparatus road when no staff is working at the area. A knox box or key switch of an approved type shall be provided at the gates.

8. A NFPA 13 fire sprinkler system shall be required. Separate submittals and additional permits shall be required for the installation/alteration of the fire sprinkler system.
9. A building permit shall be required for the installation of storage racks greater than 6 feet in height. A Fire Department permit shall be required for any combustible storage (floor and/or rack) which exceeds 12 feet in height (Class I-IV type commodities), and/or any high hazard storage which includes commodities such as hazardous materials, flammable liquids, plastics, foam and rubber products, or any other classified commodity as dictated by the California Fire Code and NFPA 13 Standards, which exceeds 6 feet in height.
10. A fire alarm system would be required in accordance with NFPA 72 if there is high-pile storage. Separate submittals and additional permits are required for the installation/alteration of the fire alarm system.

#### Hazardous Materials

11. Hazardous Materials Business Plan (HMBP) – For the storage and/or use of hazardous materials in quantities exceeding 200 ft<sup>3</sup> for gases at standard temperature and pressure, 500 lbs for solids or 55 gallons for liquids, a HMBP shall be completed for the facility.
12. Hazardous Materials Permit Application - Due to the types and quantities of hazardous materials to be stored and/or used at the facility, the owner or operator shall submit an *Application for a Consolidated Permit/Registration for the Unified Hazardous Materials/Hazardous Waste Management Regulatory Program*.
13. **Regular Inspection** – **The applicant shall be subject to inspections by the City of Hayward Fire Department at a frequency determined by the Fire Chief as necessary to ensure the compliance of the facility. In addition to regular Hazardous Materials inspections, the Hayward Fire Department shall inspect for compliance, including quantity limitations, facility security, appropriate storage configurations, labeling and signage. Dependent on compliance with the operating requirements and permit conditions of the facility, it is anticipated that one additional inspection per year would be sufficient. The applicant shall be responsible for the cost of all inspections, with the current rate for inspections being \$142 per hour.**
14. Labeling Guidelines – All containers and storage areas for hazardous materials shall be appropriately identified following the Hayward Fire Department's *Labeling Guidelines*, which can be obtained by calling the Hazardous Materials Office at 510-583-4926.
15. **Emergency Contact Information** – **A 24-hour emergency contact number shall be posted at the exterior of the facility.**
16. Secondary Containment – The containers or tanks used for the storage of hazardous liquids and having a volumetric capacity of 55 gallons or more require secondary containment as stipulated in the Hayward City Ordinance and the California Fire Code (CFC). The secondary containment shall be provided as specified in the

*Secondary Containment Guidelines*, which can be obtained by contacting the Hazardous Materials Office at 510-583-4926.

17. **Secondary Containment in Loading Dock** – Secondary containment shall be provided in the loading dock area to capture spills from the dock and trailers, and to prevent spills from entering into the storm drains.
18. **Chemical Information** - Information shall be available at the exterior of the facility as to the inventory of materials in the trucks.
19. **Placarding** – Due to the amount of hazardous materials being contained within the building, hazard placards shall be provided for the building according to the *Guidelines for the Placarding of Hazardous Materials Facilities*, which can be obtained by calling the Hazardous Materials Office at 510-583-4926.
20. **Security Measures** – The following security measures shall be in place at the facility:
  - a) The applicant shall meet with the Hayward Police Department to ensure the business is meeting the requirements of the Hayward Police Department to ensure the business is meeting the requirements of the Hayward Security Ordinance, as well as any reasonable and customary recommendations of the Hayward Police Department.
  - b) Trailers containing hazardous waste shall be backed up to the building so as to prevent illegal entry into the trailer.
  - c) Trailers containing hazardous waste shall be inside the locked gated area at all times, with the exception of those trucks/trailers which are being moved.
  - d) Video cameras shall be provided at the facility, including exterior areas. Exterior cameras shall be capable of providing adequate resolution to recognize license plates and have motion detectors tied to a security system with contact to the Hayward Police Department.
  - e) Employees shall be on site during business hours in order to provide security and oversight of the facility.
  - f) Security reports/logs shall be prepared identifying any illegal dumping or security problems that occur at the facility.
21. **Illegal Dumping in Vicinity of Facility** – The applicant shall be responsible for mitigating and cleaning up illegal dumping in the vicinity of the facility. The vicinity shall be defined by mutual agreement between Heritage and the Hayward Fire Department. .
22. **Leaking Containers** – The applicant shall make provisions for containing and managing leaking containers:
  - a) Leaking, damaged or compromised containers shall not be brought to the facility.

- b) **Applicant shall have staff and equipment capable to stabilize and clean up leaking containers.**
  - c) **Applicant shall have contractor available for emergencies that are beyond the capabilities of applicant. Proof shall be submitted with a contract with said vendor.**
23. Hazardous Materials Limits – The hazardous materials storage and use in each control area shall not exceed the maximum allowable quantities (MAQs) as given in Tables 2703.1.1(1-4), Chapter 27 of the 2010 California Fire Code (CFC) for non-hazardous occupancy classifications.
  24. Use Permit Limitations – **The applicant shall maintain quantities and types of hazardous materials below those amounts which would necessitate a Conditional Use Permit, and shall not include Group A hazardous materials as determined by the Fire Chief or his or her designee, including but not limited to, corrosive, poisonous or unstable gases; radioactive materials, explosives or other similar materials. Materials associated with Condition Number 30 are exempt from these limitations.**
  25. Incompatible Materials – The incompatible materials in storage and storage of materials incompatible with materials in use shall be separated according to Chapter 27, Section 2703.9.8 (Separation of incompatible materials) of the 2007 California Fire Code (CFC) when the stored materials are in containers having a capacity of more than 5 lbs. or ½ gallon.
  26. Bulking/Consolidation/Repackaging – No bulking, consolidation or repackaging of hazardous materials is permitted at this facility.
  27. Delivery or Acceptance of Hazardous Waste – **Hazardous waste shall not be accepted to the exempt transfer facility by anyone other than the trained staff of the applicant unless otherwise agreed to by the Hayward Fire Department.**
  28. Hazardous Waste Throughput Report – **A waste throughput report shall be generated annually identifying the amount of hazardous waste brought to the facility. The report shall break down the amounts, types of waste, and the communities from which the waste was generated, including the City of Hayward.**
  29. Final Inspection – A final inspection of this facility shall be completed by the Hazardous Materials office once the facility is ready for operations and before commencement of operations. Please contact the Hazardous Material office at 510-583-4910 to schedule the inspection at least 48 hours in advance.
  30. Community Service Assistance – **Heritage has agreed to provide free laboratory packing and disposal services for waste classroom laboratory chemicals for one Hayward Unified School District high school per year and free laboratory packing and disposal of household hazardous waste in abandoned single-family homes in Hayward as agreed to in discussions with the Hayward Fire Department. In addition as agreed to with the Hayward Fire Department, Heritage shall be a sponsor for an annual Community Clean-Up Day in Hayward and provide a monetary donation and/or materials.**

Utilities

31. A separate water service line to supply the fire sprinkler system shall be installed. All fire services shall have a Detector Check and Trim/Fire meter installed by City Water Distribution Personnel at the applicant's/developer's expense, per City Standard SD-204. Minimum sizing shall be per Fire Department's requirements.
32. The following information shall be provided on Building Permit Plans:
  - a) Provide the estimated water demand for domestic, in gallons per minute, so that the supply lines and meters can be appropriately sized.
  - b) Show the location of the existing and/or proposed water meters, service lines and Reduced Pressure Backflow Prevention Assemblies on plans.
  - c) Show the location and size of the existing and proposed sanitary sewer laterals on plans.
  - d) Add the note, "Only City Water Distribution Personnel shall perform operation of valves on the Hayward Water System. "
  - e) Add the note, "Water and Sewer Services are available and subject to standard conditions and fees in effect at the time of application and payment."
  - f) Add the note "Sewer Capacity Fee is Due and Payable Prior to Final Inspection."

**From:** Michael Sweeney  
**Sent:** Wednesday, April 06, 2011 4:13 PM  
**To:** Miriam Lens  
**Cc:** Fran David; David Rizk; Craig Bueno  
**Subject:** Hazardous Materials Transfer Station Appeal

Miriam Lens  
Hayward City Clerk  
777 B Street  
Hayward, CA 94541

Miriam:

Please consider this e-mail my appeal/review of the administratively approved Hazardous Materials Transfer Station at 30989 San Clemente Street in Hayward. The item was approved by the Development Services Director (Planning Director) on March 23, 2011.

Per Zoning Ordinance Section 10-1.2845(f)(2), please "call up" for Council review this administrative approval.

Please let me know if you have any questions or if you need more information.

Thank you.

Michael Sweeney  
Mayor  
City of Hayward

**From:** Buckner, Dave [dave.buckner@heritage-enviro.com]  
**Sent:** Wednesday, April 06, 2011 2:14 PM  
**To:** Michael Sweeney  
**Cc:** Carl Emura; Hugh Murphy  
**Subject:** Heritage Environmental Services Administrative Use Permit Application

Your Honor, my name is David Buckner. I am the Region Vice President for Heritage Environmental Services, LLC for the Western United States. I am the "applicant" on a request for an Administrative Use Permit for a waste transfer facility in Hayward (on San Clemente St.) I have been working with professionals in your Planning and Hazardous Materials Department as well as the Fire Department on this project for approximately 2 years.

In January, I submitted the Permit Application, and recently received notice that the Planning Director had approved the Project, subject to a waiting period for appeals. I also have received emails and had conversations with Carl Emura, who has been shepherding the process. It is at his recommendation that I am sending this email.

I am given to understand that you have concerns over the project. That is understandable. Whenever one sees the term "hazardous waste" in print, it gives rise to concerns. I would very much appreciate an opportunity to discuss your concerns with you. And, to seek your acceptance of the project.

I am in the Hayward area today and through tomorrow (approx. 3:00 pm), but would change my travel plans to suit your schedule.

I can be reached at 562-254-1479

I would like to take a minute to explain our business and what it could bring to Hayward.

We collect wastes primarily from retailers. These wastes are consumer products that are hazardous in California, and often non-hazardous and/or recyclable elsewhere. The customers we serve have been fined millions of dollars for illegally disposing of hazardous wastes. Those companies have stores in Hayward. Our program provides added protection for Hayward and its citizens.

I must, in candor say, we also can provide these hazardous waste services to industries. Indeed. In my search for a facility, I have passed many firms in Hayward that generate hazardous wastes. Those companies may have services that meet their needs and protect Hayward. And they may not. We believe we could form a virtual partnership with your Hazardous Materials Department in supporting 'best in class' environmental protection and sustainable development.

We are a good corporate citizen. To underscore that, I offer two individuals from cities in Arizona that we work closely with. Please feel free to call them.

Mr. Robert Flatly, City Manager, Coolidge, Arizona (ph. 520-723-5361) and  
Mr. Nom Gumenik, Superintendent, Casa Grande, Arizona (ph.520-421-8628)

In addition to being a good neighbor, we provide Household Hazardous Waste Collection Days in concert with those cities, as well as perform work at high schools designed to remove dangerous laboratory chemicals that, if left unaddressed could harm children and the environment. We provide these with out cost to the cities or school districts.

We have operated an identical facility to the one we propose in Hayward for over a decade, with no violations of any kind. Mr. Hugh Murphy, of your Hazardous Materials Department has done due diligence

on our other California location, and can provide a summary. That summary will confirm what I have said above.

I could go on, but again would offer to meet with you on this matter before you.

Thank you, for your patience

David S. Buckner, Ph.D.  
Vice President, Far West Region  
Heritage Environmental Services, LLC

Ph: 562-254-1479



# City of Coolidge

130 W. Central Avenue  
Coolidge, Arizona 85128  
(520) 723-5361

TDD: (520) 723-4653 / Fax: (520) 723-7910

April, 11, 2011

To whom it may concern:

I have been asked to provide a letter of comment on Heritage Environmental Services, LLC. Heritage has owned and operated a hazardous waste Treatment Storage and Disposal Facility at 284 E. Storey Rd for over a decade. In 2008, the location and surrounding properties were annexed into Coolidge.

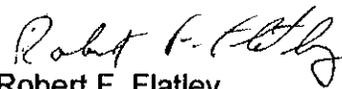
Heritage has been an excellent corporate citizen. In addition to providing jobs, it has provided Household Hazardous Waste programs for our city, has served as a training ground for our Fire Department and has supported several programs for the Coolidge High School.

We have been very pleased with the professional management of the facility. We receive no complaints about the operation. Heritage's neighbors include residences and the Arizona Training Center, a facility that houses both low level and high level residents that suffer from both physical and mental handicaps.

Heritage maintains a very low profile. As an example, of Heritage's approach to its presence, during the public hearing on the annexation of the Heritage property, one of the county deputy sheriffs in attendance commented that the facility is 'so quiet, I thought it was closed'.

On balance, we are pleased with the operation, the people that work there and the facility management. Please feel free to contact me at 520-723-5361 if I can be of further assistance.

Very Truly Yours,

  
Robert F. Flatley  
City Manager

Police Department 911 S Arizona Blvd (520) 723-5311	City Court 110 W Central (520) 723-6031	Library 160 W. Central (520) 723-6030	Public Works 411 W. S. 1 <sup>st</sup> . (520) 723-4882	Parks & Recreation 660 S. Main (520) 723-4551	Growth Management 131 W. Pinkley (520) 723-6075	Fire Department 103 W. Pinkley (520) 723-5361
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## CITY OF COOLIDGE FIRE DEPARTMENT

**Mailing Address: 130 W. Central Avenue Coolidge, AZ. 85128**  
Station 1-103 W. Pinkley Avenue / Station 2-1299 S.Signal Peak Road  
Phone: 520-723-5311 Fax: 520-723-6018

*Fire Chief*  
*Assistant Chief*

*Mickey McHugh*  
*Andy Hernandez*

---

March 21, 2011

Terry Baer  
Heritage Environmental Services  
284 E. Storey Road  
Coolidge, AZ 85128

Dear Mr. Baer,

The Coolidge Fire Department is pleased to support the efforts of Heritage Environmental Services with providing a safe facility with the upgrades to the water system, alarm system and continued safety training of your staff.

The pro-active role that Heritage has taken has not gone unnoticed and is appreciated by Coolidge Fire in that the ongoing training and sharing of information provides our firefighters with valuable knowledge of your operations.

If there have any questions please feel free to contact me at 520-723-5311

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'M. McHugh', is written over a horizontal line.

Mickey McHugh, Fire Chief  
Coolidge Fire Department  
130 W. Central Ave.  
Coolidge, AZ. 85228  
[mickeym@coolidgeaz.com](mailto:mickeym@coolidgeaz.com)

Xc: file

**Town of Florence**  
P.O. Box 2670  
775 North Main Street  
Florence, Arizona 85132

Phone (520) 868-7500  
Fax (520) 868-7501  
TDD (520) 868-7502

[www.florenceaz.gov](http://www.florenceaz.gov)

**TOWN SERVICES**

Building Safety  
868-7573

Finance  
868-7624

Fire  
868-7609

Grants  
868-7513

Human Resources  
868-7545

Library  
868-9471

Municipal Court  
868-7514

Parks & Recreation  
868-7589

Planning & Zoning  
868-7575

Police  
868-7681

Public Works  
868-7620

Senior Center  
868-7622

Town Attorney  
868-7557

Utility Billing  
868-7680

Water/Wastewater  
868-7677

April 11, 2011

To Whom It May Concern:

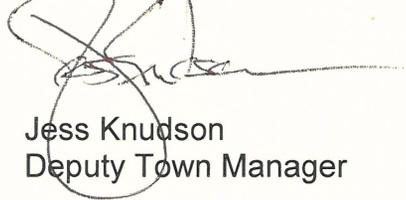
Heritage Environmental Services, LLC has assisted the Town of Florence with two of our annual Community Clean-Up Days in the last three years. Due to their assistance, our residents were able to properly dispose of many household hazardous waste items they may have otherwise thrown in the landfill.

We have been very pleased with the service they provided to the community. The customer service they displayed to our residents was top-notch. I heard many positive remarks from residents that were thrilled with the service they were provided and how they were treated by their staff.

I worked with Terry Baer, at Heritage Environmental Services, while coordinating the Community Clean-Up Day event this year. He was professional, very easy to work with and delivered everything that was promised. It couldn't have gone any smoother.

Feel free to contact me with any questions about our interaction with Heritage Environmental Services. I would be happy to answer questions or provide more detail. I can be reached at (520) 868-7541 or [jess.knudson@florenceaz.gov](mailto:jess.knudson@florenceaz.gov).

Respectfully,



Jess Knudson  
Deputy Town Manager



## **Project Narrative**

### **Project name: 10 Day Transfer Facility**

**Location:** 30989 San Clemente St. Hayward, California

#### **Property:**

Lessor: Robert Cousson

P.O. Box 2960

Alameda, CA, 94501

Lessee: Heritage Transport Services, LLC

Headquarters:

7901 West Morris St.

Indianapolis, IN 46231

Operated by Guarantor:

Heritage Environmental Services, LLC

Far West Region Headquarters:

2400 Cerritos Ave.

Signal Hill, CA 90755

#### **Applicant:**

Heritage Environmental Services LLC

Contact: David S. Buckner, Ph.D.

Vice President, Far West Region.

#### **Description of Business:**

Heritage Environmental Services, LLC collects, transports and disposes of Hazardous and Non-Hazardous waste across North America. Its operations are divided into four multi-state regions. The Far West Region, headquartered in Signal Hill, CA, manages the collection, transportation, consolidation and bulking of wastes generated mainly in California, but also in the states of Arizona, Nevada, New Mexico, Washington and Oregon.. Current Far West Region facilities are: **1.)** CUPA permitted 10-day Transfer Facility in Signal Hill, and **2.)** a RCRA Part B permitted Treatment Storage and Disposal facility in Coolidge, AZ ( Phoenix area). Recent business growth has necessitated locating a 10-day Transfer facility in the San Francisco to Sacramento corridor.

[www.heritage-enviro.com](http://www.heritage-enviro.com)

PEOPLE PROVIDING SOLUTIONS

## **10 Day Transfer Facility Operations**

This facility will operate as follows:

Heritage or Heritage approved third parties will collect waste from customers in the area, typically in 24' to 28' box trucks. At the facility, these wastes will be transferred to a 48" or 53' dry van (semi trailer); and transported either to Coolidge or to other Heritage facility for treatment, storage and disposal. No sampling of drums, treatment, consolidation of solids, bulking of liquids materials, storage in a dry van (semi-trailer) beyond 10 days, or disposal of Hazardous wastes will occur on the location.

The space inside the building will be used in two ways. First, supplies of DOT- approved metal, plastic and fibre drums of various sizes ( ranging from 5 to 55 gallons, cubic yard boxes and bags ( respectively known as Gaylord boxes and Super Sacks), as well as, Personal Protective Equipment will be stored in the building. Second, administrative functions including information management, driver lockers/ break area and training will also take place in dedicated areas, separated from the logistical operation.

No waste will be stored in the building at any time. All vans containing waste will be secured at the Close of Business each day.

There are four loading docks; one is served via a ramp, the others allow trucks to be backed securely against the building. Three of loading docks will be dedicated to the "cross docking" of drums from smaller to larger trucks, for parking smaller trucks in the evening and for "drop and hook" operations swapping vans. The processes entailed in the cross dock process are describe in the Waste Acceptance section, below and are shown via a flow diagram as well as detailed in the Heritage Standard Operating Procedures ( titled **10-day SOP**). Since the cross docking occurs between box van trucks and dry van trailers, at no time will there be more than the equivalent of 40 55 gallon drums on the dock ( the nominal drum capacity of a box van).

## **The Hours of Operation**

Business Office Hours: 8:00 am to 4:30 pm  
Operational Hours: 5:30 am to 4:30 pm  
Days of Operation: Monday thru Friday

Operational Hours differ from Office Hours because trucks dispatched to serve customers may leave earlier to avoid rush hour traffic and to meet customer-established "service windows".

From time to time, Saturday work may occur. This work will entail transloading materials arriving late in the day on Friday and secured in the dock bays, and preparing trucks (loading supplies) for making service runs on Monday, as well as facility and information transfer and system and equipment maintenance.

## **Waste Acceptance: ( Note: the reader is referred to the 10-Day Facility Container Management Standard Operating Procedures included with this submittal for added detail)**

All waste arriving at the facility will be in DOT approved containers. Each container will be appropriately labeled and securely closed. In accordance with regulation, no leaking containers, drums with loose lids or structurally damaged boxes can be removed from a customer's site. (Therefore, they would not be accepted for delivery to the 10-day facility) Further, no container may be opened on the dock, in storage, or on a box van or dry van at the dock.

In order to meet shipping requirements and to establish a 'cradle to grave' tracking mechanism for each container, each arriving service truck will be unloaded on the dock, and its contents weighed and bar-coded for continuous tracking. The bar-coded information and shipping documents (manifests, etc.) are 'scanned' into Heritage's proprietary Material Management System, a central data base located at Corporate Headquarters I Indianapolis, Indiana. This data base allows for tracking each container from the day of first entry onto the facility. Once weighed and bar coded, the container will be staged with compatible wastes and then loaded directly on a dry van trailer.

The tracking remains in place until it is ultimately disposed, reused or recycled, either in Coolidge Arizona or another Heritage audited and approved facility.

In keeping with regulation and company policy, no waste bearing containers will remain in the facility after closing of the facility for the day. That is, by the end of business for a day, the dock must be free of containers, and all containers secured on a dry van or box van in a dock bay. The dock bays will be further secured by a 6' high chain link fence, constructed according to City of Hayward guidance. Both the smaller trucks and the dry vans and other equipment ( fork lifts,) must be secured each evening. Security will be enhanced the installation of video monitoring equipment and, within the office area, motion sensors. ( An inventory of materials stored in the vans will provided in a weather-proo container attached to the fence. A lock box ("Knox Box")containing a key to entry will be on the fence as well. Local fire authorities will be provided access to that box.01)

In addition to the processing of material for shipment, the building will be used for warehousing supplies (drums, boxes, material handling equipment, PPE); and providing office space for operations management, administrative staff, sales persons; drivers, field chemists and technicians. A locker room will be provided for the crew, as will a break room and meeting and training rooms.

At the outset, the facility will have 3 to 5 employees, ( one office manager, one or two drivers, one or two dock material handlers, and a field chemist ). All drivers will have CDL's with Hazardous Waste Endorsements, all Material Handlers will have 40-Hour certifications, Fork Lift Certifications and a number of other government and Heritage required trainings.. In the event the business grows to match that of the Southern California facility, employment could reach 10-12. Parking for employees and visitors will be provided in accord with the site/building plan documents.

In keeping with regulation, no single container is permitted to be on the site more than 10 days. In practice, that means a van, full or not, must be shipped off whenever the 'oldest' container on site reaches 10 days. To assure compliance, our inventory of drums in storage is monitored by site personnel, a Region Area Manager, a Region Compliance Manager or and our Corporate Compliance Department on the "drum" level via Heritage's proprietary Material Management System ( MMS). In addition ,a container count report is distributed to senior management every 7 days, on Wednesday.

### **Environmental Compliance and Safety Oversight.**

#### **Environmental Discharges:**

Because no container with compromised integrity will be removed from a customer's site, no container may be opened on site and no treatment, or disposal will occur on site, there will be no discharge to the air or water from operations..

In addition to normal inspections by local authorities, all Heritage locations undergo annual corporate environmental, health and safety compliance audits. Findings are summarized and dates set to resolve each finding requiring addressing. Heritage personnel are required to prepare Safety and Compliance Observation reports; And track and forward those to local and corporate management, (These identify both concerns and recognize best practices.) Government authorities and customers are encouraged to visit and to conduct their own audits, as well. With respect to the government agency audits, Heritage has been operating a 10-day Transfer Facility in Signal Hill for over a decade. And, has not had a single violation of any kind.

Containment of drummed bulk liquids will be given special attention within the operating practices of the facility. Prevention of environmental issues is considered a prime directive at all Heritage Operations. Therefore, beginning with its Standard Operating Procedures, Heritage, provides multiple levels of prevention and preparation for the extremely unlikely event of a leaking container.

First, as noted in Section 4.3 of the **Standard Operating Procedures, 10 Day Facility Container Management**, Heritage will not accept any container at a customer location, or from any third party wishing to deliver containers to a Heritage Operation, if it is found to be

leaking, improperly sealed, damaged, dented, improperly labeled and the like. This first line of defense helps assure that drums scheduled to come to the facility are in compliance with DOT regulations and company policy, before they are picked up, or in the case of third party, unloaded at the facility..

Second, upon arrival at the facility, Secondary Containment will be provided in accordance with the guidelines provided by the City of Hayward, These are detailed in Addendum 1 to this document.

### Typical Business.

Heritage is locating a facility in the area in order to better serve customers in the San Francisco to Sacramento corridor.. The following summary is based on that business. It is expected that future growth will track closely with the existing business in terms of materials collected and relative mix of materials. A summary of existing volumes and waste types using federal RCRA and/or California waste codes is provided as a part of this submittal (entitled Hazardous Materials Inventory).. Because we capture all information in a central data base, queries of a specific nature and for a specific time frame can be run and summaries or detailed reports provided. As an example, the following is based on a compilation over an approximate one year period from December 1, 2009 to November 30, 2010..

On a weekly basis, we collect between 300 and 350 containers in the market area served by this facility. Based on our typical mix, we collect many more containers ranging in volume from 5 to 30 gallons, than the typical 55 gallon drum. If they were all 55 gallon drums in size, and they are not, that nominally converts into four 53' van trailer loads a week. That estimate is based on a rule of thumb that says 80+/- 55 gal drums can fit in a 53' trailer. An average drum weight range for planning purposes is between 100 and 130 lbs.

## **Waste Mix**

The waste mix is driven by the customer base. In the area, our customers include of retail stores, industrial manufacturers and energy companies. With retail comprising the largest share. Containers coming through will contain:

**Lab Pack material:** These are fully sealed containers containing small containers of chemicals ( sealed) typically from universities, commercial laboratories, or industrial operations.

**Non-RCRA solid and liquid hazardous waste:** This term “Non-RCRA” is used for wastes that are hazardous in California, but non-hazardous elsewhere. Typical solids in that category include powdered laundry detergents. Typical liquids include latex paints and shampoos and dish washing detergents. ( California classifies literally thousands of products this way.)

**RCRA solid and liquid hazardous wastes.** This list includes lead contaminated debris, asbestos , spent industrial oils containing heavy metals, and the like. Flammables, oxidizers and caustics are included in these categories.

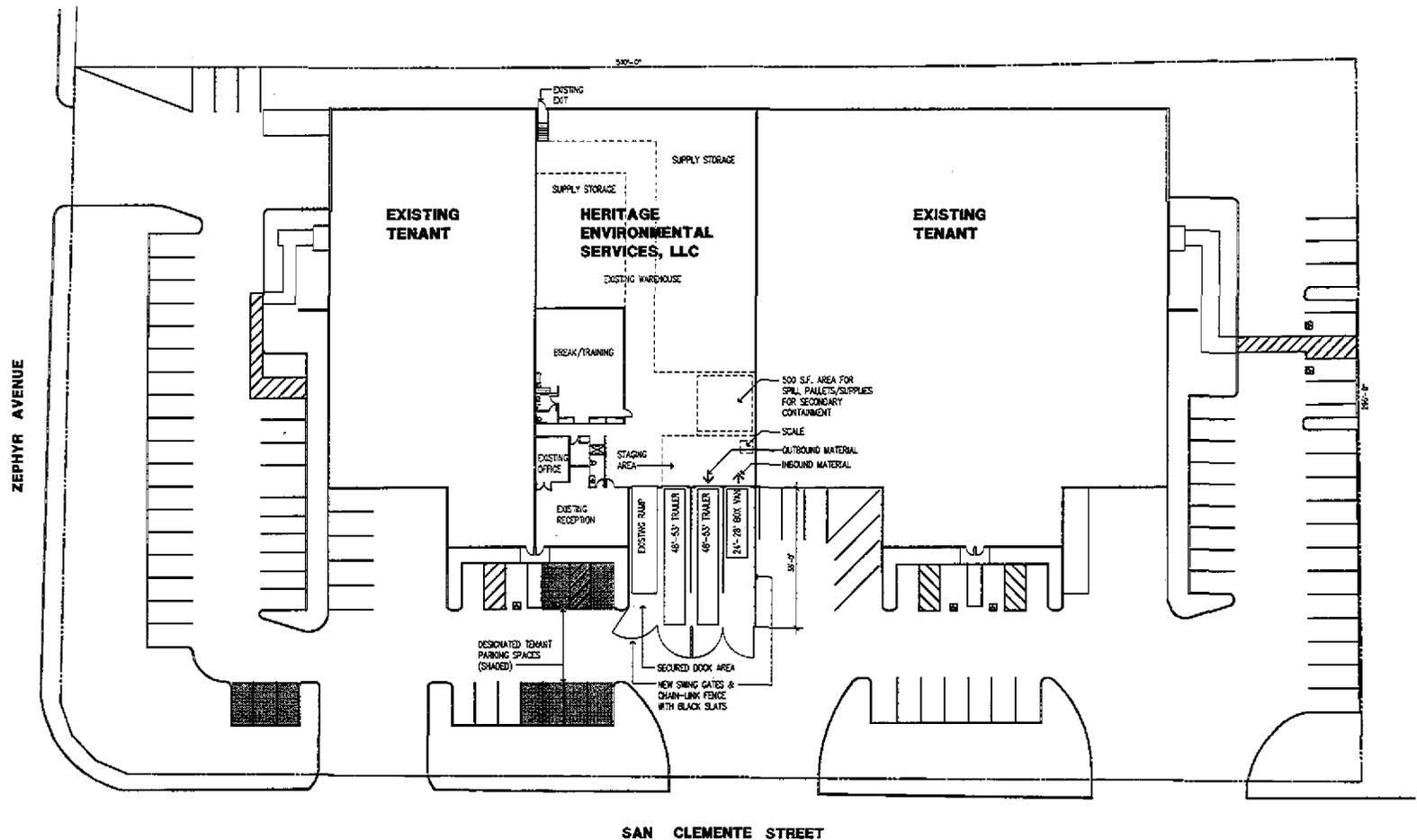
**Universal Wastes:** This category includes various light fixtures and batteries

**E-scrap:** Electronics ( computers. CRTs, printing machines,,etc)

**NOTE: It is important to underscore that, in keeping with Heritage policy and operating permits at Heritage TSDs no biological, explosives or radioactive waste of any kind are collected**

## Summary

Heritage Environmental Services is locating a facility in the San Francisco to Sacramento area to better serve its customers and to maintain its excellent safety and impeccable compliance record in California. Safety is critical, because a facility will relieve current service pressures associated with meeting customer needs from Signal Hill. The facility will operate within the permit requirements established by local jurisdictions, as well as state of California and federal regulation.



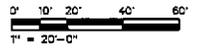
**SITE AND BUILDING PLAN**  
1" = 20'-0"

**PROJECT DATA**

HERITAGE ENVIRONMENTAL SERVICES, LLC	
TENANT AREA:	
OFFICE	3,637 S.F.
WAREHOUSE	9,863 S.F.
TOTAL:	13,500 S.F.
DESIGNATED PARKING SPACES:	9
NON-DESIGNATED PARKING SPACES:	3
TOTAL:	12 SPACES

**RECEIVED**

JAN 27 2011



**PROJECT #**  
**PL-2011-0024 AUP**

PLANNING DIVISION

**SITE AND BUILDING PLANS**

R:\V20A-CAD\2010\08\01 Heritage Environmental\20110501.dwg

## ADDENDUM 1:

### SECONDARY CONTAINMENT

#### SECONDARY CONTAINMENT PROVISIONS

Upon arrival at the facility, containers subject to Secondary Containment operating procedures, will be handled in accordance with the guidelines provided by the City of Hayward. Paraphrasing:

***Secondary Containment must be able to contain 10% of the aggregate volume of all containers or 150% of the largest container. In addition, if open to building sprinklers, it must be able to contain a volume of water equal to a 20 minute flow over the floor area of the secondary container.***

This, this facility will typically handle free liquid bearing containers ranging from five to 55 gallon in volume. The facility is equipped with a sprinkler system which has a flow rate of .33 Gallons Per Minute.

Thus, based on city requirements, the minimum containment for one 55 gallon drum over the 20 minute flow period for the sprinklers is calculated, below.

Note: While operating practices ( see Section 4.46.2 of the 10-day Facility Standard Operating Procedures), call for no more than two 55 gallon drums to be processed at one time, for purposes of example, the following also shows the requirement should four be processed at once.

Four 55 gallon drums equates to 220 gallons, 10% of that volume would be 22 gallons. While 150% of the largest container, 55 gallons equates to 82.5 gallons of containment for the largest drum. So, the amount to be considered in providing containment is  $1.5 \times 55 = 82.5$  gallons

At a flow rate of .33 gallons per minute over 20 minutes, equates to 6.6 gallons per unit area ( in this case, square feet) to be contained.

Heritage will use IBC SPILL PALLETS ( see [www.absorbentsonline.com/ibc-spill-containment-pallets.htm](http://www.absorbentsonline.com/ibc-spill-containment-pallets.htm) for an example) to provide containment in the area designated on the Site/Building Plan Diagram. These pallets have the following specifications  
Dimensions: Length 67", Width 67" , Depth 26 " ( Foot print: 31.2 sq ft.)  
Capacity: 400 gallons

Based on the city guidelines. The following calculations are provided

Capacity needed for largest container:  $55 \times 1.50 = 82.5$  gallons  
Sprinkler flow to be contained:

$.33 \text{ gal /minute} \times 31.2 \text{ sq ft. coverage} \times 20 \text{ minutes} = 205.9$  gallons

TOTAL CONTAINMENT REQUIRED:  $82.5 + 205.9 = 288.4$  GALLONS

TOTAL PROVIDED VIA IBC PALLET: 400 GALLONS

EXCESS PROVIDED; 111.6 GALS PER PALLET."

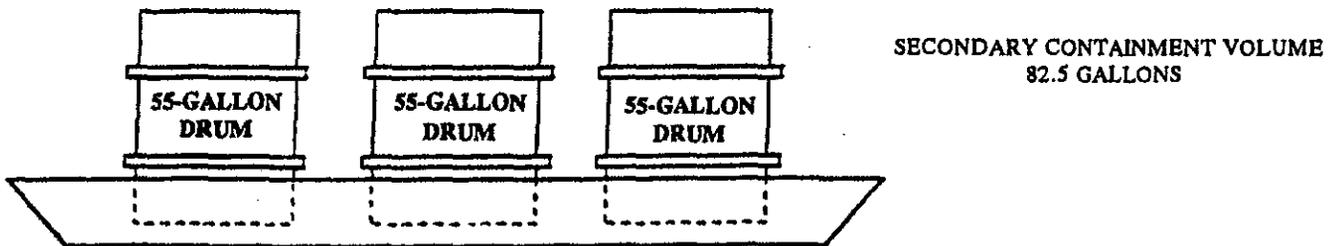
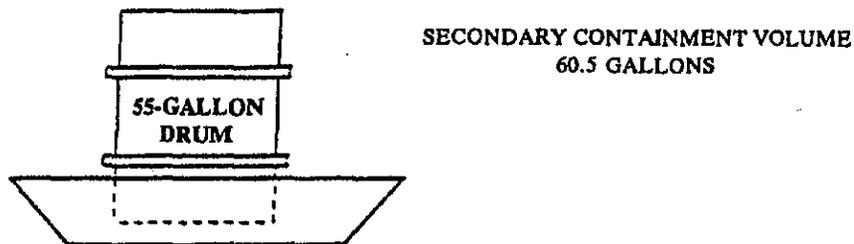
As an added layers of containment protection Heritage will:

1. Provide no fewer than three 400 gallon pallets. ( 1200 gallons capacity)
2. Fabricate a sheet metal insert for one of the pallets to handle drums containing flammables in free liquid form..
- 3.. The area surrounding the secondary containment pallets will be sealed with a 2-component , 100% solids, moisture tolerant epoxy resing
3. Maintain a supply of containment absorbent booms to encircle the containment area, as needed. As well as as supply of absorbent product ( 'kitty litter") for small leaks.

## SECONDARY CONTAINMENT

The City of Hayward Hazardous Materials Storage Ordinance (Sec. 3-8) requires that vessels containing hazardous materials have a secondary container which will be able to contain the hazardous material in the event of a failure in the primary container. The vessels containing hazardous materials are to be of such construction as to be impervious, and resistant to the contained materials.

The volume of the secondary containment shall be 110% of the volume of the primary container, unless there are multiple containers stored in the secondary containment. If there are multiple containers stored in the secondary containment, then the contained area shall be 150% of the volume of the largest container stored, or 10% of the aggregate volume of all containers, whichever is greater. If open to rainfall, the secondary container must additionally accommodate a 24-hour rainfall as determined by a 25-year storm history. This is an additional 4 inches in depth. If open to building sprinklers, the secondary container must additionally contain a volume of water equal to a 20-minute flow of sprinklers over floor area of the secondary container or the design area of the sprinkler system, whichever is smaller. Examples:



### Materials of Construction

1. For flammable materials, secondary containment must be noncombustible. Reinforced secondary containment vessels for flammable materials can be fabricated in any sheet metal shop.
2. Concrete secondary containment must be coated with a material that will seal the concrete and be resistant to the contained material.
3. Plastic containers can be used for most corrosives and oxidizers.

**STANDARD OPERATING PROCEDURES:**

**SERVICE CENTER OPERATIONS**

**10-DAY FACILITY:**

**CONTAINER MANAGEMENT**

**HERITAGE ENVIRONMENTAL SERVICES, LLC**  
**Standard Operating Procedures – Service Center Operations**

<b>SUBJECT: 10-Day Facility Container Management</b>			
Revision Date: Rev (2) 6-15-10	NUMBER SC-1	PAGE	1 OF 8

**1. POLICY**

Heritage has developed these work instructions to standardize operations in the collection and management of containers within our 10-day system.

**2. PURPOSE**

This guidance standardizes 10-Day operations to facilitate the flow of materials and consistent handling of paperwork; and capture shipment information in the Heritage Material Management System.. These procedures are to be used in all facilities. Training on these procedures is required for new hires and refresher training to reinforce daily operations procedures will be conducted.

**3. DEFINITIONS**

10-Day Transfer Facility is any Heritage location that receives drums “in transport” for the purpose of receiving / billing / and building safe economical loads to be transported to a designated treatment / storage / disposal facility.

MMS / Inventory System – Heritage Material Management System (MMS) is Heritage’s proprietary central data base used to capture, store and integrate all approvals, in-house material management, and billing functions.

40 CFR 263.12 – is the federal regulation which must be followed; and, states a transporter who stores manifested hazardous waste in containers meeting the requirements of 40 CFR 262.30 at a transfer facility for ten days or less is not subject to RCRA permitting requirements. The ten day period referenced by 263.12 begins the day the shipment arrives at the transfer facility, not the day the transporter signs the manifest. State requirements differ; and must be followed by all 10-day operations.

For Supplemental Information: Please Refer to these items on the Heritage Intranet:

Waste Inventory Management Manual

WTI Nonconformance / Rejected load procedures

Heritage TSD Nonconformance / Rejected load procedures

State Manifest rules and regulations

**4. 10-DAY PROCEDURES**

**4.1 General 10-day Protocols**

Ten-Day operations are not formally regulated by EPA / RCRA, as a TSD is. However, many requirements must be followed to assure accurate and efficient operations, as customers’ materials move through the Heritage system. These requirements, in addition to Heritage best practices in regard to safety protocols and environmental best practices, are described as follows.

**4.2 Safety - All 10-Day facilities will:**

- 4.2.1 Assure personnel wear required safety apparel as outlined in the most recent HES Personal Protective Equipment Guidelines.
- 4.2.2 Have Material Safety Data Sheets (MSDS) for materials within the facility in hard copy form available for all employees; and train employees on how to read and understand MSDS sheets and their purpose. (these are to be reviewed / updated annually at a minimum)
- 4.2.3 Place a jack stand and wheel chocks under every trailer in which people are working.

**HERITAGE ENVIRONMENTAL SERVICES, LLC**  
**Standard Operating Procedures – Service Center Operations**

<b>SUBJECT: 10-Day Facility Container Management</b>			
Revision Date: Rev (2) 6-15-10	NUMBER SC-1	PAGE	2 OF 8

- 4.2.4 Establish specific procedures for preventing any spills from the primary containment (the DOT approved containers used in providing services). Establish procedures for the highly unlikely event of a spill, including management practices and engineering controls to prevent entry to surface waters and conveyances to surface waters.
- 4.2.5 Obtain and maintain equipment and supplies to respond to incipient spills and / or damaged containers. Establish procedures for segregating the equipment and supplies from general use.
- 4.2.6 Perform training program for shipping hazardous materials, (DOT) for all employees handling transportation items or completing shipping papers. This must be done every three years. Contact for assistance: Heritage Transport Compliance Manager and Region Compliance Manager ( for the Far West Region)
- 4.2.7 Facility must perform all maintenance checks and inspections on material handling equipment as required in manufacturers' specifications and all appropriate job titled staff must be annually re-certified to operate powered industrial equipment ( e.g. forklifts)
- 4.2.8 Maintain housekeeping at a level that insures maintain a safe and efficient workplace.

**4.3 Receiving**

- 4.3.1 Correct any paperwork issues at the first 10-day location after pickup at a customer.
- 4.3.2 Review of all paperwork including: approvals, signed documents and manifests, document numbers, LDRs, etc. Include:
  - o Check drum counts and shipping labels against the paperwork
  - o All required signatures (driver and generator) are present.
  - o Approval numbers accurate and in place.
  - o LDR present, if applicable.
  - o Heritage Stop Ticket MUST accompany paperwork.
  - o Manifest document number, actual quantities, and container type must match manifest.
- 4.3.3 Do not accept hazardous materials that are not in DOT shippable containers. DOT's 49 CFR 173.24 regulation defines acceptable shipping containers.
- 4.3.4 Do not accept any waste in containers with dents, 2 inches long and half inch deep, or bulging. If you receive a drum that does not meet DOT shippable standard, the appropriate Account Coordinator should be contacted to correct the problem with the generator. And, in the Far West Region, the Region Compliance Manager, West Coast Area Manager and Technical Services Manager must be notified..
- 4.3.5 Assure that cylinders are shipped in accordance with regulations. If the cylinders are not emptied, make sure that the cylinders are in good condition.
- 4.3.6 If working with an outside transporter, do not accept material until you have checked manifests against drums and all required paperwork is in hand. This will include in most cases, printing a Heritage billing document, to ensure that the waste is approved into its TSD.

**4.4 Storage Consolidating and Loading:**

- 4.4.1 Trailers are to be stored in a secure manner ( closed and locked fenced) and fifty (50) feet away from the curb line on streets.
- 4.4.2 Trailers are to remain secured not in use.
- 4.4.3 Upon arrival of trailers, trailers are to be thoroughly inspected for inventory and leaking containers. As needed, clean trailers before loading.
- 4.4.4 Check EPA waste codes and product codes on drums.
- 4.4.5 Have segregation/compatibility charts posted for easy reference.

**HERITAGE ENVIRONMENTAL SERVICES, LLC**  
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<b>SUBJECT: 10-Day Facility Container Management</b>			
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- 4.4.6 Use drum stackers and/or fork lift to double stack compatible wastes, do not stack drums over 600 pounds, make sure that heavier material is on the floor of the trailer. Remember to segregate both vertical and horizontally. Drums containing liquids are to be unloaded and managed in a manner that ensures Secondary Containment is protection is provided during the Process. For 55 gallon drums, this means unloading, processing according to the flow diagram, will be done on no more than 2 drums at a time.
- 4.4.7 If shipping waste through another 10-day prior to its final destination, that 10 day must be notified that it is coming, and what type of waste it is.
- 4.4.8 When scheduling into next 10-day, include drum counts and final destination.
- 4.4.9 Waste must be shipped from the facility within the ten (10) day requirements cited in section 3. Definitions, above.

**4.5 Inspections to be conducted and documented, with records maintained for two years:**

- 4.5.1 Warehouse (housekeeping), daily, if needed and at least once a week.
- 4.5.2 Inspect loaded trailers (drums, placarding, spill kits) daily. (see sample below)
- 4.5.3 Inspection of material stored within building/warehouse ( empty drums, spill kits, placards) daily. A MMS scan of all containers is to be completed at the end of each day.
- 4.5.4 Inspect facility grounds and surrounding public areas (housekeeping, compliance) once a week.
- 4.5.5 Create and maintain accurate logs for 2 yrs.
- 4.5.6 Keep a hard copy and a computer generated copy of your Storage Inventory Log. And make it readily accessible to the local fire department.
- 4.5.7 Complete Safety/ Compliance Observations within company guidelines, track and post trends. If an Observation cites a problem, investigate immedialte, determine the necessity of a corrective action; and undertaken immediately..
- 4.5.8 See below for an example of a 10-day inspection log.

**Sample 10-day Inspection Sheet (modify to include location-specific criteria)**

1. Are loaded trailers placarded?	Yes	No
2. Are trailers placarded properly	Yes	No
And stored 50' from the property line fence?	Yes	No
3. Manifest and billing docs on trailer?	Yes	No
4. Is the spill kit properly supplied?	Yes	No
5. Trailer doors locked?	Yes	No
6. Trailer jack stand in place?	Yes	No
7. Are there any leaking drums on the trailer?	Yes	No
8. Can a truck backup to the rear of the trailer?	Yes	No
9. Is the parking lot free of trash and debris?	Yes	No
10. Is a hard copy of the Storage inventory up to date		
And available to the fire department?	Yes	No

Inspection date \_\_\_\_\_  
Inspection Time \_\_\_\_\_  
Person Inspecting \_\_\_\_\_

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*List any Corrective Actions Taken for items designated as 'NO' above:*

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**4.6 10-day Process Inbound / Manifest Check-in Procedure** - Every shipment will be checked in using the MMS ‘Manifest Check-In form’. Every shipment at a Heritage 10-day will have Orders, Trips, and Transactions in MMS, including items from 3rd party transporters, brokers, direct ships, and WTI required documentation. All manifest lines will be entered and matched to the appropriate containers. All paperwork will be reviewed for discrepancies and will be communicated to Heritage Supervisory/Management personnel immediately..

**4.6.1 Staging / Load Receipt Protocols**

4.6.1.1 The following steps will be conducted ( See Process flow chart): Unload containers from trailer. Weigh containers and place weight / scale ticket on container (perform piece counts, as stated in the quote or work order). Forklifts are to be operated only by certified operators and only after verification the fork truck is in proper working condition and after a documented daily inspection. Scales will be recertified per manufacturer instructions and at a minimum of every six months.

4.6.1.2 Place containers in designated staging area with labels facing out (2 1/2 foot aisle minimum) during normal business hours and on secured vans during closed hours.

**4.6.2 Manifest Check In / Container Movement**

4.6.2.1 Use paperwork packet and proceed to MMS “manifest check in screen” on Heritage Intranet. Enter stop or trip # (stop # recommended) to access load information.

Reference Waste Inventory Management manual ‘Manifest Check In’ section (page 1) for specific instruction on manifest check in steps / procedures.

4.6.2.2 Verify all data is correct via manifest tab and individual line tabs on MMS screen. For non Heritage Generated manifests, the line item information on the manifest will have to be typed in. For Heritage generated manifests, make changes as needed, to match manifest to MMS

**Special Note:** Capturing hazard codes in the MMS is a critical element to properly manage shipments to and from Heritage facilities. The Manifest Check-In process in MMS MUST include both the review, editing, and correction of hazard codes. The hazard codes (both state and federal) should exactly match any hazard codes found on the paper manifest plus those found on any LDR forms.

4.6.2.3 Enter in Quantity & Wastestream Information

4.6.2.4 Enter in container size / type info, if available from manifest. This can be done at the time of drum scanning, but it is generally easier via computer, if the information is available. (This step eliminates having to enter all items with the exception of weight via the scanners / bar codes for non-TSD locations)

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- 4.6.2.5 Enter in Location Information. In MMS, go to “Acquire Drum Screen” and verify that computer information and paperwork match
- 4.6.2.6 Check in MMS (Container Movement Screen) to verify trailer information
- 4.6.2.7 Address any discrepancies (see discrepancy resolution section in Waste Inventory Management manual). Once all items are resolved “move” load in MMS.

Note: Remember to use the Waste Inventory Management manual ‘Manage Containers’ section (Page 41) for specific instructions on container movement steps / procedures.

**4.6.3 Print Barcodes / Work Order**

- 4.6.3.1 Determine when drums need to be sampled (TSD locations only). No containers may be opened or sampled at the 10 day facility.
- 4.6.3.2 Note any lot holds (E.G. Items requiring counts (light bulbs) – write “count required” on bar code label, to alert dock personnel)
- 4.6.3.3 Create final TSD stickers. In addition to bar coded labels, all locations also employ a color coded labeling system to help dock workers identify drums and stage appropriately. This point in the process is the best time to prepare these stickers as well
- 4.6.3.4 Print / Review Work Order
- 4.6.3.5 Match labels to correct drums, (matching to Waste Stream # is usually the easiest way to find correct drums)
- 4.6.3.6 Review bar code information and affix to correct containers (side near DOT label and on the edge of the top). Never cover any existing labels!

SEE THE FOLLOWING EXAMPLE OF A HERITAGE BAR CODE. THIS BAR CODE WILL REMAIN WITH THE DRUM FROM THE FIRST LOCATION ACCEPTING THE WASTE ( 10 DAY OPERATION) THRU THE FINAL DISPOSAL AT A HERITAGE TSD. SCANNING ALONG THE WAY ( FROM ONE 10 DAY TO ANOTHER TO THE TSD, FOR EXAMPLE) HELPS ASSURE CRADLE TO GRAVE TRACKING.

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DRUM  300 TP  
 10156270  
 DOC 1731169 CUST#  
 PG:2 LN:5 000000114WAS  
 WASTSTRM  
 74780-30  
 PRODUCT  
 103-10  
 15540 47667-163 DATE: 01/11/08

*outbound 3rd party TSD approval #.*

Drum capacity / type DF=Drum Fiber, DM=Drum Metal, TP=Tote, etc. If no size (capacity) is listed this is the Manifest Container Type.

Computer assigned Drum Number and Document Number (also called transaction #) is found directly under the horizontal bar code. The customer drum number is also listed here when present.

Date label was printed from Heritage MMS. It may or may not be the start of your 10-day timeframe.

DRUM  300 TP  
 9972805  
 DOC 1646743 CUST#  
 PG:1 LN:2 000077669WAS  
 WASTSTRM  
 89957-6  
 PRODUCT  
 68-70  
 15540 DATE: 01/11/08

*trans # drum TSD*

*3-DOT ME*

*FINAL TSD.*

TSD# of destination facility. If material has been approved into a 3<sup>rd</sup> party (non-Heritage) facility the 3<sup>rd</sup> party approval # is to the right of the TSD #.

The area under the Doc # contains the associated manifest number & manifest page/line #. The DOT hazard class is listed under the manifest number.

Heritage wastestream and product code / matrix information is listed in this area.

- 4.6.3.7 For TSD operations, a third label may be present. These labels are for drums that require sampling or Lab Pack packing slips. The label should be attached to a sample container and placed on the drum in preparation for sampling.
- 4.6.3.8 Verify paperwork / work order. Mark-off as bar codes are affixed. Make a special note of any special instructions / comments
- 4.6.3.9 Discrepancies are to be immediately brought to the attention of 10 Day Supervisor, Area Manager or Far West Region Compliance Manager. Assist Document Control personnel / 10-day Supervisor in resolving any discrepancies
- 4.6.4 Scanning Containers
- 4.6.4.1 Scan containers into the system with hand held scanners. Data to enter can include:
- Weight (piece counts may be necessary as stated in the quote or work order)
  - Container Size (if not entered earlier via computer)
  - Container Type (if not entered earlier via computer)
  - Customer Drum ID (If Present and if not entered earlier via computer)

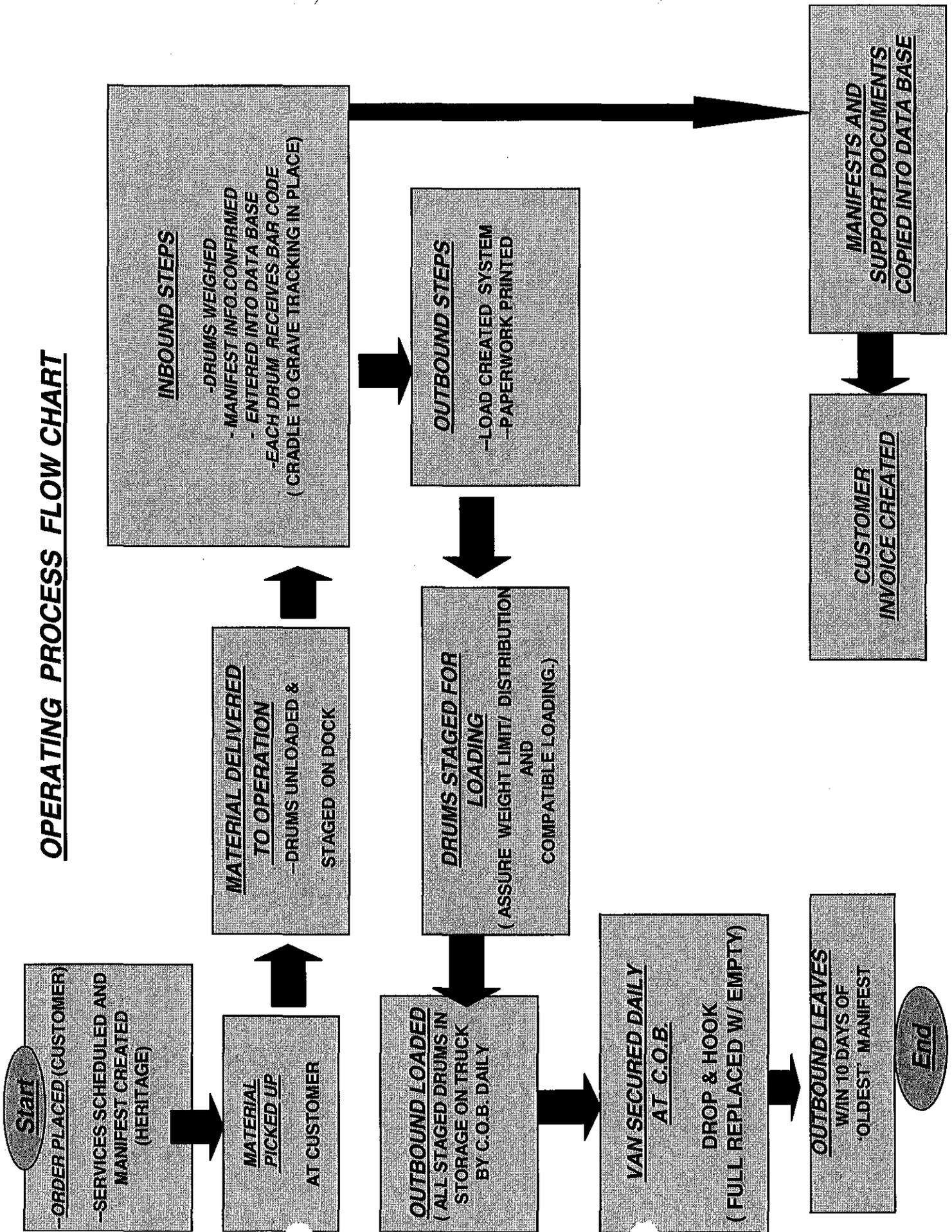
**HERITAGE ENVIRONMENTAL SERVICES, LLC**  
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- Additional Comments
- TSD operations that sample drums may also log:
  - Ph, Odor, Appearance, Observed Product Code, Observed Matrix Code

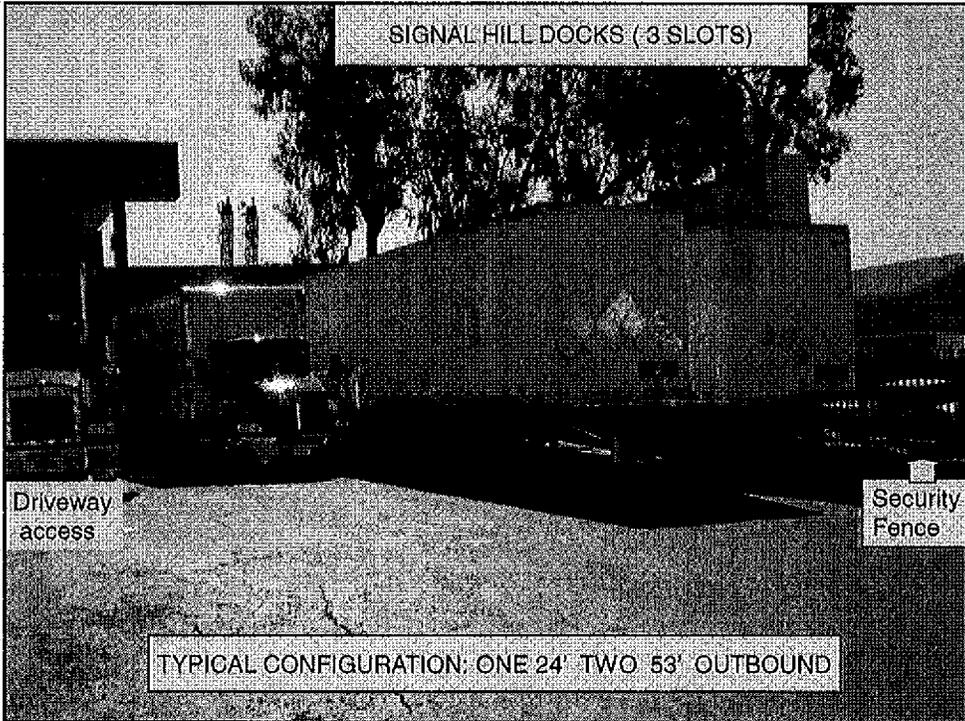
- 4.6.4.2 Move containers (physically and in MMS via hand held scanners) to designated storage within facility-specific operating permit requirements.
- 4.6.4.3 Check Scan Data - Verify successful scan in MMS (container movement screen) and / or address any issues. Missing information shows in pink in the MMS.
- 4.6.5 Receive / Accept - Once complete go to MMS and “receive and accept” the “Trip”
- 4.6.6 Segregate / move containers based on designated TSD location and scan to new location  
Break out paperwork from packet and segregate according to drum destination (final TSD)
- 4.6.7 Sign off on manifest (if applicable) - 10 day signs as “Transporter” if delivered by 3<sup>rd</sup> party transporter / TSD signs as “Receiving Facility”.
- 4.6.8 Scan into Imaging System and then have paperwork available for transfer with the material to the next 10day or the final TSD.

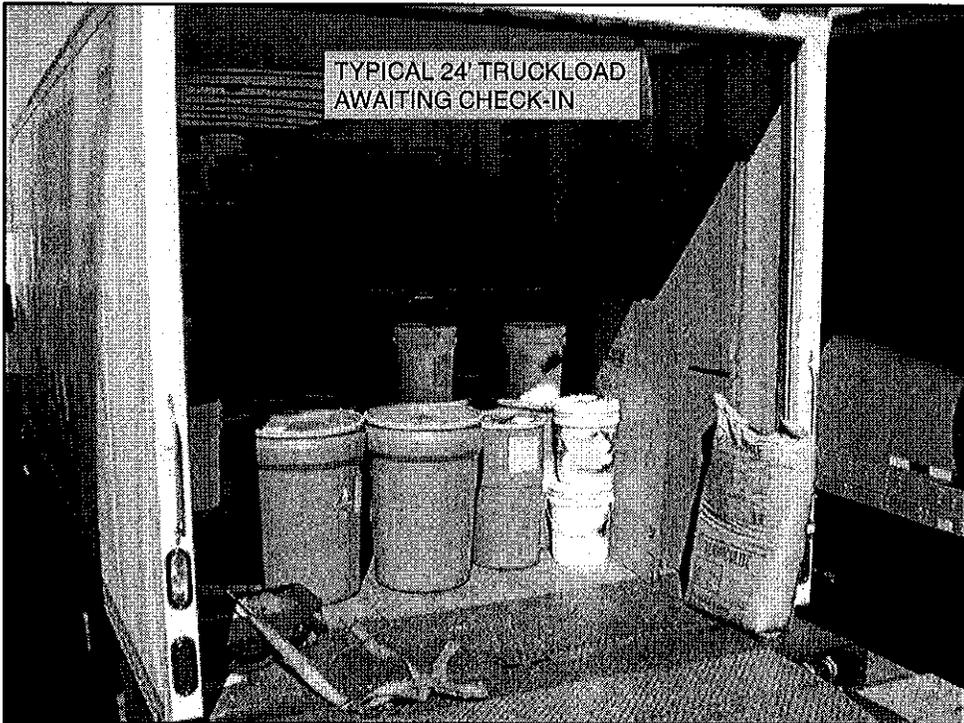
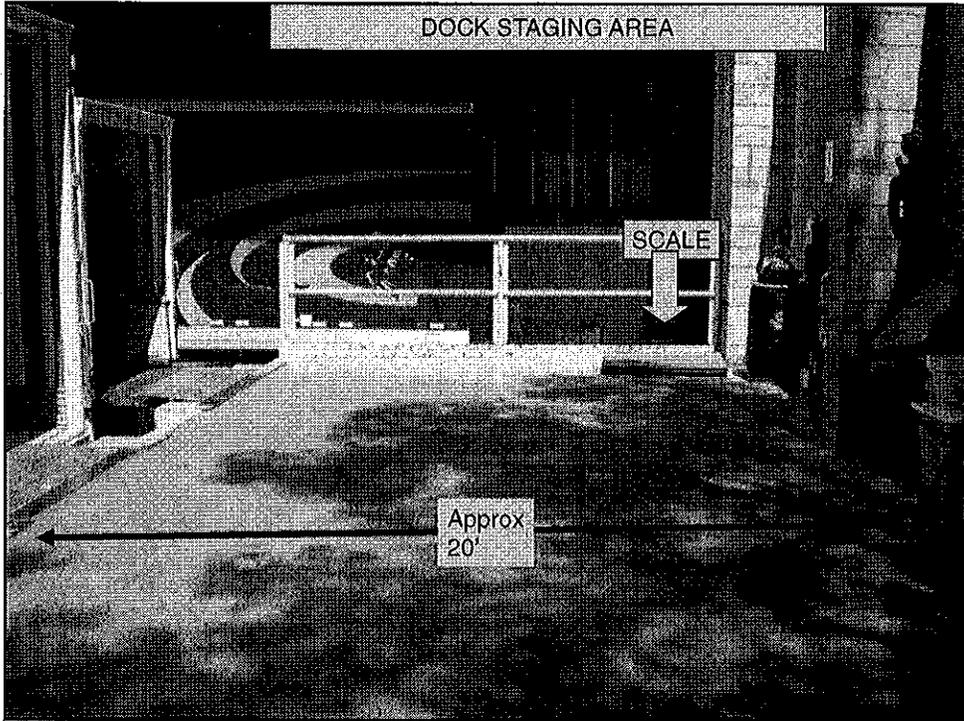
# OPERATING PROCESS FLOW CHART

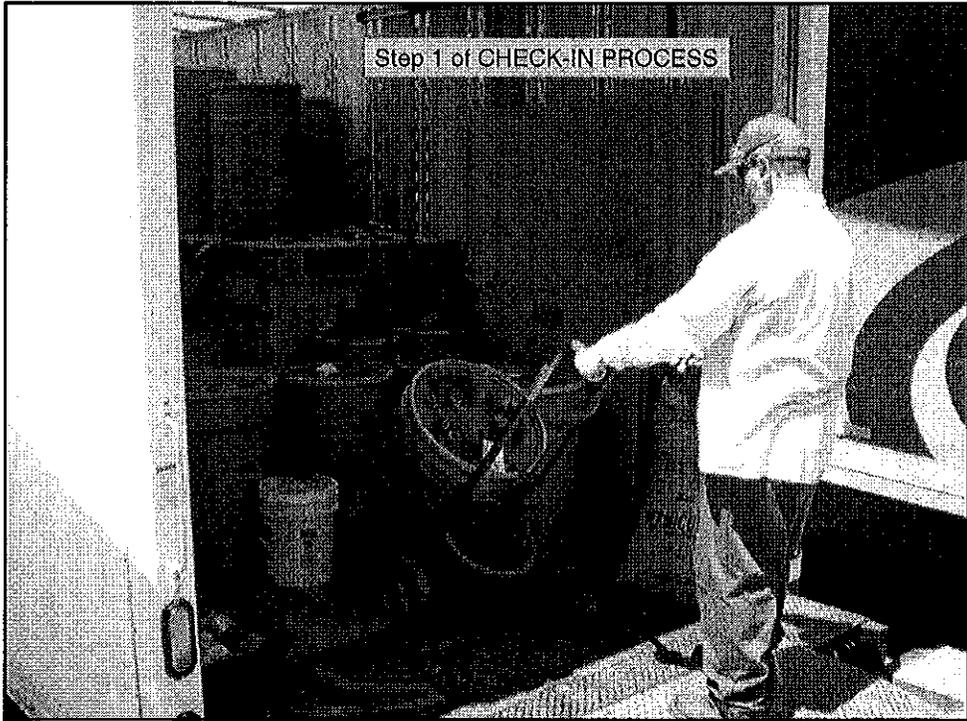


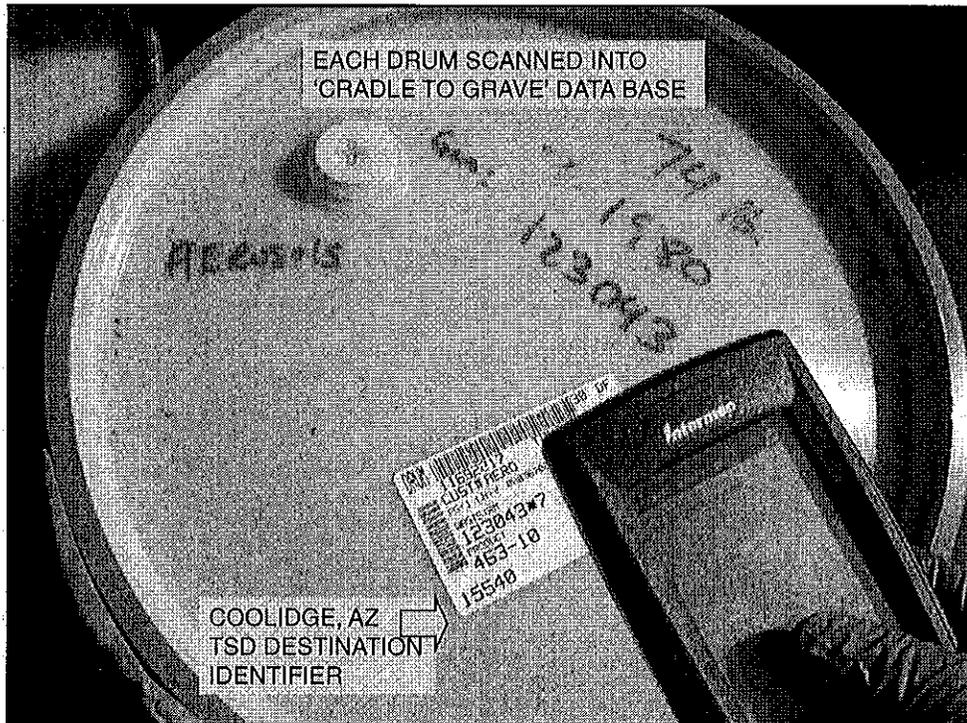
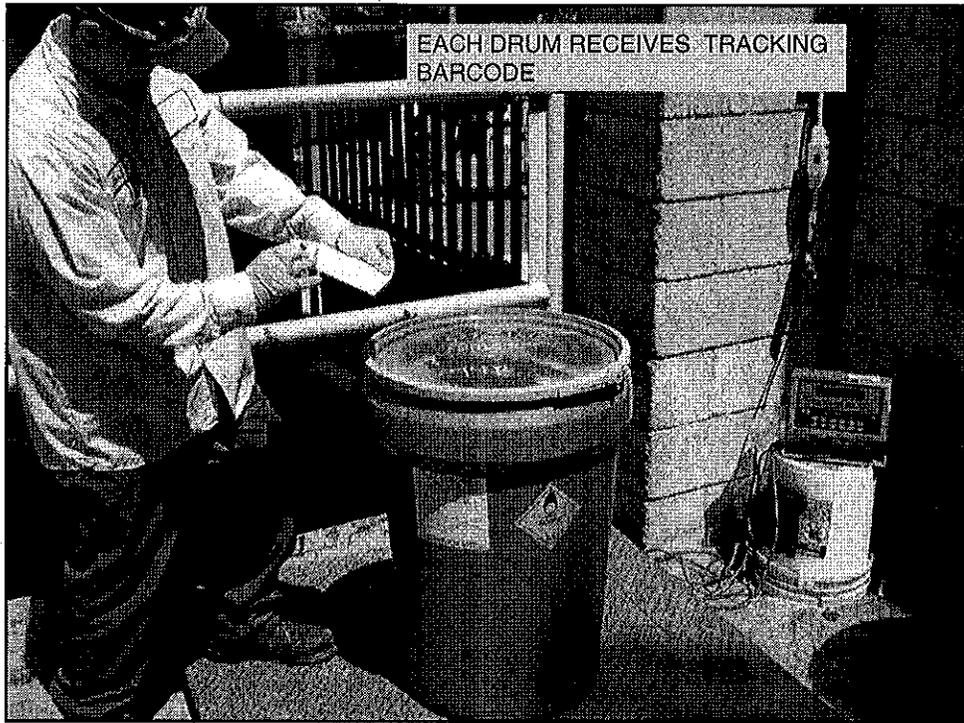
# Heritage 10 Day Process

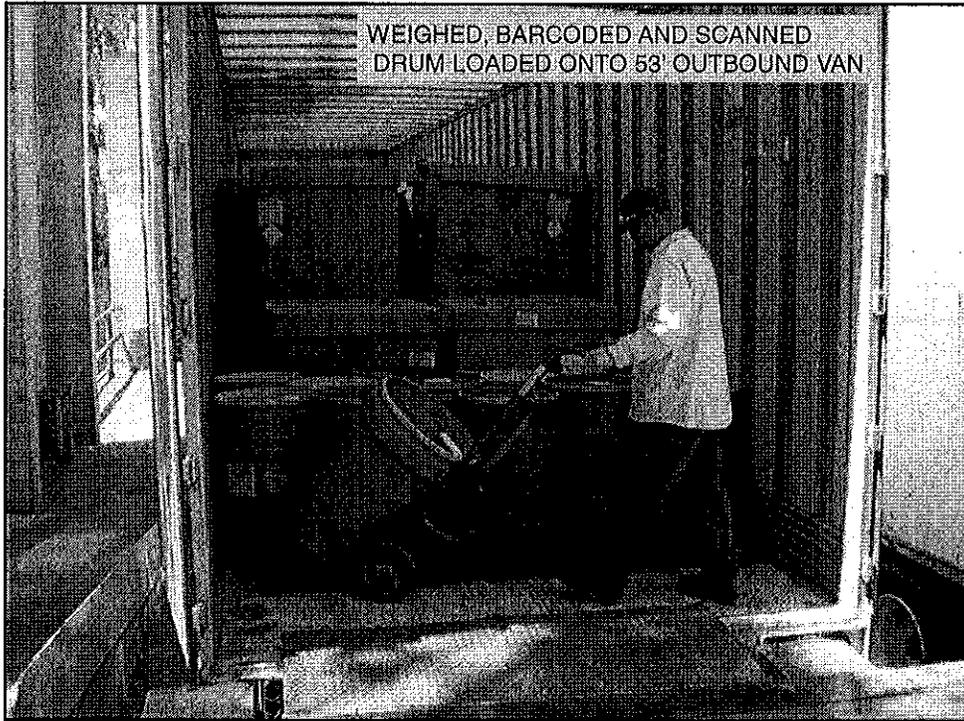
## EXAMPLES OF THE STEPS AT SIGNAL HILL 10 DAY OPERATION











**DATE:** May 31, 2011  
**TO:** Mayor and City Council  
**FROM:** Assistant City Manager  
**SUBJECT:** Increase to Per Mile and Flag Drop Rates for Hayward Taxi Cabs

**RECOMMENDATION**

That Council adopts the attached resolution:

- 1) Authorizing taxi cab companies within the City of Hayward to raise the flag drop rate from \$2.00 to \$3.00; and
- 2) Authorizing taxi cab companies within the City of Hayward to raise the per mile rate from \$2.40 to \$2.60 per mile.

**BACKGROUND AND DISCUSSION**

In early May, the City received a letter from an attorney representing a local taxi cab company requesting that the City Council consider increases for various taxi cab rates to account for rising fees and costs in addition to the precipitous rise in gas prices over the past few years (Attachment II). Hayward Municipal Code Section 6-5.03 governs the rate schedule for taxi cabs within the City. The Municipal Code indicates that the Council shall by resolution establish a schedule of rates applicable to all taxicabs. The City last increased taxi rates in March 2003. At that time, the Council adopted a resolution increasing the per-mile rate to \$2.40 per mile and the rate per hour of waiting time to \$24.00 per hour. Prior to 2003, the Council last considered increases to the taxi cab rates in January 1999.

Given the dramatic rise in gas and transportation costs since 2003, staff recommends this proposed rate increase. The Hayward Police Department administers the taxi cab regulation program within the City and is also supportive of the proposed rate increase. This proposal brings the rates allowed in the City of Hayward to levels consistent with surrounding communities. Table 1 identifies taxi cab rates in surrounding communities.

**Table 1: Taxi Cab Rate Comparison**

<b>City</b>	<b>Flag Drop Rate</b>	<b>Per Mile Rate</b>	<b>Waiting Time Per Hour</b>
Hayward (current)	\$2.00	\$2.40 per mile	\$24.00
Hayward (proposed)	\$3.00	\$2.60 per mile	\$24.00
San Leandro	\$3.00	\$2.60 per mile	\$27.50
Fremont	\$2.00	\$2.75 per mile	\$27.50
Oakland	\$3.00	\$2.60 per mile	\$26.00
Berkeley	\$3.00	\$2.60 per mile	\$26.00
Emeryville	\$3.00	\$2.60 per mile	\$26.00

**ECONOMIC IMPACT**

By approving this rate increase, the City will help support the business operations of local taxi cab companies, thereby allowing for transportation options for Hayward residents and visitors.

**FISCAL IMPACT**

There is no fiscal impact to the City of Hayward General Fund as a result of this proposal.

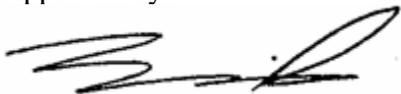
**PUBLIC CONTACT**

Consistent with the requirements of Hayward Municipal Code Section 6-5.03, the City Clerk's Office published notice of this public hearing in the Daily Review ten days prior to the hearing. In addition, staff mailed a courtesy notice of this hearing date and proposed rate increase to nine taxi cab companies currently licensed to operate in the City of Hayward.

If the Council approves this resolution, the City Clerk will mail a copy of the resolution to each person holding a current certificate to operate a taxi cab in the City.

*Prepared by:* Kelly McAdoo Morariu, Assistant City Manager

Approved by:



---

Fran David, City Manager

Attachments:

- Attachment I: Resolution Approving Rate Increases for Hayward Taxi Cabs
- Attachment II: Letter from Law Offices of Michael Broad

HAYWARD CITY COUNCIL

RESOLUTION NO \_\_\_\_\_

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

RESOLUTION APPROVING RATE SCHEDULE FOR TAXICABS

BE IT RESOLVED by the City Council of the City of Hayward that, pursuant to the authority of Section 6-5.03 of the Hayward Municipal Code, the following is hereby approved as the amended schedule of rates to be charged for public motor vehicle service in the City of Hayward:

SCHEDULE OF RATES

Per Mile Rate                      \$2.60 per mile

Flag Drop Rate                      \$3.00

Waiting Time                      \$24.00 per hour

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to mail a copy of this resolution to the Chief of Police and to each person holding a current certificate to operate a taxicab in the City.

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

## LAW OFFICES OF MICHAEL BROAD

166 Santa Clara Ave.  
Oakland, CA 94610  
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fax: 510-835.5773  
[www.broad-law.com](http://www.broad-law.com)  
email: [mikebroad@broad-law.com](mailto:mikebroad@broad-law.com)

May 4, 2011

Miriam Lens  
Hayward City Clerk (via fax 583-3636)  
77 B Street  
Hayward, CA 94541

RE: Yellow Cab Hayward and request for agenda item

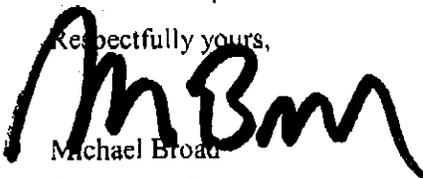
Dear Ms. Lens:

My client, Yellow Cab Hayward, would like, if possible, like to add an agenda item for the next May 17<sup>th</sup> city council meeting. In particular, given the rise in fees and costs, coupled with the precipitous rise in gas prices, we would like the city council to consider raising the meter rate for cabs.

On Monday, the San Leandro city council voted to raise the flag drop rate from \$2.00 to \$3.00 and the per mile rate from \$2.40 to \$2.60 per mile. Interestingly, these increases were then supposed to take affect in August, but given the economic realities facing cab drivers, the San Leandro city council voted to implement these changes faster and voted to have them begin in June.

We are asking for the Hayward city council to consider a similar resolution, and would like to have this issue placed on the agenda. Please feel free to call me to discuss this further.

Respectfully yours,



Michael Broad  
Attorney at Law

MB/ln  
cc: Yellow Cab Hayward

■

**DATE:** May 31, 2011

**TO:** Mayor and City Council

**FROM:** Human Resources Director

**SUBJECT:** Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS)

### **RECOMMENDATION**

That the City Council adopts the Resolution of Intention to approve an amendment to the City of Hayward’s contract with CalPERS to add Section 20516 “Employee Sharing Cost of Additional Benefits” for sworn members of both the Police and Fire Departments; and Section 21547.7 (Alternative Death Benefit for Local Fire Members with 20 Or More Years of Service); and Section 20965 (Credit for Unused Sick Leave) for sworn members of the Fire Department.

### **BACKGROUND**

The City of Hayward is projecting budget deficits in the General Fund of approximately \$20 million in FY2012 and more in FY2013. Employee benefits and salaries comprise approximately 89% of the current General Fund operating budget. Over the past several months, the City has been participating in discussions with all bargaining units to achieve an overall savings in salaries and benefits of approximately \$12 million for FY2012. As part of these discussions, the City and employees have been exploring opportunities for structural change in the salary and benefit packages currently offered.

The City of Hayward currently offers medical and pension benefits to its employees through CalPERS. CalPERS is an agency in the California executive branch that manages pension and health benefits for more than 1.6 million public employees, retirees, and their families. The agency is overseen by a thirteen member Board of Administration, whose members are elected, appointed, or ex officio.

IAFF LOCAL 1909 (Firefighters) and the Hayward Fire Chief’s Association (together, the “Fire Units”); the Hayward Police Officers’ Association (HPOA) and the Police Management unit (together, the “Police Units”); and the Fire Chief participated in the discussions with the City related to addressing the City’s projected budget shortfalls. These discussions resulted in a variety of cost savings concession items related to salaries and benefits. One of the concession items includes

proposed amendments to the CalPERS contract to provide for a cost sharing agreement that allows the employee to pay a portion of the employer's retirement contribution. The Discussion Section below explains, in more detail, the City's CalPERS contract for employee retirement and the proposed amendments.

To implement any changes to the retirement program, it is necessary to amend the City's existing contract with CalPERS. The Resolution under consideration authorizes staff to work with CalPERS to amend the contract to incorporate the changes described in this report. Action on the CalPERS contract amendment is required prior to budget adoption in June to allow the CalPERS provisions to go into effect with the first payroll at the beginning of FY2012.

## **DISCUSSION**

In response to the City's request to discuss employee salary and benefit cost savings, the Police and Fire Units have negotiated proposed amendments to the City's contract with CalPERS. These proposed amendments are outlined below:

### Section 20516 - "Employee Sharing of Cost of Additional Benefits"

The City of Hayward currently provides the "3% at age 50" retirement benefit for public safety employees, which requires contributions into the retirement system by both employees and employers. The current employee rate is set at 9% of salaries and remains fixed. The rate for employers is variable and is set on an annual basis, and is comprised of two components that make up the final required employer contribution in any given year. The first component represents the normal cost of the benefit and the second represents the current unfunded liability of the benefit.

For the current fiscal year (FY2011), the City's employer contribution is 27.493% of salaries for sworn Fire employees and 30.005% of salaries for sworn Police employees. In FY2012, these amounts increase to 33.454% for Fire and 36.493% for Police, post any contract amendments.

In accordance with Government Code Section 20516, employees may share the cost with the employer of optional retirement benefits, which are in addition to the fixed employee contribution of 9%. Optional benefits are defined as those benefit enhancements that were implemented by amendment to the original contract.

This Government Code section is applicable to Hayward because the original public safety contract provided for a benefit calculated at a rate of "2% at age 50" for every year of service, with a three year average final compensation. This was "enhanced" through contract negotiations over the years to a rate of "3% at age 50", with a one year final highest compensation, which became effective by contract amendment on January 1, 2001.

An amendment to allow for cost sharing provides an opportunity for the employee to share in both: 1) the normal cost of a retirement formula enhancement for an indefinite period of time, and 2) the unfunded liability portion of the benefit for a period not to exceed twenty years from the date in which a retirement formula enhancement was approved. Provided a cost sharing amendment is part of the collective bargaining agreement between the City and the Fire/Police Units, CalPERS would

allow members of the sworn Fire service to contribute up to a maximum of 15.607%, and members of the sworn Police service up to a maximum of 13.887% toward the City's employer contribution.

The members of HPOA and the Police Management unit have agreed to contribute 3% towards the employer's contribution during FY2012. With this agreement, the City's CalPERS contribution for FY2012 will be reduced from 36.493% to 33.493% and the employees' contribution will increase from 9% to 12%. The projected annual savings of the Police Units cost sharing arrangement for FY2012 is approximately \$745,000.

The members of IAFF Local 1909 and the Hayward Fire Chiefs Association, including the Fire Chief, have agreed to contribute 6% towards the employer's contribution during both FY2012 and FY2013. With this agreement, the City's CalPERS contribution for FY2012 will be reduced from 33.454% to 27.454%. The employees' contribution will increase from 9% to 15% for IAFF Local 1909 – Firefighters. The employees' contribution will increase from 0% to 6% for members of IAFF Local 1909 – Fire Officers, the Hayward Fire Chiefs Association, and the Fire Chief. The reason for the difference of contribution levels amongst members of the Fire Units is due to the fact that the city currently pays the employees' 9% contribution for the Officers and Chiefs of the Fire Unit as a result of a previously negotiated agreement. The projected annual savings of the cost sharing arrangement for FY2012 is approximately \$987,000.

**Section 21547.7 (Alternative Death Benefit For Local Members with 20 Or More Years Of Service) and Section 20965 (Credit for Unused Sick Leave)**

Under the current contract with CalPERS, members do not receive credit for unused sick leave toward service time at the time of retirement. As an optional benefit, Government Code Section 20965 allows employees within four months of separation from employment to receive sick leave credit at the rate of 0.004 year of service credit for each unused day of sick leave certified by the employer.

Additionally, Government Code Section 21547.7 provides for survivor benefits to a Firefighter member who, upon death, is employed by a CalPERS agency, has reached the minimum age required for voluntary retirement (fifty), and has twenty years or more of service. This benefit allows the eligible spouse or eligible children to receive a monthly allowance in lieu of the basic death benefit, which is a one-time payment of the accumulated contributions of the member (Section 21532).

The City is proposing that its contract with CalPERS be amended to include credit for sick leave and survivor benefits for sworn Fire Units. The cost of these two contract amendments has been calculated as part of a larger concession package from members of the sworn Fire service that includes, among other items, implementation of the 6% cost sharing arrangement outlined above and permanent forfeiture of salary increases originally committed to the unit in FY2012 and FY2013. The Fire Units were alone in exceeding the 13% and offering their concessions for both FY2012 and FY2013, including foregoing raises and the other requested structural changes resulting in an estimated two-year savings for the Fire Unit of approximately \$6.5M. The estimated annual cost of the above survivor benefit is \$173,000, which is being paid for by Fire Unit employees in FY2012 and FY2013, and is part of the overall financial package.

## ECONOMIC IMPACT

The proposed cost sharing agreement has a positive economic impact for the Hayward community because it contributes to a preservation of current service levels for the residents.

## FISCAL IMPACT

Although there is an overall expected savings based on the entire scope of the concession agreements with the sworn Fire service, Government Code Section 7507 requires the future annual costs of any proposed contract amendments be made public at a public meeting two weeks prior to the adoption of the final Ordinance. The following presentation is a bit complex, but follows the required CalPERS language.

The change in the employer contribution rate associated with adding the unused sick leave credit and alternate death benefit provisions for the Fire unit members is an additional 1.053% to the employer's CalPERS rate (\$173,000 in FY2012) and is already included in the employer rates stated above. The Fire Units are paying for this enhancement through permanent concessions of previous contractual agreements, which exceed the 13% request from the City.

The increase in normal costs is calculated based on an actuarial estimate of the change in present value of benefits. The present value of benefits represents the total dollars needed today to fund all future benefits for current members of the plan. The actuarial study estimated the change in cost to the overall retirement plan to fund all future benefits to be \$1,671,621. The percentage of the increase to the employer rate that accounts for funding these future benefits is 0.388% of the total increase of 1.053%.

The change in accrued liability represents the increase in costs that members have already earned, but that have not been paid for. The actuarial study estimated the change in cost to the overall retirement plan to fund all past earned benefits to be \$1,115,319. The percentage of the increase to the employer rate that accounts for funding the benefits for past service is 0.665% of the total increase of 1.053%. The increase to accrued liability due to the two amendments will be separately identified from the normal costs and will be paid off in twenty years (Table 1).

Table 1 – Cost of Contract Amendment in Percentages

	<b>Credit for Unused Sick Leave</b>	<b>Alternate Death Benefit</b>	<b>Total of each Cost Type</b>
<b>Normal Cost</b>	0.210%	0.178%	0.388%
<b>Accrued Liability</b>	0.401%	0.264%	0.665%
<b>Total Current Cost</b>	0.611%	0.442%	1.053%

Government Code Section 7507 also requires an actuary to be present to provide information as needed at the Council's public meeting at which the adoption of a benefit charge will be considered pursuant to Section 7507, an actuary will be present at this meeting to answer any questions about the actuarial impact of the charges.

## **SCHEDULE**

If the Council approves the attached Resolution of Intention, Government Code Section 20471 imposes a mandatory twenty (20) day period between the adoption of the Resolution of Intention and the adoption of the final ordinance. Accordingly, an emergency ordinance approving the amendment and authorizing staff to execute the contract must be adopted on June 21, 2011. This schedule complies with Section 20471; twenty (20) days notice period and will enable CalPERS to make the contract amendment effective July 4, 2011, which is the beginning of the first full pay period in FY2012.

*Recommended by:* Fran Robustelli, Human Resources Director

Approved by:



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Fran David, City Manager

Attachments:

Attachment I: Resolution of Intention  
Attachment II: Exhibit Contract Amendment

HAYWARD CITY COUNCIL

RESOLUTION NO. 11-

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

RESOLUTION OF INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY OF HAYWARD

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedure to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change: To provide Section 20965 (Credit for Unused Sick Leave); Section 21547.7 (Alternative Death Benefit for Local Fire Members Credited with 20 or More Years of Service); and Section 20516 (Employee Sharing Cost of Additional Benefits) applicable to Section 21362.2 (3% at 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20<sup>th</sup> anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%; and Section 20516 (Employee Sharing Cost of Additional Benefits) applicable to Section 21362.2 (3% @50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20<sup>th</sup> anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that it does hereby give notice of its intention to approve an amendment to the contract between the City of Hayward and the Board of Administration, California Public Employees' Retirement

System (“CalPERS”) a copy of said amendment being attached here to as an “Exhibit” and by this reference made a part hereof, and to authorize staff to work with CalPERS to finalize such contract amendments.

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



## EXHIBIT

California  
Public Employees' Retirement System

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# AMENDMENT TO CONTRACT

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Hayward

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The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1950, and witnessed August 7, 1950, and as amended effective January 16, 1952, January 1, 1956, April 1, 1959, January 1, 1960, November 1, 1962, April 1, 1965, December 1, 1969, July 1, 1973, July 16, 1973, June 1, 1978, April 23, 1979, January 12, 1981, March 9, 1981, July 11, 1986, October 10, 1988, June 21, 1991, June 19, 1992, March 8, 1996, January 1, 2001, April 1, 2001, July 1, 2001, August 26, 2002 and May 23, 2008 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 13 are hereby stricken from said contract as executed effective May 23, 2008, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

2. Public Agency shall participate in the Public Employees' Retirement System from and after October 1, 1950 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
  - (d) Public Agency's election to file for bankruptcy under Chapter 9 (commencing with section 901) of Title 11 of the United States Bankruptcy Code and/or Public Agency's election to reject this Contract with the CalPERS Board of Administration pursuant to section 365, of Title 11, of the United States Bankruptcy Code or any similar provision of law.
  - (e) Public Agency's election to assign this Contract without the prior written consent of the CalPERS' Board of Administration.
  - (f) The termination of this Contract either voluntarily by request of Public Agency or involuntarily pursuant to the Public Employees' Retirement Law.

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

- (g) Changes sponsored by Public Agency in existing retirement benefits, provisions or formulas made as a result of amendments, additions or deletions to California statute or to the California Constitution.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
    - a. Local Fire Fighters (herein referred to as local safety members);
    - b. Local Police Officers (herein referred to as local safety members);
    - c. Employees other than local safety members (herein referred to as local miscellaneous members).
  5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
    - a. **PERSONS EMPLOYED AFTER JANUARY 16, 1952 AS CROSSING GUARDS; AND**
    - b. **PERSONS EMPLOYED AFTER JANUARY 30, 1959 AS PART-TIME LIFEGUARDS AND PART-TIME LIBRARY AIDES.**
  6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after August 26, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
  7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after August 26, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
  8. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).

## PLEASE DO NOT SIGN "EXHIBIT ONLY"

9. Public Agency elected and elects to be subject to the following optional provisions:
- a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.
  - b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
  - c. Section 20042 (One-Year Final Compensation).
  - d. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage) for local safety members only.
  - e. Section 21024 (Military Service Credit as Public Service).
  - f. Section 21027 (Military Service Credit for Retired Persons).
  - g. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
  - h. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
  - i. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local miscellaneous members only.
  - j. Section 20903 (Two Years Additional Service Credit).
  - k. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
  - l. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
  - m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%.

Section 21362.2 (3% @ 50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on June 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
  - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
  - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
  - c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.

- d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.
- 13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
- 14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF HAYWARD

BY \_\_\_\_\_  
DARRYL WATSON, CHIEF  
CUSTOMER ACCOUNT SERVICES DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

**DATE:** May 31, 2011  
**TO:** Mayor and City Council  
**FROM:** City Manager  
**SUBJECT:** Reaffirmation of Fiscal Emergency Facing the City of Hayward

### **RECOMMENDATION**

That Council adopts the attached resolution (Attachment I) reaffirming a fiscal emergency in the City of Hayward.

### **BACKGROUND**

In March 2009, the City Council unanimously adopted a resolution declaring a fiscal emergency for the City. The purpose at that time was to highlight the gap between planned revenue and expenses, and the need for additional revenue. This action allowed Council to place a Utility Users Tax (UUT) measure on the ballot for the May 2009 special election. At that time, the City had just begun to see the impacts of the Great Recession on the General Fund budget. Since then, and despite the successful ballot measure, the fiscal condition of the City has continued to worsen. As outlined in the FY2012 City Manager's Recommended Budget, the City is facing a growing economic crisis like none it has experienced before. A series of factors have converged to create the "perfect fiscal storm" and to leave the City's General Fund budget facing deficits of between \$20-30 million annually over the next ten years, even with the newly approved UUT.

While the City Manager has developed a difficult and balanced recommended budget for FY2012 through a series of measures including employee salary and benefit concessions, organizational downsizing, use of reserves, and other organizational savings, the structural changes proposed in this budget are merely the first steps the organization needs to take to address the widening gap between future revenue growth and escalating costs. There is little doubt that the City must continue to make structural change in expenses, primarily employee-related costs, in order to resolve the fiscal crisis. This will require difficult choices over the next few years and the continued commitment and participation of all affected entities: Mayor and Council, management, City employees, and the community.

In the sixteen months leading up to adoption of the original resolution, the City took many actions that resulted in an approximate 10% reduction in General Fund costs, acknowledging that many of these actions were short-term in nature. These included:

- Concessions of cost of living adjustments from Police, Fire, and Unrepresented Management
- Mandatory unpaid furloughs for many employees and closing of City facilities
- Elimination of 50 positions (non-sworn)
- Other cost cutting measures resulting in \$3 million in cost reductions

Although some of the actions taken in the past few years were structural in nature, many entailed the use of one-time money to bridge what had been a consistent and on-going gap between revenues and expenditures of approximately \$8-9 million, exacerbating the City's already precarious economic condition, and depleting the City's sources of available "one-time" cash.

## **DISCUSSION**

As the City prepares to begin FY2012, the economic picture remains bleak and it is clear that the City is facing a new economic reality, not just a slight downturn in the economy. The factors mentioned above have combined to present the organization with a FY2012 challenge of closing a \$20 million General Fund deficit. This is not a one-year only problem, but rather a structural issue that has existed for some time, and which was dramatically exposed by the economic crisis the country has been experiencing, with California being hit particularly hard.

Clearly, in this economy, the City's revenue has fallen dramatically. Large and usually dependable revenue sources have fallen: Property Tax has fallen from a high of \$41 million in FY2009 to a current low of \$36 million in FY2011 (-\$5M); Sales Tax from a high in FY2008 of \$29 million to a projected low of \$24 million in FY2012 (-\$5M). Other taxes and fees have suffered similar losses. Real Property Transfer Tax fell from a high of over \$10M in FY2006 to a low of \$3 million in FY2010 (-\$7M).

What makes this period unique is that the two major revenues (Property Taxes and Sales Taxes) are not likely to "rebound" in the manner local California governments have come to expect in prior periods. Property Tax has never fallen to this extent in recent memory. This deep decline coupled with California's tax controls, make rapid recovery highly unlikely.

Sales Tax has traditionally shown dependable resiliency in normal conditions. However, Hayward has seen significant losses of sales tax generating businesses, primarily new car dealers, which are not likely to return to the City. Additionally, the economic downturn has dramatically impacted "business-to-business" sales tax, which is a major component of Hayward's Sales Tax base. This is tied directly to how well the economy is doing, particularly related to the construction and industrial sectors. Between December 2009 and December 2010, Hayward saw an 18% decline in business-to-business sales tax receipts, which account for approximately 25% of total sales tax receipts in the City.

As discussed above, the organization has, over the past few years, been employing many strategies to balance the City's General Fund budget. The organization has been downsizing, reorganizing, flattening and in many other ways gaining efficiency while streamlining and reducing costs. Employees have been "giving back" from their contracted positions for several years through

deferral and foregoing of raises, accepting and implementing furloughs, and in many other ways in hopes that the City will "get through" the worst of the economic times and see the revenue-expense balance return to prior levels. Unfortunately, that balance has not returned and is unlikely to without implementation of longer term, structural changes to the City's budget. In addition to the loss of revenue explained above, the escalation in employee costs has been phenomenal and is directly associated with health care costs, CalPERS pension rates, and Retiree Medical benefit costs.

The City of Hayward currently offers medical and pension benefits to its employees through CalPERS. CalPERS pension contribution rates have increased for several reasons, both short- and long-term. In the short-term, CalPERS has suffered extraordinary investment losses. Overall, CalPERS suffered a loss of nearly 40% of its market value -- the worst loss in the system's 77-year history. While that picture appears to be slowly turning to the positive, the reality is that CalPERS cannot make up all of its losses without seeking higher contribution rates from its members.

Similarly, with the increasing longevity of CalPERS members, there was already growing concern within the industry related to CalPERS' ability to cover its member retirement liabilities even before the investment losses. Therefore, the City of Hayward has seen an escalation in its CalPERS rates as shown in the following table. It should be noted that each 1% increase in CalPERS rates costs the City an estimated \$413,000 for Public Safety and \$297,000 for Miscellaneous Employees per year at today's salary rates.

**TABLE I: City of Hayward CalPERS Rates**

	<b>FY 2000 (Actual)</b>	<b>FY 2005 (Actual)</b>	<b>FY2010 (Actual)</b>	<b>FY2012 (Actual)</b>	<b>FY2015 (Projected)</b>	<b>% Increase from 2000 to 2010</b>	<b>% Increase from 2000 to 2015</b>
Public Safety - Police	8.515%	26.518%	25.902%	36.493%	42.400%	204%	398%
Public Safety - Fire	8.319%	26.745%	28.685%	32.401%	39.400%	245%	374%
Miscellaneous	1.804%	7.800%	11.351%	17.981%	22.600%	529%	1,153%

Healthcare costs have more than doubled in the last few years. This not only impacts what is paid for or by individual employees, but also what the organization must pay for Workers' Compensation claims. Health insurance rates are increasing at double digit rates almost every year. In California, some organizations report that healthcare premiums have risen 70% over the last five years. For the City of Hayward, health premiums under the Kaiser program have increased from \$259.21 per single employee in 2003 to \$568.99 in FY2011.

The same picture can be painted for Retiree Health Care costs. However, in this case, the City has just begun to accumulate reserves toward meeting the funding obligation for this benefit. The growing cost of healthcare, the early retirement ages of public employees, and the expected increased longevity of individuals contribute to the overall problem. The organization is severely underfunded with respect to the future cost liability of this benefit, and will likely find it impossible to fund this program given the City's current benefit level throughout the organization, the

uncapped structure currently offered to the sworn service in the Police Department, and the other aforementioned factors.

As staff prepared the last two-year budget (FY2011 and FY2012), employees not only continued to commit furlough hours and other "give backs" in FY2011, they also committed a similar level of participation in FY2012. This allowed the City Manager to recommend a two-year balanced budget to Council in May of 2010. As staff identified the extent of the above identified financial challenges in FY2012 and FY2013, the City Manager has asked employees for 13%, with as much structural change as employee groups can construct. This has presented a daunting picture to employees.

What is really needed to address the next five years and the future is an overall 30%+ reduction in on-going, organizational expenses. The most important structural changes employees have been asked to consider are (1) assuming a greater share of the costs for their retirement system participation; (2) sharing to a greater degree in the cost of health care coverage; (3) eliminating the current City contributions to the deferred compensation plan; and (4) permanently foregoing the contractual raises due to them in their current contracts for the immediate years. In addition, the City Manager has been working with Department Heads to identify position reduction possibilities. As a result of that effort, the City is currently projected to reduce the size of the organization by over fifty Full Time Equivalents (FTE); and, the City will also see a reduction of at least twelve uniformed Police Officer positions in FY2012 due to attrition.

Along with all of the above and additional savings from operations, the City Manager, as part of the FY2012 recommended Budget, is reluctantly recommending that Council approve the use of Economic Uncertainty Reserves in the amount of \$4.4 million to balance the budget. Council has been wise in their past use of reserves, and staff has made every effort to maintain those reserve levels as close to Council policy as possible. The Council's reserve policy is included as part of the Supplemental Information section in the City's operating budget and is reaffirmed annually. However, the continued use of reserves will be needed in the immediate few years to balance the budget unless permanent structural change is accomplished within the organization. Without such change, reserves will be rapidly depleted.

Therefore, staff strongly recommends that Council continue their prudent approach to utilizing and preserving reserves unless and until a clear path is agreed to, which permanently reduces costs. Staff further recommends that Council approves this declaration of a continuing fiscal emergency, and directs the City Manager to continue working with the organization and its employees to define and implement structural change to reduce the financial obligations of the City and its related agencies and authorities; and that Council applies this state of fiscal emergency to all funds.

## **NEXT STEPS**

The structural changes proposed in this budget are merely the first steps the organization needs to take to address the widening gap between future revenue growth and escalating costs. There is little doubt that the City must continue to work on reducing the costs of employee benefits. Public pension reform is the single most talked about issue in the news today. Clearly, that issue will be addressed by others through the Legislature and/or the Courts; and by our City through collective bargaining currently scheduled to start in the latter half of FY2012 on into CY2016.

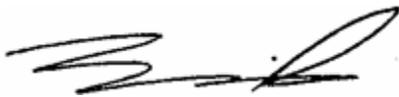
With a solid, reliable ten-year financial plan, the City has the foundation in place to continue addressing the longer term structural imbalance in the General Fund. This will require difficult choices over the next few years and the continued commitment and participation of City employees. Support from the City Council will also be critical as the organization continues to weather this economic storm and adjusts to the on-going state of the “new normal.”

## **ECONOMIC AND FISCAL IMPACT**

As outlined in this report and in the proposed budget for FY2012, the City is facing an economic crisis like none it has experienced before. A series of factors have converged to create the “perfect fiscal storm” and to leave the City’s General Fund budget facing deficits of between \$20-30 million annually over the next ten years, unless long-term, permanent financial restructuring occurs. It is important that the City Council adopt this resolution reaffirming the seriousness of the City’s current and long-term fiscal emergency.

*Prepared by:* Kelly McAadoo Morariu, Assistant City Manager

Approved by:



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Fran David, City Manager

Attachments:

Attachment I: Resolution Reaffirming a Fiscal Emergency for the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO \_\_\_\_\_

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

RESOLUTION REAFFIRMING A FISCAL EMERGENCY  
FOR THE CITY OF HAYWARD

WHEREAS, under the California Constitution, the City Council has plenary authority to control the City’s municipal affairs; and

WHEREAS, in March 2009, the City Council approved a resolution declaring a fiscal emergency for the City of Hayward; and

WHEREAS, the economic conditions leading to the 2009 resolution have continued and have deepened in severity to an extent not previously contemplated, resulting in estimated deficits for the General Fund of between \$20-30 million annually over the next ten fiscal years; and

WHEREAS, in spite of the valuable revenue provided by the newly enacted Utility Users Tax, the City has experienced the “perfect fiscal storm” of flat or only slightly increasing revenues coupled with dramatically escalating costs, exacerbated by the depletion of one-time money and solutions used over the past several years to bridge what has been a consistent gap of approximately \$8-9 million between revenues and expenditures in the City’s General Fund; and

WHEREAS, the City’s two primary revenue sources (Property and Sales Taxes) are not likely to recover in the manner local California governments have come to expect at the end of prior recessionary periods; and

WHEREAS, although the Mayor, City Council, and staff have instituted many significant strategies to manage the impacts of the current economic situation over the past few years, including passage of the Utility Users Tax, elimination of vacant positions, employee salary concessions, mandatory employee furloughs and closure of City facilities, and use of reserves, these strategies have been inadequate to completely address the long-term, structural deficit in the coming years; and

WHEREAS, the City Manager is recommending the elimination of additional General Fund positions in the proposed FY2012 budget, which will result in the layoff of valued City employees and probable further degradation of basic services provided to the community; and

WHEREAS, there remains no possible way for the City of Hayward to absorb additional personnel reductions in the General Fund without significantly impacting the City’s ability to deliver even basic, core services; and

WHEREAS, the Mayor, Council and staff are committed to the safety and welfare of the City's residents and businesses through the continued provision of public safety services, the preservation of fire and paramedic response times, youth and anti-gang programs, neighborhood cleanliness and appearance services, quality streets, sidewalks and lighting, and other municipal services.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Hayward does declare that there continues to exist a fiscal emergency in the government and community of Hayward and that this fiscal emergency, if not addressed utilizing longer-term, structural strategies to control expenditures and manage revenues, will cause severe cuts into core municipal services and negatively impact the quality of life in the City of Hayward and the financial foundation of the organization.

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