



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
JANUARY 24, 2012

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

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CITY COUNCIL MEETING FOR JANUARY 24, 2012
777 B STREET, HAYWARD CA 94541
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CLOSED SESSION
Closed Session Room 2B – 4:00 PM

1. **PUBLIC COMMENTS**
 2. Public Employment
Pursuant to Government Code 54957
 - Performance Evaluation
City Attorney
 3. 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, Finance Director Vesely and Assistant City Attorney Roufougar
Under Negotiation: All Bargaining Units
 4. Conference with Legal Counsel
Pursuant to Government Code Section 54956.9
 - Pending Litigation
California Redevelopment Association, et al v. Matosantos, California Supreme Court Case No. S194861
 5. Conference with Legal Counsel
Pursuant to Government Code 54956.9
 - Pending Litigation
Nanette Dillard v. Alameda County Associated Community Action Program Governing Board
Alameda County Superior Court No. RG11572661
 6. Adjourn to Special Joint City Council/Redevelopment Agency/Housing Authority Meeting
-

**SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY/
HOUSING AUTHORITY MEETING**
Council Chambers - 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Salinas

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or 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.)*

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.)*

SPECIAL JOINT CITY COUNCIL/PLANNING COMMISSION WORK SESSION

1. Revisions to the Alcohol Beverage Outlet Regulations in the Zoning Ordinance (**Report from Development Services Director Rizk and Police Chief Urban**)
 - [Staff Report](#)
 - [Attachment I Hayward Alcohol Beverage Outlet Regulations](#)
 - [Attachment II ABC License Types](#)
 - [Attachment III January 17, 2006 City Council Meeting Minutes](#)
 - [Attachment IV Elephant Bar Letter](#)
 - [Attachment V ABC License Locations in Hayward](#)
 - [Attachment VI Summary of Bay Area Cities' Alcohol Regs](#)
2. Presentation of the Alternative Scenarios for the Regional Sustainable Communities Strategy (**Report from Development Services Director Rizk**)
 - [Staff Report](#)
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 - [Attachment IV Targets Scorecard](#)
 - [Attachment V Equity Analysis Scorecard](#)

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.)*



CONSENT

3. Hayward Municipal Election – June 5, 2012

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Election Calendar](#)

4. First Amendment to Debt Service Reserve Forward Delivery Agreement: 2002 Association of Bay Area Governments (ABAG) Lease Revenue Bonds

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Agreement](#)

5. Adoption of Revised Enforceable Obligations Payment Schedule (EOPS) Required Under ABx1 26 (the Redevelopment “Dissolution Act”)

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Original EOPS](#)

[Attachment III Revised EOPS \(to be distributed prior to meeting\)](#)

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*

LEGISLATIVE BUSINESS

6. Resolution Authorizing the City Manager to Negotiate and Execute a Ground Lease for Phase I and an Option Agreement with Master Lease for Phases I-V with Hayward Airport Development, LLC on a Parcel of Land at Hayward Executive Airport (**Report from Public Works Director Fakhrai**)

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II Location Map](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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



ADJOURNMENT

NEXT MEETING – 7:00 PM, TUESDAY, FEBRUARY 7, 2012

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.*

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.*

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

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

Please visit us on:



DATE: January 24, 2012

TO: Mayor and City Council and Planning Commission

FROM: Chief of Police and Development Services Director

SUBJECT: Revisions to the Alcohol Beverage Outlet Regulations in the Zoning Ordinance

RECOMMENDATION

That the City Council and Planning Commission review this report and provide staff direction that would allow staff to return to the Planning Commission and City Council with proposed revisions to the alcohol beverage outlet regulations in the Zoning Ordinance.

SUMMARY

It has become evident in recent months that the City's Alcohol Beverage Outlet Regulations in the Zoning Ordinance (Attachment I) need to be revised. Concerns have been expressed by the public and Council members in the past as to whether the regulations provide adequate guidance regarding alcohol serving establishments that have the potential to generate negative impacts and usurp scarce public safety resources. Also, concerns have been expressed that some of the standards and regulations are not business-friendly for full-service restaurants and may prevent some of those restaurants, which can operate without benefit of a conditional use permit, from reaching maximum business potential.

Given the other operating standards required of full-service restaurants and the fact that such establishments typically have very low to no levels of calls for police service, staff is recommending for full-service restaurants only, that Council eliminate the provision that prohibits happy hours (reduced price alcohol sales) and that music be allowed in such restaurants up until 10:00 pm without approval of the Chief of Police. If directed, staff will present the Council in the immediate future with a resolution for consideration.

Also, staff is recommending that Council direct staff to conduct further research and present at future meetings proposed revisions to the Alcohol Beverage Outlet regulations that will achieve several objectives such as: provide more flexibility to promote economic growth and number of desired businesses; ensure potentially undesirable uses that drain limited resources are adequately regulated and/or discouraged; develop more aggressive ways to close unwanted businesses that serve alcohol; and provide a funding structure/process to ensure adequate Police

Department resources are available to regulate such uses and effectively enforce City regulations.

BACKGROUND

There are several reasons to re-evaluate the existing City regulations regarding alcohol service:

- a. City Council asked that regulations be revised at its September 27, 2011 meeting when it adopted the South Hayward BART/Mission Boulevard Form-Based Code;
- b. Current regulations are not in total alignment with the following adopted FY 2012 City Council Priorities:
 - o Improve public safety in targeted areas like Downtown/Entertainment Areas
 - o Strengthen and protect Hayward's business community
 - o Engage in and succeed at aggressive economic development
- c. Current regulations do not adequately differentiate between various establishments that serve alcohol that may require different levels of service, nor do they provide sufficient operating and performance standards;
- d. Hayward Police Department resources are limited.

City Policies - Existing policies and strategies from the Hayward General Plan seek to strike a balance between promoting economic growth and business choices for the public, while minimizing impacts to quality of life in residential and retail neighborhoods. For example, the Economic Development Chapter of the General Plan contains the following strategies:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.
- Business attraction efforts should focus on sales tax and employment generators; high performance, fast-growing firms and community-serving retail as well as high technology and other industries that will enhance the local economy.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.

- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purposes of various commercial zoning districts seek to promote economic growth, as reflected below:

- The purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.
- The Neighborhood Commercial (CN) District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained, in order to make provision for a number of areas throughout the City carefully located in relationship to other Commercial Districts and to the Residential Districts served. The products and services intended are those primarily represented by convenience goods and services purchased frequently.

Along with the fiscal reality of limited resources, such policy direction provides a framework within which to consider revisions to the City's Alcohol Beverage Outlet regulations.

California Department of Alcohol Beverage Control - The California Department of Alcohol Beverage Control (ABC) has sole authority related to permitting alcohol sales. ABC issues a variety of licenses related to alcohol service (see list, Attachment II). Two of the most common types of licenses issued by ABC for on-site sale of alcohol are Type 47 and Type 48 licenses. Type 47 licenses (On-Sale General for Bona Fide Public Eating Places) are typically associated with restaurants and require at least 51% food to 49% alcohol sales activity. Generally, ABC defines such establishments as places that allow minors during business hours and which serve meals, and also sell beer, wine and distilled spirits. Type 48 licenses (On-Sale General for Public Premises) are typically associated with a bar or nightclub and entail the sale of beer, wine and distilled spirits for consumption on the premise where sold. Minors are not allowed to enter or remain and food service is not required.

According to ABC staff, alcohol sales are taxed by the State Board of Equalization, which checks restaurant receipts. If there is more than 50 percent alcohol sales (in violation of the standard ABC Type 47 license for a restaurant), then the State Board of Equalization contacts ABC, which will open up an investigation. The Hayward Police Department is contacted when an establishment is under investigation by ABC. Typically, due to limited resources, Hayward Police Department does not check receipts, but will work with ABC if complaints are received about an establishment.

History of City's Alcohol Beverage Outlet Regulations – The City's original Alcoholic Beverage Outlet regulations were adopted in 1993, and the stated purpose of those regulations was to stem the proliferation of establishments selling alcoholic beverages within the City, with the notion that they present problems which adversely impact residents, businesses, property owners, visitors, and workers of Hayward. The regulations were intended to address problems associated with establishments engaged in the sales of alcoholic beverages by restricting their locations in relation to one another and to their proximity to facilities primarily devoted to use by children and families with children. Such regulations entailed establishing a requirement for conditional use permits for new establishments engaged in the sale of alcoholic beverages, where conditions could be established to prevent the undesirable impacts on the community. Several changes to the original regulations were made, particularly related to the Downtown.

The City last comprehensively revised its alcohol beverage outlet regulations in 2006 (see City Council meeting minutes, Attachment III). According to the record, the City Council was interested in (1) pursuing changes to the regulations that focused on the Downtown, liquor stores, and bars; (2) the extent of alcoholic beverages permitted to be sold by physical volume (e.g., cubic feet) rather than percentage of floor area; and (3) re-examining the relevance of the current separation requirements between establishments involved in the sale of alcoholic beverages.

Overview of City's Current Regulations – The purpose of the current regulations is stated at the beginning of the regulations (see Attachment I). The stated specific purpose of the regulations is “to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.”

Most new alcohol serving establishments in Hayward are required to operate via a conditional use permit approved by the Planning Commission (or City Council upon appeal) via a noticed public hearing. As reflected in Section 10-1.2315(b)(3) of the Zoning Ordinance (Attachment I), exceptions to such requirement include “full-service” restaurants (see subsequent discussion); retail stores having at least 10,000 square feet of floor area and which devote not more than 5 percent of such area to alcohol sales, display, and storage; and special event functions, such as neighborhood or community festivals (provided other required permits and licenses are obtained for such events).

With the exceptions of full-service restaurants, retail stores of 10,000 square feet or more that do not allocate more than five percent of their floor area to alcohol, and legally permitted special community events, all other new alcohol-serving establishments require a conditional use permit. If establishments operating under a use permit become problematic or operate in conflict with their use permit conditions, the City can revoke such use permits and seek to shut down such establishments. However, many establishments within Hayward have existed for years before the current regulations requiring a conditional use permit (called nonconforming uses). Such locations do require an ABC license, however.

The bottom of page six of the attached regulations (Attachment I) provides direction regarding nonconforming uses. Those provisions indicate such businesses may operate without a use permit, unless a change to their liquor license occurs or there is a substantial change in the mode or character of operation of an establishment. Such change could include an expansion in the area devoted to alcohol sales/consumption or a pattern of conduct occurs in violation of other laws or

regulations. If such occurs, a conditional use permit would be required for such establishments to continue to operate.

Full Service Restaurants – Pages two and three of the attached regulations (Attachment I) define a “full service restaurant” and identify operating standards. Generally, such restaurants allowed to serve alcohol without benefit of a conditional use permit are required to provide meal service at all times when they are open and are prohibited from providing live or recorded entertainment, including music, except for background music as approved by the Chief of Police.

Other Alcohol-Serving Establishments – Page five of the attached regulations provide standards for new on-sale establishments (where alcohol is sold and consumed on-site). Such standards do not provide operating standards, such as developing and implementing a security plan approved by the Hayward Police Department, and just address location and density standards. Such standards require a minimum 500-foot separation outside the Downtown between on-sale establishments and other on-sale or off-sale establishments, as well as to schools, public parks, libraries, playgrounds, recreational centers, child care centers, or other similar uses. In the Downtown, a minimum 100-foot separation is required between on-sale and off-sale establishments. No separation is required from schools, public parks, etc. for on-sale establishments that front B Street between Watkins Street and Foothill Boulevard or front Main Street between A and C Streets. Also, within the Downtown, no more than two on-sale alcohol establishments are permitted per block side or face. Off-sale establishments are typically required to be separated by at least 500 feet and be no closer than 500 feet to schools, public parks, etc. Page six of the regulations does identify possible conditions that may be appropriate for such uses, but such conditions are not stated as being required.

A “night club” is defined in the Zoning Ordinance as “any alcohol beverage sales commercial activity which engages in the sale of alcohol beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 pm to 2:00 am, regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.” Such definition is the only specific one for uses that entail selling alcohol for on-site consumption, aside from the full-service restaurant definition. It may be appropriate to develop another definition that addresses those establishments that are not night clubs or full-service restaurants, so that operating and performance standards for such uses can be developed.

DISCUSSION

Following is a discussion related to the objectives identified in the Summary section.

More flexibility to promote economic growth and number of desired businesses – Given the limitation on full-service restaurants that at least 40% of gross sales be non-alcohol related, staff would recommend that the prohibition of reduced price (happy hour) alcohol sales be deleted. Such restriction could dissuade customers who would be attracted to a restaurant, including those customers seeking lunch and/or dinner. Such restriction impacts revenues and the ability of such restaurants to compete in the marketplace, particularly during difficult economic times. Staff has received a letter from the Chief Financial Officer of the *Elephant Bar* restaurant at Southland Mall

(Attachment IV), who is requesting that the prohibition of happy hour alcohol sales for that restaurant be lifted. Anecdotal data related to the *Elephant Bar* restaurant indicates that the prohibition on happy hours is negatively impacting the Southland Mall restaurant during these challenging economic times, when price is a bigger concern for customers; and may reduce their weekly revenue by as much as 30% compared to other similarly located *Elephant Bar* locations with unrestricted happy hours. Regarding other restaurants at Southland Mall, it should be noted that the *Olive Garden* restaurant does not have a happy hour; *Applebee's* restaurant has a happy hour, which was approved via a conditional use permit application prior to current regulations; and *Mimi's* restaurant operates as a "full service restaurant" without a conditional use permit and currently does not have a happy hour for alcohol, but does have a happy hour for appetizers.

Also, to assist full-service restaurants in attracting customers, staff would recommend that the restrictions regarding music be revised to allow the playing of recorded or live music (without dancing) by right until 10:00 pm without Chief of Police approval at such restaurants. The allowance until 10:00 pm is related to when meal service would typically be most active. Under such scenario, for a restaurant that plays music past 10:00 pm, it would not be considered a full-service restaurant and a conditional use permit would be required.

Such recommendations would seek to balance the oft times competing goals and policies of promoting economic growth, while minimizing negative impacts to residents and neighborhoods.

Ensure potentially undesirable uses that drain scarce resources are adequately regulated and/or discouraged – Attachment V is a map that shows the location of establishments with ABC licenses. Not surprisingly, establishments are concentrated in Downtown and along major arterial corridors, many of which are nonconforming that operate without benefit of a conditional use permit.

As directed by Council, staff would develop revisions to the alcohol regulations that do a better job of identifying operating standards for such establishments. As discussed previously in this report, although the current regulations suggest conditions that policy makers should consider imposing on establishments, required operating and performance standards generally do not exist in the current provisions. Also, the recommended funding structure discussed on the next page will assist with more active oversight and enforcement associated with problematic locations.

Develop more aggressive ways to shut down undesirable businesses that serve alcohol – Typically, the most effective ways to shut down undesirable uses is via injunctive relief, involving legal action. Administrative remedies, such as those that utilize land use regulations, are less effective. However, at Council direction, staff will consult with the City Attorney's office to determine whether more effective remedies in the alcohol beverage outlet beverage regulations can be developed. Certainly, to effectively address undesirable alcohol-serving uses that are operating in detriment to surrounding neighborhoods and the City, a cooperative, multi-pronged strategy would be most effective, involving action by the City Attorney and Hayward Police Department in coordination with ABC.

Provide a funding structure/process to ensure adequate Police Department resources are available to regulate such uses and enforce City regulations – Several municipalities have regulations that generate funding to support public safety oversight of alcohol-serving establishments/entertainment venues (see summary, Attachment VI). For example, the City of Emeryville not only requires a conditional use permit from the Emeryville Planning Commission, but also a cabaret permit from the Emeryville Police Department. Emeryville’s definition of cabaret is: “cabaret shall mean any event or place where live entertainment is provided by or for any patron or guest, including but not limited to: singing, playing music, dancing, acting, holding a fashion show, performing pantomime, performing comedy or other act or performance and to which admission:

- a. May be gained by the public generally with or without the payment of a fee or cover charge of the purchase or presentation of a ticket or token; or
- b. May be gained by a person without an invitation or by anyone who cannot be identified at the time of the issuance of the invitation by the sender.”

Such regulations require that operators pay an annual permit fee to offset the costs of administering the regulations, give broad authority to the Police Department to inspect the books and premises (to which the operators give advance consent), and the cabaret permit is not transferable and must be applied for renewal each year. For problematic establishments, a cabaret permit can be revoked, meaning the operator could sell alcohol, but not conduct any cabaret activities. Such dual permitting would be similar to the massage establishment permitting process for Hayward that requires a conditional use permit for such establishments, as well as a massage establishment permit at least every other year from the Hayward Police Department.

Although such fees and process would be an additional burden on certain types of establishments, given the limited resources that currently exist and policies and priorities of the City that promote and encourage public safety and economic development, staff is prepared to conduct more research and develop recommendations for a similar funding and permitting system associated with similar types of alcohol-serving entertainment establishments.

ECONOMIC IMPACT

It is difficult to determine what potential economic impacts would be without specific Code revisions being proposed. Allowing happy hours and music until 10:00 pm without City approval in full-service restaurants would be viewed as promoting the economic viability of such restaurants.

FISCAL IMPACT

The recommended immediate adjustments to the regulations would have minimal fiscal impact. However, conducting further research and developing recommendations for a comprehensive revision to the regulations will take potentially substantial staff time. However, such efforts could result in a funding source to help defray General Fund support for administering and overseeing certain alcohol serving establishments. Costs associated with developing revisions to the regulations would be borne by the General Fund, as part of the normal activities of Development Services Department, Police Department, and Finance Department staffs.

PUBLIC CONTACT

Staff provided notice of this joint work session to the Chamber of Commerce, downtown homeowners' associations, and other interested parties.

NEXT STEPS

Pending Council and Planning Commission discussion at this meeting, staff would present the City Council a resolution in the near future that would eliminate the prohibition of happy hour (reduced price alcohol sales) and would allow the playing of music (no dancing allowed) without City approval until 10:00 pm at full-service restaurants. Also, if directed by Council, staff will then conduct a community workshop in the near future to obtain input and feedback from business owners and residents, primarily those in the downtown area, regarding the City's alcohol beverage outlet regulations. Subsequently, staff will discuss the existing regulations with the City Council Economic Development Committee, and will then develop a draft ordinance within the next six months that incorporates feedback and direction from City Council, Planning Commission, and the community.

Prepared by: David Rizk, AICP, Development Services Director
Diane Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Hayward Municipal Code Section 10-1.2735(b) et al (Alcohol Beverage Outlet Regulations)
- Attachment II: List of ABC License Types
- Attachment III: January 17, 2006 City Council Meeting Minutes
- Attachment IV: November 22, 2011 Letter from Elephant Bar Restaurant
- Attachment V: Location of Hayward Establishments with ABC Licenses (map)
- Attachment VI: Summary of Alcohol-Related Regulations of Selected Bay Area Cities

- (c) Within 500 feet of any other adult entertainment activity as herein defined.
- (4) Public Display of Certain Matter Prohibited.
No person shall place, maintain, display or exhibit any material in a manner which exposes to public view photographs or illustrations of "specified sexual activities" or of poses which emphasize or direct the viewer's attention to "specified anatomical areas." As used herein, "exposes to public view" means exposes to the view of persons outside the building in which said material is placed, maintained or displayed.
- (5) Discontinuance of Nonconforming Activities.
No later than September 19, 1980, all adult entertainment activities made nonconforming by reason of the provisions hereof, except those activities rendered nonconforming because of being within 500 feet of any other adult entertainment activity, shall be discontinued or shall be brought into full conformance with the provisions hereof, except that such activities may be allowed to continue for an additional period upon the approval of a variance with the finding that the activity is obligated by written lease entered into before the effective date of this section for a period exceeding two years from such effective date, or that the activity involves investment of money in leasehold or improvements of such that a longer period is necessary to prevent undue financial hardship.

b. Alcoholic Beverage Outlet Regulations.

- (1) Purpose.
In addition to the general purposes listed in Section 10-1.110: General Provisions, the specific purpose of the Alcoholic Beverage Outlet Regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.
- (a) In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers of Hayward.
- (b) Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- (c) It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- (d) These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- (e) The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming

from such uses by the imposition of reasonable conditions upon the operation of such uses.

(2) Definitions.

For the purpose of these regulations, certain terms and words shall have the following meanings:

- (a) **Alcoholic Beverage Sales Commercial Activity.** “Alcoholic Beverage Sales Commercial Activity” means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding full-service restaurants that comply with the below-listed definition of full-service restaurant.
 - (i) “On-sale Alcohol-related Commercial Activity” shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises. This section shall be interpreted to include bars, exclusive of night clubs.
 - (ii) “Off-sale Alcohol-related Commercial Activity” shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
 - (iii) “Liquor store” shall mean any business of less than 10,000 square feet (gross) where beer, wine or distilled spirits are sold for off-sale consumption.
- (b) **Downtown Entertainment Area.** The “Downtown Entertainment Area” shall mean that area generally between A and D Streets and between Second Street and Grand Street.
- (c) **Restaurant – Full Service.** A “full service restaurant” shall mean a sit-down commercial activity which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants or delicatessens. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon 72 hours’ prior written notice. To be considered a full service restaurant, the commercial activity must meet the criteria listed below. Restaurants that fail to meet these criteria must apply for a conditional use permit. In the event that the establishment fails to obtain a conditional use permit, the establishment shall be in violation of these regulations and subject to the penalties and enforcement provisions set forth in Section 10-1.2850 of the Zoning Ordinance.

- (i) A full service restaurant shall serve meals to guests at all times the commercial activity is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (ii) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (iii) A full service restaurant shall not offer or permit any form of live or recorded entertainment; including by way of example and not limited to, the playing of recorded music by a disc jockey, karaoke, dancing, video or mechanical games. Background music complementary to a dining experience may be provided as determined by the Chief of Police.
- (iv) A full service restaurant shall not offer any type of reduced price promotion for alcoholic beverages served on the premises.
- (v) A full service restaurant is one that abides by all of the following performance standards:
 - (a) That it does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
 - (b) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
 - (c) That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
 - (d) That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
 - (e) That all its employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within 90 days of being employed; and
 - (f) That it complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
 - (g) That it does not sell alcoholic beverages to minors.
- (d) Night Club. “Night club” shall mean any alcoholic beverage sales commercial activity which engages in the sale of alcoholic beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 p.m. to 2:00 a.m. regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.

(3) Conditional Use Permit for New Establishments.

Except as otherwise provided herein, no new alcoholic beverage sales commercial activity may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- (a) Retail stores having 10,000 square feet or more of floor area and which devote not more than 5 percent of such floor area to the sale, display, and storage of alcoholic beverages;
- (b) Full-service restaurants; or
- (c) Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (i) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (ii) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each of the dates the event will be held; and
 - (iii) The duration of the event does not exceed three consecutive days or five days in any single calendar year.

(4) Posting of Conditions of Approval.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

(5) Findings.

- (a) In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages.
- (b) The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

(6) Application For Conditional Use Permit.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- (a) The type of Alcoholic Beverage Control license the applicant is seeking for the establishment; and
- (b) The true and complete name and address of each lender or share holder with a 5 percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- (c) A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

(7) Requirements For New On-Sale Alcohol-Related Commercial Activities.

(a) With the exception of the downtown entertainment area, no new on-sale alcohol-related commercial activity shall be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreational center, day care center, or other similar use.

(b) Notwithstanding the above:

(i) Outside the downtown entertainment area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.

(ii) Within the downtown entertainment area, no on-sale alcohol-related commercial activity shall be established or maintained within a radius of 100 feet of any off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol related commercial activities which front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.

(iii) Within the downtown entertainment area, no more than two on-sale alcohol-related commercial activities shall be permitted per block side or face, with the exception of new or existing establishments that are exempted by subsection (3) above. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related commercial activity on a block between the two immediate cross streets.

(8) Requirements For New Off-Sale Alcohol-Related Commercial Activities.

With the exception of the downtown entertainment area, no new off-sale alcohol-related commercial activity will be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

(9) Conditions.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and in subsection (1) above, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

- (a) Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare.
 - (b) Alcoholic beverage sales commercial activities shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
 - (c) Alcoholic beverage sales commercial activities with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
 - (d) Alcoholic beverage sales commercial activities shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
 - (e) No beer or malt liquor shall be sold in bottles or containers larger than 12 ounces for off-site consumption;
 - (f) Beer and malt liquor in containers of 12 ounces or less shall not be sold in units of less than one six-pack for off-site consumption;
 - (g) Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption;
 - (h) Distilled spirits shall not be sold in bottles or containers smaller than 750 ml for off-site consumption; and
 - (i) Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment;
 - (j) Alcoholic beverage sales commercial activities shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.
- (10) Existing Establishments Selling Alcoholic Beverages.

Any alcoholic beverage sales commercial activity lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations. Upon the occurrence of either of the following, however, operation of the establishment shall require approval of a conditional use permit:

- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a license classification; or
- (b) There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.

(11) Modifications in Permitted Alcoholic Beverage Sales Commercial Activities.

Any permitted alcoholic beverage sales commercial activity operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a classification; or
- (b) There is a substantial change in the mode or character of operations of the alcoholic beverage sales commercial activity as defined in subsection (11) above.

(12) Notice.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within 300 feet of the perimeter of the subject property for which use permit approval is sought.

(13) Letter of Public Convenience or Necessity.

The Planning Director is authorized to issue letters of public convenience or necessity to the State Department of Alcoholic Beverage Control for alcoholic beverage sales commercial activities that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit.

c. Catering Truck Standards.

All catering truck operations shall comply with the following standards:

- (1) Catering trucks shall only park on private property with the permission of said property owner(s).
- (2) Catering trucks shall not park on any City streets, rights-of-way or property.
- (3) Catering trucks shall not be located on a single parcel more than 20 minutes at a time.
- (4) Catering trucks shall not be located within 300 yards of a food vendor as defined in this Ordinance.
- (5) Catering trucks shall not return to the same location within less than two hours.
- (6) Catering trucks shall obtain all necessary approvals for the County Health Department and City of Hayward Police Department.

d. Christmas Tree and Pumpkin Patch Lot Regulations.

All Christmas tree and pumpkin patch lots shall comply with the following standards:

- (1) Pumpkin Patch lots shall not be established before October 1 of each year and Christmas tree lots shall not be established before November 22 of each year. Annual permits must be obtained from the Fire Department and the Building Division.
- (2) Prior to opening for business, all Fire Department and the Building Division permits shall be obtained. The lot shall be maintained and operated in compliance with all Fire Department and the Building Division requirements.
- (3) No merchandise, equipment, vehicles, refuse, or other material associated with the proposed lot shall block circulation or parking aisles outside fenced areas .

COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

LICENSE TYPE	DESCRIPTION
01	BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	ON SALE BEER & WINE - EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	ON SALE BEER & WINE - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	ON SALE GENERAL - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	ON SALE GENERAL - SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



LICENSE TYPE	DESCRIPTION
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51	CLUB - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises.
52	VETERAN'S CLUB - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guest only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
57	SPECIAL ON SALE GENERAL - Generally issued to certain organizations who cannot qualify for club licenses. Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. Authorizes the sale of beer and wine, to members and guests only, for consumption off the licensed premises. Food service is not required. Minors are allowed on the premises.
58	ON SALE BEER AND WINE – SEASONAL - Authorizes the same privileges as a Type 41. Issued for a specific season. Inclusive dates of operation are listed on the license certificate.
60	ON SALE BEER – SEASONAL - Authorizes the sale of beer only for consumption on or off the premises where sold. Issued for a specific season. Inclusive dates of operation are listed on the license certificate. Wine or distilled spirits may not be on the premises. Minors are allowed on the premises.
61	ON SALE BEER – PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer only for consumption on or off the licensed premises. Wine or distilled spirits may not be on the premises. Minors are not allowed to enter and remain (warning signs required). Food service is not required.
67	BED AND BREAKFAST INN - Authorizes the sale of wine purchased from a licensed winegrower or wine wholesaler only to registered guests of the establishment for consumption on the premises. No beer or distilled spirits may be on the premises. Wine shall not be given away to guests, but the price of the wine shall be included in the price of the overnight transient occupancy accommodation. Removal of wine from the grounds is not permitted. Minors are allowed on the premises.
70	ON SALE GENERAL – RESTRICTIVE SERVICE - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment's overnight transient occupancy guests or their invitees. This license is normally issued to "suite-type" hotels and motels, which exercise the license privileges for guests' "complimentary" happy hour. Minors are allowed on the premises.
75	ON SALE GENERAL – BREWPUB - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide eating place plus a limited amount of brewing of beer. Also authorizes the sale of beer and wine only for consumption off the premises where sold. Minors are allowed on the premises.
80	BED AND BREAKFAST INN – GENERAL - Authorizes the sale of beer, wine and distilled spirits purchased from a licensed wholesaler or winegrower only to registered guests of the establishment for consumption on the premises. Alcoholic beverages shall not be given away to guests, but the price of the alcoholic beverage shall be included in the price of the overnight transient occupancy accommodation. Removal of alcoholic beverages from the grounds is not permitted. Minors are allowed on the premises.





**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 17, 2006, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Cooper at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Dowling.

ROLL CALL

Present: COUNCIL MEMBERS Quirk, Jimenez, Halliday, Ward, Dowling, Henson
MAYOR Cooper
Absent: COUNCIL MEMBERS None

PRESENTATION

Pride in Hayward Award

Mayor Cooper presented the January Pride in Hayward Award to the following Hayward residents from the Mt. Eden Neighborhood: Bogdanos family; Richard and Kim Tsubamoto, Alex Chin and Victoria Santiago; Orlando and Maria Tavares; and Elisabeth Hartman. She thanked each for taking pride in their homes by maintaining their property and adding to the beauty of the City of Hayward. She urged residents to nominate families with well-maintained homes in their neighborhoods.

PROCLAMATION

National Volunteer Blood Donor Month

Mayor Cooper read the proclamation declaring the month of January 2006 as Volunteer Blood Donor Month. She urged all residents to pay tribute to those among us who donate for others in need and urged all Hayward residents in good health to donate regularly.

PUBLIC COMMENTS

Carolyn Williams spoke regarding the Josephine Lum Lodge residents.

CONSENT

1. Approval of the Minutes of the City Council Meeting of January 10, 2006

It was moved by Council Member Henson, seconded by Council Member Jimenez, and carried unanimously to approve the minutes of the City Council Meeting of January 10, 2006. Council Member Ward stated that although he was absent from the meeting, he had read them and will vote on their approval.

2. Water Main Retrofit at Hayward Fault Crossings on Walpert Street and Palisade Street - Authorization for Change Order and Appropriation of Funds

Staff report submitted by Deputy Director of Public Works Ameri, dated January 17, 2006, was filed.

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

Resolution 06-003, "Resolution Authorizing an Increase in the Administrative Change Order Amount and Amending Resolution 05-080, as Amended, the Budget Resolution for Capital Projects for Fiscal Year 2005-2006, Relating to an Appropriation of Funds for the Water Main Retrofit at Hayward Fault Crossings Project, Project No. 7164"

HEARING

3. Text Change of Alcoholic Beverage Outlet Regulations, Initiated by the Planning Director

Staff report submitted by Project Planner Anderly, dated January 17, 2006, was filed.

Project Planner Anderly presented the report noting that staff is recommending an amendment to the definition of the term "restaurant" to support contemporary marketing styles that work effectively and provide separate bars and is not the primary purpose of the establishment. She cited Olive Garden and Appleby's as examples. The amendment will also include performance and physical standards for the operation of the restaurant. In discussion with police staff, use permits will be required for existing establishments that desire to become entertainment venues more than a restaurant as they would not meet the performance standards in the definition. She reported on the separation requirements of the ordinance and stated that the ordinance continues to maintain the current 100-foot separation of establishments in the downtown. It retains the 500-foot radius separation from schools, parks, library, day care centers and other similar uses. The ordinance will change the 500-foot separation when the alcohol establishment is outside the downtown area. It will not apply to alcohol establishments not on the same side of street. She referred to Crossroads World Market as an example, and noted that the Planning Commission objected this at its hearing. As use permits are required for these establishments there is still opportunity for discretion. She noted that in the last 13 years Council has approved six, and only one had a separation issue.

Project Manager Anderly further discussed the recommendation to adopt a policy related to letters of public convenience or necessities. The recommendation is not to send letters for bars or liquor stores in areas of over concentration. This revised ordinance would authorize the Planning Director to send letters for uses that are already exempt from the alcohol ordinance, such as large grocery stores. She enumerated those receiving notice and responded to questions from Council.



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Council Member Jimenez commented on the staff report, commended staff, and emphasized that the Chamber of Commerce was supportive of the changes and amendments to the ordinance as it will benefit the downtown.

Council Member Halliday was disappointed that an additional work session was not scheduled prior to this public hearing. She felt that further discussion would assist her in what was discussed in 2004. She expressed her desire to maintain the 500-foot separation rule and agreed with the Planning Commission's recommendation to maintain it.

City Manager Armas responded to the question related to Council direction at the 2004 work session, noting that there were three areas for staff resolution: one was the question of volume versus square footage to determine quantities within a particular building; the second to consider not allowing liquor stores and bars in areas of high concentration and third, staff was directed to consult with agencies such as COMMPRE to continue the process of revising the ordinance. He noted that there have been few requests to operate such establishments.

Project Planner Anderly suggested that grouping restaurant establishments is favorable in some instances and felt that it is more important to look at the use permit than the separation requirement.

Council Member Halliday discussed the issuance of letters by the Planning Director for future liquor stores and bars, which would be eliminated in the new ordinance. She summarized that with this elimination, such establishments would no longer be approved and strengthen the City's position. It was noted that such establishments have applied and withdrawn due to downtown merchant opposition.

Council Member Ward stated that he understands the desirability to make the downtown more attractive, but was concerned with the separation condition in neighborhoods. There may not be the distance in other neighborhoods. There was discussion on merits of the use permit in particular when there is change in management and would prefer not modifying the separation portion of the ordinance.

Council Member Henson reiterated the need for restaurants in the downtown and agreed with what was stated by his colleagues. He would be supportive of the revisions for the benefit of the downtown, but stated that this is a major concern that convenience stores could destroy the essence of neighborhoods. Council Member Henson discussed with Police Chief Lowe how the Department of Alcoholic Beverage Control (ABC) license goes to the owner of the business, and any changes are reviewed by the Police Department, which grants transfer approvals. It was noted that the use permit on the land remains with the land. Council Member Henson inquired on what other cities in this county deal with this issue.

Project Planner Anderly reported that some of the bigger cities as Oakland, Vallejo and Walnut Creek have had some problems with restaurants with bars, but this has not been a problem in

Hayward. The Police Department agrees that regardless of the separation, this ordinance provides a more complete definition for restaurants and provides a policy that addresses those issues.

Council Member Henson asked whether staff reviewed the information as provided by ABC, which may not be accurate. He expressed concern that making revisions may be an issue if the data is inaccurate. Project Planner Anderly indicated that she received notice of this from the City of Stockton and reviewed Hayward's to determine the number of residents in relation to the number of ABC licenses issued for such establishments in a census tract. The information has about a 30% error rate.

Council Member Quirk felt that it was more beneficial to conduct this hearing that is broadcast rather than in a work session. He agreed with the provision of no longer providing letters to bars and liquor stores. He confirmed that letters of convenience and necessity would no longer be issued by the Planning Director. He asked for clarification of the definition of fast food restaurants. He asked how performance standards would be applied and asked if they could be applied on those establishments that do not have a conditional use permit. Project Planner Anderly explained that gross receipts are reviewed to verify that the establishment is a restaurant.

City Manager Armas stated that staff is not recommending the language as recommended by COMMPRE. Although some cities do this, Hayward does not recommend that any liquor establishment be subject to the performance standards as there have not been problems as compared to other communities. The Police Department has worked with ABC to successfully resolve issues with two establishments. Council Member Quirk asked about the nuisance section of the draft ordinance and as he has previously met with COMMPRE staff, asked if the "sales to minors" language be placed under the nuisance section.

Council Member Halliday had a follow-up question related to the definition of a restaurant and asked for a clarification in the Planning Commission minutes of December 15, 2005. There was a brief discussion on the definition of a nightclub that differentiates it from a restaurant. Project Planner Anderly stated that this would be a tool to assist the review by both the Planning Commission and the Police Department to require a conditional use permit and is a more stringent standard than ABC's standards.

Mayor Cooper opened the public hearing at 8:55 p.m.

Bill Leung, owner of Golden Mountain Restaurant, spoke in support of the text change.

John Mallory spoke in opposition of the text change. He reported that on occasion, he has observed liquor served to minors. He recommended that performance standards be applied to every establishment of this type. He desired to strengthen the conditional use permit and allow citizens to provide public input.

Mary R. Clements spoke in support in keeping the conditional use permit process intact and allow public input. She reported that she had previously sent an email in this regard.



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Maria Solis, a resident of Longwood, spoke in Spanish and was opposed to the 500 foot separation and any over concentration of liquor stores in neighborhoods. She urged that the current laws not be weakened.

Gloria Morales spoke in opposition to the text changes and felt that the community should have a say in approving them. She commented that the Dollar Store near St. Joachim's Church sells wine coolers.

Twila Flores spoke against the proposed ordinance. She spoke against the over saturation of liquor establishments.

Jennifer Cabrejas spoke against the text change. She was concerned that owners of bars could masquerade as restaurants and asked whether there will be oversight of such establishments.

Raquel Domingo, a member of the Eden Youth Health Advisory Council, spoke on the provisions of the modified text change and noted her concern that the performance standards do not include the prohibition of sales of alcohol to minors. She also felt that the revision could increase the need for police services.

Zachary Twist, representing his business at 631 Jackson Street, the Islamic Institute, spoke on the social concerns of alcohol and expressed his opinion that liquor stores are the nexus of such problems. He spoke strongly against removing public input by allowing the Planning Director to take discretion and commented on his experience on community concerns in Oakland.

David Cota, representing COMMPRE, emphasized its opposition to eliminating the conditional use permit process as restaurants with bars tend to be a source of crime and nuisance behaviors. He submitted a survey of information regarding ABC violations. Using a map, he demonstrated the over-concentration of alcohol establishments. He commented on the performance standards and reported that COMMPRE pays for such reports from ABC. He responded to questions from Council.

Council Member Dowling asked for clarification on the report. Mr. Cota reported on specific Hayward establishments that have been cited as requested by Council Member Dowling. Mr. Cota reported that in his survey of other cities, most require a conditional use permit.

It was noted that these changes will basically eliminate bars and liquor stores in the practical sense. It was also noted that Council has not approved bars and liquor stores since 1993. Every service station requesting the sale of alcohol has been denied. Police Chief Lowe explained that the ABC grant funded a program related to sales to minors and will no longer be available. He reported that since 2000, 62 reports were sent by ABC and only two were fined.

Council Member Quirk was of the opinion that COMMPRE did not thoroughly review this issue, provided misinformation, including its inappropriateness of designating establishments as having history when they, in fact, had only one violation. Council Member Jimenez also agreed that the information distributed by COMMPRE was inaccurate.

There was further discussion on the ABC determination of the number of liquor licenses proportionate to the City's population and the issuance of a license for off-sale beer and wine regardless of those limits.

Liz Morales, Prevention Specialist at COMMPRE, clarified how information was collected and analyzed. She noted that the definition for liquor does not include beer and wine which are sold in convenience stores, thus in her information there is an over saturation. She asked that the Council continue in conducting the conditional use permit process including stores over 10,000 square feet. She felt that Hayward residents should have the opportunity to provide input. She stated that COMMPRE is requesting that minimum performance standards be applied to all of its ABC licenses, not just the new establishments. She asked that language related to the sale to minors be added to the performance standards. Thirdly, she recommended that there be a cost recovery fee for enforcement and education for each of the alcohol establishments.

Carlos España, a Hayward resident, spoke against the proposed text changes, in particular eliminating the permit process and public input.

Zaid Shakir, representing the Islamic Institute, described various public nuisances on Jackson due to alcohol.

Margarita Calvio, a resident of the Longwood neighborhood, spoke against the proposed changes.

Mayor Cooper closed the public hearing at 9:54 p.m.

Mayor Cooper commented on the Council's public hearing notification process. She explained the Council's land use authority over restaurants. She stated that this Council is not abolishing the sale of alcohol nor supporting alcoholism. She noted that this Council has limited power over alcohol sales. The Alcohol Beverage Control Board has most of the power and the City works with them to close down violators. Mayor Cooper cautioned against closing down alcohol outlets as a solution to eliminating youth usage of alcohol and drugs. Concentrating on the sale of alcohol is not addressing youth problems. She commended Jolene and John Mallory for their outstanding dedication to youth. She would be supporting the revision.

Council Member Ward felt that he could approve some parts of the proposed ordinance that supports the downtown, but he did not agree with the separation issue as it exacerbates an already serious problem in neighborhoods. He cautioned against the notion that no future liquor establishments will be allowed in Hayward. Lastly, he stated that he could not support the staff recommendation due to the separation issue.

Council Member Quirk discussed his experience with alcohol and its availability. He stated that Council approving an additional alcohol establishment in the future is unlikely, but could occur with well-justified reasons. He felt that the revisions would strengthen existing regulations. He



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 17, 2006, 8:00 p.m.**

asked staff to provide language for the change that the 500 foot radius rule does not apply when there is a divider or median on the street. He agreed that restaurants with a separate bar are not a problem for Hayward. This would encourage sit-down restaurants; and this is not a revenue issue, but to have more nice restaurants. He moved the recommendation with the change that the 500-foot radius requirement outside the downtown apply to establishments on the same side of the street remain. Council Member Jimenez seconded the motion.

It was noted that this was the Planning Commission recommendation.

Council Member Dowling asked about refining the definition as suggested by COMMPRE to add "beer and wine" to the definition. He was in support of the downtown restaurants. And asked both the maker of the motion, Council Member Quirk, and the maker of the second, Council Member Jimenez, to add the suggestion and eliminate the 500-foot radius separation from the motion. They accepted the revisions to the motion.

Council Member Halliday felt that Council Member Dowling's additional recommendations to the motion were noteworthy. She asked that the "sale to minors" be added to the language in the performance standards as reinforcement to the establishment that the City is serious about this issue. Both the maker of the motion, Council Member Quirk and the maker of the second, Council Member Jimenez, accepted this minor change. Council Member Halliday indicated that she would be voting against the ordinance as she believed in retaining the condition to require a conditional use permit for restaurants with bars.

Council Member Ward will be supporting the modified motion. There was clarification regarding the administrative determination by the Planning Director that can be appealed to the Planning Commission and to the Council. A conditional use permit cannot be approved by staff.

Council Member Henson reiterated his vision for the future. He remained firm on his decision to support the downtown, and suggested that this could apply to the mall as well. He felt that there was some vagueness to the ordinance. He would not be supporting the motion and would prefer instead a rewrite of the ordinance.

It was moved by Council Member Quirk, seconded by Council Member Jimenez, and carried by the following roll call to adopt the staff recommendation with no changes to the existing ordinance relating to the 500 foot separation requirement; add "beer and wine" to the definition section of liquor stores; add the language to the performance standards related to prohibiting the sale of alcohol to minors, and approve the following:

Introduce Ordinance 06-__, "Ordinance Amending Section 10-1.2735(b) of the Hayward Municipal Code and Adopting New Alcoholic Beverage Outlet Regulations"

Resolution 06-004, "Resolution Approving the Negative Declaration and Adopting Text Change Application No. PL 2005-0623, Relating to Alcoholic Beverage Outlet Regulations"

Resolution 06-005, "Resolution Regarding Letters of Public Convenience and Necessity to the California Department of Alcoholic Beverage Control"

AYES: COUNCIL MEMBERS Jimenez, Quirk, Ward,
Dowling
MAYOR Cooper
NOES: COUNCIL MEMBER Halliday, Henson
ABSENT: None
ABSTAINED: None

LEGISLATIVE BUSINESS

4. Vesting Tentative Tract Map 7487/PL-2003-0515 – Application No. PL-2005-0705 – Request for One-Year Extension of Tract Map for Centennial Tower – Property Located at 22300 Foothill – The Albert Group (Applicant), Intercoastal Group of Properties (Owner)

Staff report submitted by Associate Planner Pearson, dated January 17, 2006, was filed

Project Planner Anderly made the report, noting that two years ago a vesting tentative map was approved and are requesting a one-year extension for the tentative map.

Robert Sakai, attorney for the project, recalled the former City Hall occupancy and now it has been an eyesore since its closure by the City. As a standalone project it is not financially viable. He reasoned that the extension of the map would allow further discussions by the owner with staff; adding that currently it is not financially viable to improve the building. The owner has assured that within a particular time period, it will either be renovated or removed completely. He introduced the project manager. Mr. Sakai responded to Council questions and suggestions to remove the edifice and construct a new building. He indicated that adding new units to the project could make the project viable and conversations are occurring to perhaps improve the garage to support additional units. It was noted that when discussions are affirmed, Council will consider any contractual proposals.

With no requests to speak, Mayor Cooper opened and closed the public hearing at 10:32 p.m.

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



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, January 17, 2006, 8:00 p.m.**

Resolution 06-006, "Resolution Approving an Extension of Tentative Map Tract 7487 PL-2003-0515 for Centennial Towers, the Albert Group, Inc. (Applicant) and Intercoastal Group of Properties, Inc. (Owner)"

COUNCIL REPORTS

There were no Council reports.

ADJOURNMENT

Mayor Cooper adjourned the meeting at 10:33 p.m.

APPROVED:

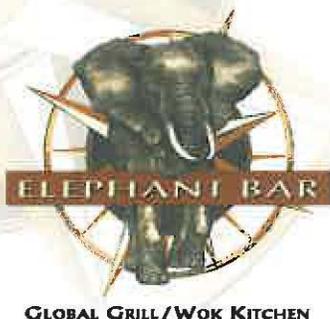
A handwritten signature in blue ink that reads "Roberta Cooper".

Roberta Cooper, Mayor, City of Hayward

ATTEST:

A handwritten signature in blue ink that reads "Angelina Reyes".

Angelina Reyes, City Clerk, City of Hayward



RECEIVED

NOV 28 2011

Development Services Department

November 22, 2011

David Rizk
Development Services Director
777 B St.
Hayward, CA 94541

RE: Elephant Bar Restaurant in Hayward, CA

Dear Mr. Rizk and Hayward City Council:

Thank you for taking the time to read this letter and our appeal for reconsideration on the restriction of reduced Happy Hour pricing on alcoholic beverage drinks at Elephant Bar Restaurant.

Elephant Bar Restaurant made a decision back in 2005 to sign a lease to build a restaurant at the Southland Mall in Hayward which would employ approximately 100 employees. After having signed the lease and starting on construction, it was discovered during our process of obtaining a liquor license that the Elephant Bar in Hayward would not be allowed to have our typical Happy Hour program; specifically, we could offer reduced prices on food, but would not be allowed to offer reduced prices on alcoholic beverages. Despite this obstacle, we decided to proceed with spending several million dollars building the restaurant hoping that the clientele would nonetheless find our offerings more compelling than our competitors, despite the price differential.

We opened the restaurant, prior to the recession, at the end of 2006 with much success and it appeared that our gamble had paid off. However, the recession has significantly changed consumer behavior, where price is more significant of a consideration in choosing where to eat and drink than before. This puts Elephant Bar in a considerable economic disadvantage to the competitors just outside our door that do not have the same restriction regarding Happy Hour pricing on alcoholic beverages. The result has been that sales dropped compared to 2007(pre-recession), and sales during the Happy Hour period are significantly below other Elephant Bar locations throughout the Bay Area where we have special Happy Hour pricing on alcoholic beverages.

We enjoy being part of the Hayward community, and look forward to many more years in the community providing good food and drink, and employing many of the residents. We respectfully request your help in leveling the playing field by lifting the restriction so that we can compete at the same level of offerings as our casual dining competitors in the same trade area.

Respectfully submitted,

Paul Potvin
Chief Financial Officer

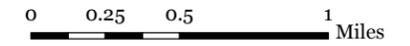
S.B. Restaurant Co. DBA

ELEPHANT BAR RESTAURANT

200 E. Baker Street, Suite 201 • Costa Mesa, CA 92626 • Ph: 562-207-6200 • Fax: 562-207-6290 • WWW.ELEPHANTBAR.COM



ABC Licenses in Hayward



ABC Liquor Licenses

- ▲ Misc Licenses (3)

All Other License Types (Quantity)

- Off Sale 20 (34)
- Off Sale 21 (58)
- On Sale 40 (6)
- On Sale 44 (91)
- On Sale 42 (1)
- On Sale 47 (28)
- On Sale 48 (19)

Note: 25 Licenses are not within the City limits. Many locations overlap as displayed on this map. 239 licenses are displayed.

Licenses as of September 29, 2011

Summary of Restaurant/Night Club Regulations of Bay Area Cities

City of San Francisco

Night Club – Requires a “Place of Entertainment Permit” for review by the Entertainment Commission. Permit is issued by the Police Department

City of San Jose

Public Eating Facilities – are a permitted use in the Commercial Districts

("Public eating establishment" is a building or area where meals may be purchased and eaten. As an incident to the operation of a public eating establishment which is a bona fide public eating place, as defined in California Business and Professions Code Section 23038, or its successor:

1. *Any alcoholic beverage may be sold, offered for sale, or served to the patrons of such bona fide public eating place for consumption with their meals on the premises thereof;*
2. *Instrumental and vocal music may be provided for the listening pleasure of patrons, but no other entertainment may be provided. Such incidental music shall be considered incidental between the hours of 6:00 a.m. and 10:00 p.m. Any music after said times shall be considered an entertainment use.)*

Drinking Establishment – require approval of a Conditional Use Permit in the Commercial Districts. It includes Bars and Night Clubs.

(A "drinking establishment" is any place where alcohol is sold, offered for sale, or served to patrons independent of any other activity, including but not limited to eating, entertainment, karaoke, etc.)

Public Entertainment Business – must obtain an Entertainment license and permit from the Chief of Police

A. *“Public entertainment business” means a business open to the public where alcohol is sold on the premises, the premises has a maximum occupant load that exceeds one hundred persons, as determined by the fire marshal of the San José fire department, and where one or more public entertainment activities are also provided or allowed.*

B. *“Public entertainment business” shall not include taverns, bars, lounges, cocktail lounges and other drinking establishments where electronically reproduced music emanating from a loudspeaker system is provided for the listening pleasure of patrons, so long as no other public entertainment is provided or allowed.*

Summary of Restaurant/Night Club Regulations of Bay Area Cities

Guidelines for Evaluation of Nightclubs and Bars (a few excerpts)

- *New nightclubs and bars that are not open during daytime hours should not occupy more than 30 percent of the street frontage on any one side of the street. Basement and upper story nightclubs are exempt from this provision provided that the entrance to those facilities is clearly the sole use at the ground level along the street frontage.*
- *Nightclubs which include an ancillary, non-separated restaurant are not permitted. Nightclubs may be permitted in such facilities provided that the restaurant use does not operate when the nightclub is in operation.*
- *Entertainment uses that serve no alcohol may be open to patrons 18 to 20 years and older.*
- *Time limits for Conditional Use Permits for nightclubs and bars should generally be five years, unless there is sufficient evidence to support an alternate limit. Compliance Reviews may be required and should include an evaluation of the operation as well as any subsequent reports required as part of the permit approval.*

City of Oakland

Full Service Restaurants – Primary Use in Commercial Districts. Conditional Use permit not required to serve alcohol. Alcohol can be served up to two hours after meal service has ceased. All other alcoholic beverages sales require approval of a conditional use permit.

Cabaret – requires approval of a conditional use permit for Alcoholic Beverage Sales and must obtain an annual cabaret permit from the office of the City Administrator.

("Cabaret" shall be construed to include any place where the general public is admitted, for a fee, entertainment is provided, and alcohol is served. A place that does not charge for admission but where the general public is admitted, alcohol is served, dancing is permitted, and the venue operates past 11:00 p.m. shall also be construed as a cabaret.)

Small Cabaret exemptions – a business that conducts cabaret activity and that has an occupant load of less than 50 persons, as established by the Fire Department, shall be exempt from the requirement to obtain a cabaret permit. They must obtain for a small cabaret exemption and pay annual fee. They must successfully complete annual fire inspection and occupancy load must not exceed 50 persons. Must not create a public nuisance.

Summary of Restaurant/Night Club Regulations of Bay Area Cities

City of San Mateo

Restaurants – Primary Use in Commercial District

Alcohol Sales – On and Off site alcohol sales requires approval from Director of Community Development to determine Public Convenience and Necessity. If there's a public controversy it is referred to the Planning Commission.

Entertainment – Requires an Entertainment Permit from Police Department. 15 business days turnaround time to make a decision. Limits entertainment – entertainment not permitted between 1:30 am and 10 am. Must renew permit every year. Where night clubs are allowed under “commercial recreation” in commercial districts, a Use Permit (Special Use) is required.

Incidental Entertainment – Does not require an Entertainment permit. The term “incidental entertainment” shall mean the use of radio, television, or music recording devices or juke boxes in any establishment when used for background only. In addition, this term include non-amplified live performance by a performer (or performers). This term does not include the use of the devices mentioned above by a disc jockey, or in conjunction with karaoke, or in connection with dancing by patrons.

City of Walnut Creek

Eating and/or Drinking Establishment

1. **With Wine and Beer Service** – permitted use
2. **With Full Alcoholic Beverage Service** – Not permitted if located within 600' of a school. A Conditional Use Permit shall be required if is to be located within 600' of the boundary of any hospital or residential zoning district, otherwise it is a permitted use. The Planning Commission shall grant the conditional use permit unless it finds that: 1) noise from the interior of the facility will be audible from the hospital or residentially zoned property, or 2) noise from the parking lot, other than normal conversation levels, will be audible to the hospital or residentially zoned property.
3. **With Live Entertainment** - Not permitted if located within 600' of a school. A Conditional Use Permit shall be required if is to be located within 600' of the boundary of any hospital or residential zoning district, otherwise it is a permitted use.
4. **With Dancing** - Not permitted if located within 600' of a school. A Conditional Use Permit shall be required if is to be located within 600' of the boundary of any hospital or residential zoning district, otherwise it is a permitted use. The Planning

Summary of Restaurant/Night Club Regulations of Bay Area Cities

Commission shall grant the conditional use permit unless it finds that: 1) noise from the interior of the facility will be audible from the hospital or residentially zoned property, or 2) noise from the parking lot, other than normal conversation levels, will be audible to the hospital or residentially zoned property.

City of Fremont

Eating places/beer and wine/all alcoholic beverages - In some commercial zoning districts, eating places with beer and wine and closed before midnight were permitted uses. Eating places with all alcoholic beverages and eating places with beer and wine and where open after midnight required a Zoning administrator permit. In some cases eating places with beer and wine with more than 30 seats and/or open after midnight required approval of a conditional use permit.

Nightclubs/Drinking places – requires approval of a conditional use permit

City of Berkeley (Telegraph District)

Restaurants - Full Service – requires approval of an Administrative Use Permit

- Full Service under 1,500 – requires a Zoning Certificate
- Quick Service under 1,500 – requires a Zoning Certificate

Quick and Full Service Restaurants /beer and wine incidental to food service – requires approval of an Administrative Use Permit.

Full Service Restaurants, Bars, Cocktail Lounges, and Taverns/Distilled Alcoholic Beverages – requires approval of a Use Permit.

Entertainment Establishments/Night Clubs – requires approval of a Use Permit

Live Entertainment incidental to a Permitted Use -

- Unamplified – requires a Zoning Certificate
- Amplified – requires approval of an Administrative Use Permit

(Zoning Certificates serve as a record of the initial establishment of a use, or the construction of a structure, which is allowed as a matter of right. A Zoning Certificate is generally issued at the Permit Services Center counter by Land Use Planning (Zoning) staff.)

DATE: January 24, 2012

TO: Mayor and City Council and Planning Commission

FROM: Development Services Director

SUBJECT: Presentation of the Alternative Scenarios for the Regional Sustainable Communities Strategy

RECOMMENDATION

That Council and the Planning Commission read and comment on this informational report, and provide comments regarding the Alternative Scenarios prepared by the Association of Bay Area Governments, which will be incorporated into a resolution to be presented to Council for adoption in the near future.

SUMMARY

Senate Bill 375 (SB 375) requires each of the state's eighteen metropolitan areas to develop a regional growth policy/plan for the next twenty-five years called a Sustainable Communities Strategy (SCS), which will seek to focus growth closer to transit in an effort to reduce per capita greenhouse gas (GHG) emissions associated with cars and light trucks. The first draft of the SCS, called the Initial Vision Scenario (IVS), was released in March 2011. The IVS anticipated that the City of Hayward would gain approximately 15,000 new households and 19,000 new jobs over the next twenty-five years.

Incorporating comments received on the IVS, the Association of Bay Area Governments (ABAG) developed four Alternative Scenarios – the Unconstrained Core Concentration Growth Scenario, the Constrained Core Concentration Growth Scenario, the Focused Growth Scenario, and the Outer Bay Area Growth Scenario. The Alternative Scenarios project less housing and fewer jobs for the Bay Area compared to the IVS. For Hayward, the Alternative Scenarios project slightly higher household growth (15,477 households) and less job growth (between 16,050 and 17,435) compared to the IVS. Staff recommends that the City of Hayward advocate for a fifth growth scenario, which was developed through a joint effort of the Alameda County Planning Directors and the Alameda County Transportation Commission (ACTC) staff; designated as the ACTC Locally Preferred Scenario. This alternative scenario projects 11,984 new housing units and 15,385 new jobs over twenty-five years, and presents a growth distribution for Hayward that is more balanced than the four Alternative Scenarios identified above.

BACKGROUND

The regional Sustainable Communities Strategy (SCS), required to be developed by SB 375, will identify where projected population and job growth through 2040 will occur, and requires coordination of regional housing and transportation planning efforts. SB 375 gives joint responsibility for development of the SCS in the Bay Area to the Metropolitan Transportation Commission (MTC) and the ABAG, who have formed a partnership called “One Bay Area” (www.onebayarea.org) to spearhead the process. These agencies are coordinating with the Bay Area Air Quality Management District (Air District) and the Bay Conservation and Development Commission (BCDC). At the County level, the process is being coordinated by the Alameda County Transportation Commission (ACTC).

The SCS will be developed in partnership among regional agencies, local jurisdictions, and ACTC through an iterative process. The regional agencies recognize that input from local jurisdictions with land use authority is essential to create a feasible SCS. The SCS will not alter the authority of jurisdictions over local land use and development decisions.

Initial Vision Scenario (IVS) - The Initial Vision Scenario was a proposal by MTC and ABAG intended to be a first draft of the SCS and to begin the discussion regarding development of the SCS. The IVS was an “unconstrained” scenario, which means it assumed that all funding necessary for affordable housing, public transportation, and other infrastructure would be available. SB 375 recognizes that, because of the constraints of Federal law and inadequate funding for infrastructure and public transit, the SCS may not be able to achieve the region’s targets. If the region determines that the SCS cannot achieve the targets with funding constraints, then an Alternative Planning Strategy (APS) must be developed. The APS must identify the principal impediments to achieving the targets within the SCS. The APS must also include a number of measures—such as alternative development patterns, infrastructure, or additional transportation measures or policies—that, taken together, would achieve the regional target. Targets, such as GHG reductions and others, are discussed in detail below in the *Discussion* section.

As shown in Table 1 below, the IVS projected that the Bay Area would grow by over 2 million people and Hayward would grow by approximately 50,000 people over the next twenty-five years.

Table 1. Projections from the Initial Vision Scenario, 2010 – 2035

	Bay Area			Hayward		
	2010	2035	2010-2035 Growth	2010	2035	2010-2035 Growth
Households	2,669,800	3,572,300	902,600	46,300	61,283	14,982
Population¹	7,348,300	9,429,900	2,081,600	144,186	194,757	50,571
Employed Residents²	3,152,400	4,199,000	1,046,600	NA	NA	NA
Jobs	3,271,300	4,493,300	1,222,000	66,135	84,730	18,595

¹ 2010 population is per the 2010 Census; 2035 population is calculated based on Hayward’s average household size of 3.18.

² Employed Residents data for Hayward was not provided in the Initial Vision Scenario.

A major concern of staff is that the assumed future growth in the IVS is well above historic growth in Hayward. Between 1980 and 2000, Hayward had a 30% increase in housing units and a 3% increase in jobs. Yet, over the next twenty-five years, the IVS projects a 32% increase in new households for Hayward (14,982) and a 28% increase in new jobs (18,595).

The above IVS regional population and job growth figures assumes that the region will produce an average of 36,000 housing units per year; however, the region gained only 21,000 units per year in previous decades. The figures also assume an increase of 50,000 jobs per year, but job growth over the last twenty years averaged approximately 10,000 per year.

On January 18, 2011, staff provided an overview of the SCS and process to Council³. A similar presentation was made to the Planning Commission on January 27, 2011⁴. On April 19, 2011, staff presented the IVS during a joint meeting of the City Council and Planning Commission⁵. On May 17, 2011, staff presented Council with a draft resolution summarizing the comments made by the Commission and Council on April 19. Resolution 11-051 was adopted by Council on May 17, 2011, and forwarded by staff to ABAG and MTC on May 20, 2011 (see Attachment I).

DISCUSSION

The IVS identified where projected growth could occur in each city and much of the growth was focused near transit stations and corridors. Throughout the Bay Area, Priority Development Areas (PDAs) and Growth Opportunity Areas (GOAs) were anticipated to accommodate approximately 70% of the household growth. PDAs are areas that have been identified through ABAG's FOCUS program, which is a regional development and conservation strategy that promotes a more compact land use pattern for the Bay Area. GOAs have characteristics similar to PDAs, but have not been formally recognized by ABAG. On January 17, 2012, Council authorized an application requesting ABAG to change the Mission Boulevard Corridor area from a GOA to a PDA. Such designation is expected to be approved by ABAG on March 15, 2012.

SCS, the Regional Housing Needs Allocation, and the Regional Transportation Plan – SB 375 also requires that an updated eight-year Regional Housing Need Allocation (RHNA) prepared by ABAG be consistent with the SCS. ABAG administers the state-required RHNA, which must follow the development pattern specified in the SCS. This fact alone is reason to follow the SCS development process closely. ABAG will adopt the next RHNA at the same time that MTC adopts the regional transportation plan (RTP). Local governments will then have another eighteen months to update their housing elements.

In addition to the RHNA, the One Bay Area Grant is another reason to closely follow the SCS process. The One Bay Area Grant will reward jurisdictions that accept housing allocations and produce housing with additional transportation dollars. The Grant is also proposed to support the SCS by promoting transportation investments in PDAs. While MTC and ABAG have not released details about how local housing production will be considered, they have indicated that the county congestion management agencies will be required to adopt PDA growth strategies to implement the

³ See Item # 1 at <http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca011811full.pdf>

⁴ See Item # 1 at <http://www.hayward-ca.gov/citygov/meetings/pca/2011/PCA11PDF/pca012711full.pdf>

⁵ See Item # 1 at <http://www.hayward-ca.gov/citygov/meetings/cca/2011/CCA11PDF/cca041911full.pdf>

SCS. Also, to be eligible for these grant funds, local jurisdictions will be required to adopt non-binding resolutions of intent to align housing allocations and PDAs with zoning. The One Bay Area Grant is scheduled to be approved by the MTC in May 2012.

Alternative Scenarios - As noted above, the IVS was an “unconstrained” scenario, which means it assumed that the funding necessary for affordable housing, public transportation, and other infrastructure would be available. Considering input from local jurisdictions on the IVS, ABAG has subsequently developed four “additional” or Alternative Scenarios – one unconstrained scenario and three constrained scenarios.

1. *Core Concentration – Unconstrained*: Concentrates housing and job growth at selected Priority Development Areas in the Inner Bay Area along the region’s core transit network, and assumes full funding available for housing, transit, etc. Assumes a high concentration of employment growth in the three primary central business districts (San Francisco, Oakland, and San Jose).
2. *Core Concentration Growth Scenario*: Concentrates housing and job growth at selected Priority Development Areas in the Inner Bay Area along the region’s core transit network.
3. *Focused Growth Scenario*: Recognizes the potential of Priority Development Areas and Growth Opportunity Areas across the region with an emphasis on housing and job growth along major transit corridors. As there are many Priority Development Areas and Growth Opportunity Areas throughout the Bay Area, this scenario results in a growth pattern that is more dispersed than the Core Concentration.
4. *Outer Bay Area Growth Scenario*: Addresses higher levels of growth in the Outer Bay Area and is closer to previous development trends than the other two scenarios.

While the IVS made growth projections through 2035, the Alternative Scenarios extend to 2040. In Table 2 below, the IVS projections are adjusted to cover the same time period. The Unconstrained Core Scenario is similar to the IVS in terms of total growth. In the Constrained Alternative Scenarios, regional projections for both households and jobs have been significantly scaled back. While the IVS assumed an increase of 50,000 jobs per year, Alternative Scenarios assume 33,000 new jobs per year. Also, the IVS assumed 36,000 new housing units per year, but the Alternative Scenarios assume 27,000 new units per year. Total regional growth projected in the three constrained Alternative Scenarios are essentially the same; however, the distribution of the growth among the Bay Area cities and counties varies among the three scenarios (see following discussion).

Table 2. Regional Projections for the Alternative Scenarios, 2010 – 2040

	Initial Vision Scenario	Unconstrained Core			Constrained Core, Focused, and Outer Bay Area Growth Scenarios		
Bay Area	2010-2040 Growth	2010	2040	2010-2040 Growth	2010	2040	2010-2040 Growth
Households	1,031,000	2,608,000	3,645,969	1,037,946	2,608,000	3,378,000	770,000
Population ⁶	2,432,000	NA	NA	NA	7,151,000	9,236,000	2,085,000
Employed Residents ⁷	1,338,000	NA	NA	NA	3,153,000	3,974,000	821,000
Jobs	1,463,000	3,268,229	4,734,002	1,465,773	3,271,000	4,266,000	995,000

Projected Household Growth for Bay Area Counties and Cities – Table 3 below shows the distribution of household growth among the Bay Area counties comparing the IVS and the four alternative scenarios. The IVS allocated 28% of the region’s household growth to Santa Clara County, 24% to Alameda County, 17% to Contra Costa County, and approximately 10% each to San Francisco and San Mateo Counties. The Unconstrained Core Concentration Scenario has significantly less growth allocated to Contra Costa County and significantly more growth allocated to San Francisco, San Mateo, and Santa Clara Counties. For the three constrained scenarios, the Core Concentration Scenario allocates more growth to San Francisco and Santa Clara Counties. The Focused Growth Scenario allocates slightly more growth to Alameda County and the Outer Bay Scenario projects more growth to Contra Costa, Marin, Napa, Solano, and Sonoma Counties.

Table 3. Projected Household Growth for Bay Area Counties

County	Initial Vision Scenario		Four Alternative Scenarios							
	IVS 2035	% of Total	Unconstr. Core Concen. 2040	% of Total	Core Concen. 2040	% of Total	Focused Growth 2040	% of Total	Outer Bay 2040	% of Total
Alameda	212,700	24%	340,181	23%	167,750	22%	172,990	22%	164,300	21%
Contra Costa	154,000	17%	108,713	7%	96,880	13%	110,930	14%	136,550	18%
Marin	10,700	1%	12,890	1%	10,100	1%	11,260	1%	13,250	2%
Napa	4,800	1%	15,396	1%	5,520	1%	6,290	1%	7,170	1%
San Francisco	90,100	10%	256,801	18%	110,640	14%	90,470	12%	76,430	10%
San Mateo	93,800	10%	177,281	12%	72,110	9%	68,570	9%	61,700	8%

⁶ ABAG has not provided Population figures for the Unconstrained Core Scenario.

⁷ ABAG has not provided Employed Residents figures for the Unconstrained Core Scenario.

County	Initial Vision Scenario		Four Alternative Scenarios							
	IVS 2035	% of Total	Unconstr. Core Concen. 2040	% of Total	Core Concen. 2040	% of Total	Focused Growth 2040	% of Total	Outer Bay 2040	% of Total
Santa Clara	253,900	28%	474,867	32%	245,990	32%	242,060	31%	227,120	29%
Solano	39,600	4%	23,051	2%	28,740	4%	30,860	4%	38,690	5%
Sonoma	42,900	5%	56,592	4%	33,080	4%	37,380	5%	45,620	6%
TOTAL	902,500	100%	1,465,773	100%	770,810	100%	770,810	100%	770,830	100%

Table 4 on the next page shows the distribution of growth among the cities in Alameda County comparing the IVS and the four alternative scenarios. When commenting on the IVS, several cities requested lower housing numbers. As noted in the City Council resolution forwarded to ABAG and MTC in May of 2011, Council found the housing numbers in the IVS reasonable and noted that additional housing could be accommodated in Hayward’s PDAs. As shown in the table, the Unconstrained Core Concentration Scenario allocates 19,587 new households to Hayward – a 31% increase above the IVS. The large increase is likely because this scenario focuses new households in locations that are within a forty-five-minute commute from the three major employment centers.

For each of the three constrained scenarios, projected households for Hayward increased by 495, or 3% above the 14,982 households shown in the IVS. For Hayward, Albany, Berkeley, Newark, Piedmont, and San Leandro, the growth numbers among the three scenarios are the same. This is because the total housing for the County does not vary much between the three constrained scenarios and because all three scenarios are designed to focus growth near transit. For Alameda, Emeryville, Fremont, and Oakland, the growth numbers are highest in the Core Concentration scenario. As expected, for Dublin, Livermore, Pleasanton, and unincorporated Alameda County, the growth numbers are highest in the Outer Bay scenario as this scenario follows the suburban development pattern observed in the East Bay in the last several decades.

Table 4. Projected Household Growth for Alameda County Cities

		IVS	Four Scenarios and Comparison to IVS							
Alameda County	2010	Growth	Unconst. Core Concen. Growth	% Change from IVS	Core Concen. Growth	% Change from IVS	Focused Growth	% Change from IVS	Outer Bay Growth	% Change from IVS
Alameda	31,774	8,099	17,994	122%	6,801	-16%	5,812	-28%	5,720	-29%
Albany	7,150	2,167	1,341	-38%	955	-56%	955	-56%	955	-56%
Berkeley	46,146	15,730	13,385	-15%	8,370	-47%	8,370	-47%	8,370	-47%
Dublin	15,572	16,644	18,763	13%	10,900	-35%	13,811	-17%	15,778	-5%
Emeryville	5,770	7,490	6,616	-12%	5,657	-24%	5,235	-30%	5,237	-30%
Fremont	71,004	27,560	42,480	54%	19,091	-31%	17,381	-37%	15,500	-44%
Hayward	46,300	14,982	19,587	31%	15,477	3%	15,477	3%	15,477	3%
Livermore	28,662	12,138	12,505	3%	9,120	-25%	11,213	-8%	12,549	3%
Newark	13,530	5,802	7,126	23%	5,802	0%	5,802	0%	5,802	0%
Oakland	160,567	65,453	79,009	21%	58,719	-10%	57,721	-12%	46,213	-29%
Piedmont	3,810	10	49	390%	627	6167%	627	6167%	627	6167%
Pleasanton	24,034	9,785	10,657	9%	6,297	-36%	7,381	-25%	8,339	-15%
San Leandro	31,647	8,800	12,688	44%	7,119	-19%	7,119	-19%	7,119	-19%
Union City	20,420	5,480	4,589	-16%	4,549	-17%	4,549	-17%	4,164	-24%
Alameda Co. Unincorp.	51,265	12,606	15,689	24%	8,267	-34%	11,540	-8%	12,445	-1%
Countywide Total	557,651	212,746	262,479	23%	167,751	-21%	172,994	-19%	164,295	-23%

Attachment II to this report is a map showing Hayward's existing and planned PDAs. As shown in that map, the South Hayward BART area is divided into two different Place Types by ABAG – an Urban Neighborhood and a Mixed Use Corridor reflecting the proximity of each area to the South Hayward BART station. Such Place Types have different expected densities, land uses, etc. These two Place Type designations are indicated in Table 5 and following tables. ABAG has allocated growth to the Downtown in an area larger than the formally designated PDA. Staff will work with ABAG to have the formal Downtown PDA boundary adjusted to include the area shown in purple as “City Center.”

As shown in Table 5 below, which reflects where in Hayward projected growth would occur according to the four scenarios, approximately 53% of Hayward's growth was to occur in PDAs and GOAs, per the IVS. As indicated in the resolution adopted on May 17, 2011 (Attachment I), Council requested that ABAG allocate more of Hayward's housing growth to occur in PDAs and GOAs where there is transit service. Reflective of such request, and as shown in Table 5, in the Focused Growth and Outer Bay Scenarios, approximately 66% of Hayward's growth would occur in PDAs and GOAs and in the Core Concentration Scenario, the number increases to approximately 72%. In the Unconstrained Core Concentration Scenario, only approximately 61% of the growth is allocated to PDAs.

Table 5. Hayward's Household Growth Areas by Scenario

	2010 Census	INITIAL VISION SCENARIO			Alternative Scenarios								
					UNCONSTRAINED CORE CONCENTRATION			CORE CONCENTRATION			FOCUSED GROWTH & OUTER BAY		
	Existing	2035	Growth 2010-2035	% of Total Growth	2040	Growth 2010-2040	% of Total Growth	2040	Growth 2010-2040	% of Total Growth	2040	Growth 2010-2040	% of Total Growth
Downtown	2,542	4,945	2,914	19.5%	7,551	5,009	25.6%	5,928	3,386	21.9%	5,617	3,075	19.9%
South Hayward BART – Mixed Use Corridor	172	1,680	935	6.2%	1,421	1,249	6.4%	1,470	1,298	8.4%	1,345	1,173	7.6%
South Hayward BART – Urban Neighborhood	1,658	3,360	1,869	12.5%	4,661	3,003	15.3%	4,327	2,669	17.2%	4,077	2,419	15.6%
The Cannery	411	961	748	5.0%	1,467	1,056	5.4%	1,238	827	5.3%	1,158	747	4.8%
Carlos Bee Quarry	28	575	552	3.7%	164	136	0.7%	641	613	4.0%	582	554	3.6%
Mission Corridor	909	1,446	972	6.5%	2,404	1,495	7.6%	3,321	2,412	15.6%	3,107	2,198	14.2%
PDA Total	5,720	12,967	7,990	53.3%	17,669	11,949	61.0%	16,925	11,205	72.4%	15,887	10,167	65.7%
Non-PDA	39,645	48,316	6,992	46.7%	47,284	7,639	39.0%	43,917	4,272	27.6%	44,955	5,310	34.3%
City Total	45,365	61,283	14,982	60,842	64,952	19,587	100.0%	60,842	15,477	100.0%	60,842	15,477	100.0%

Since the release of the IVS, the Alameda County Planning Directors have worked with the Alameda County Transportation Commission (ACTC) to develop a Locally Preferred Scenario. As shown in Table 6 (for households growth) and Table 9 (job growth), growth projections in the Locally Preferred Scenario are more realistically distributed to areas of Hayward beyond the PDAs. A map showing the locations of the Growth Areas is included as Attachment III.

Such numbers for the South Hayward BART and Mission Corridor areas are close to the build-out projections made by staff for those areas. The numbers also recognize that new housing is anticipated for California State University East Bay. Of the three constrained scenarios, the projected housing figures of the Focused Growth/Outer Bay are the most realistic. The projected housing in the Core Concentration scenario is aggressive, given service capacity of the City, potential development impacts (especially associated with traffic and air quality) associated with high density development within the PDAs, and the capacity for infill and new development in other areas of the City (e.g., Mt. Eden, Stonebrae, La Vista Quarry, etc.). Ultimately, the economy, market, and service capacity of the City of Hayward will determine whether or not the projected numbers are realized.

Table 6. Hayward’s Household Growth with the Locally Preferred Scenario

Growth Area	Map Key for Growth Areas	IVS Growth	ACTC Preferred Scenario	
			2010-2035 HH Growth	% of City Total
Downtown	HAY2	2,914	2,940	24.5%
South Hayward BART (PDA)	HAY3_ab	2,804	3,503	29.2%
The Cannery (PDA)	HAY1	748	966	8.1%
Carlos Bee Quarry (GOA)	OAHAY3	552	575	4.8%
Mission Corridor (GOA)	OAHAY1	972	1,366	11.4%
Jackson Street HWY 92	HayE1		138	1.2%
Winton-Airport	HayE2		103	0.9%
Cabot Street	HayE3		-	0.0%
Cal State East Bay	HayE4		580	4.8%
Industrial Pkwy	HayE5		-	0.0%
Industrial Blvd-SHBART	HayE6		204	1.7%
A street-Hesperian	HayMU1		345	2.9%
Foothill Gateway	HayMU3		264	2.2%
Total all PDAs and GOAs		7,990	10,984	91.7%
Remainder of City		6,992	1,000	8.3%
Citywide Total		14,982	11,984	100.0%

Staff recommends that the City of Hayward formally advocate for the ACTC Locally Preferred Scenario. While not likely to result in as much GHG emission reduction, it focuses the most realistic growth in the PDAs, while recognizing the potential for future growth outside PDAs. Staff supports this scenario because it is more reflective of Hayward's historic pattern of development and large areas of established, existing neighborhoods that have some infill development capacity.

Projected Job Growth – The IVS projected 18,595 new jobs for Hayward through the year 2035. As noted in the resolution forwarded to ABAG and MTC, the projected job growth was overly optimistic and unrealistic. The Alternative Scenarios project that, over thirty years, Hayward will gain 16,050 to 17,435 new jobs. As shown in Table 7 on the following page, Hayward is projected to gain 7.9% and 8.2% of the County's job growth in the Core Concentration and Focused Growth Scenarios, respectively, which is fourth among Alameda County jurisdictions, following Oakland, Fremont, and Berkeley. In the Outer Bay Scenario, Hayward's 8.1% projected job growth rate is sixth of Alameda County jurisdictions, behind Oakland, Fremont, Berkeley, Pleasanton, and Livermore.

Table 7. Distribution of Jobs throughout Alameda County

		IVS			Unconstrained Core Concentration			Core Concentration			Focused Growth			Outer Bay		
Jurisdiction	2010	Growth	2035	% of County Growth	Growth	2040	% of County Growth	Growth	2040	% of County Growth	Growth	2040	% of County Growth	Growth	2040	% of County Growth
Alameda	26,480	12,069	37,416	4.83%	20,265	46,748	6.0%	7,573	34,053	3.7%	8,221	34,701	4.0%	7,873	34,353	3.0%
Albany	5,066	498	4,974	0.20%	1,432	6,499	0.4%	1,413	6,479	0.7%	1,348	6,414	0.7%	998	6,064	0.0%
Berkeley	73,781	8,794	78,575	3.52%	21,682	95,464	6.4%	22,296	96,077	10.9%	22,104	95,885	10.9%	21,434	95,215	9.0%
Dublin	17,495	15,342	33,400	6.14%	15,037	32,519	4.4%	4,955	22,449	2.4%	5,524	23,018	2.7%	9,890	27,384	4.0%
Emeryville	16,352	7,281	25,479	2.91%	11,235	27,587	3.3%	6,009	22,361	2.9%	5,657	22,008	2.8%	5,291	21,643	2.0%
Fremont	89,279	41,645	128,484	16.67%	58,328	147,608	17.1%	26,357	115,636	12.9%	26,319	115,597	12.9%	27,772	117,051	12.0%
Hayward	63,964	18,595	84,730	7.44%	21,466	85,370	6.3%	16,050	80,014	7.9%	16,646	80,610	8.2%	17,435	81,399	8.0%
Livermore	47,201	18,445	46,930	7.38%	12,716	49,031	3.7%	13,544	60,745	6.6%	15,095	62,296	7.4%	20,127	67,328	9.0%
Newark	16,816	2,750	21,799	1.10%	6,338	23,154	1.9%	4,171	20,987	2.0%	4,444	21,260	2.2%	4,421	21,237	2.0%
Oakland	196,602	67,518	254,846	27.02%	115,041	308,895	33.8%	64,393	260,996	31.6%	58,933	255,535	28.9%	57,160	253,763	26.0%
Piedmont	2,101	80	2,171	0.03%	248	2,349	0.1%	613	2,714	0.3%	687	2,788	0.3%	332	2,434	0.0%
Pleasanton	52,505	17,382	70,158	6.96%	15,007	66,932	4.4%	14,577	67,082	7.2%	16,151	68,656	7.9%	21,512	74,018	9.0%
San Leandro	39,347	13,074	51,606	5.23%	13,081	52,429	3.8%	10,754	50,101	5.3%	10,797	50,144	5.3%	11,301	50,648	5.0%
Union City	19,255	15,642	33,560	6.26%	17,030	36,286	5.0%	4,653	23,908	2.3%	4,792	24,047	2.4%	4,616	23,871	2.0%
Alameda Co. Unincorporated	23,484	10,744	51,320	4.30%	11,274	46,305	3.3%	6,420	29,904	3.2%	6,960	30,444	3.4%	6,175	29,659	2.0%
Totals	689,728	249,859	925,449	100.00%	340,181	1,027,177	100.0%	203,778	893,506	100.0%	203,678	893,403	100.0%	216,337	906,067	100.0%

Table 8. Distribution of Jobs in Hayward Areas by Scenario

PDA	Existing Jobs		Unconstrained Core Concentration			Core Concentration			Focused Growth Scenario			Outer Bay Growth Scenario		
	2010	% of Total	Growth	2040	% of Total Growth	Growth	2040	% of Total Growth	Growth	2040	% of Total Growth	Growth	2040	% of Total Growth
The Cannery	1,186	1.9%	189	1,374	0.9%	357	1,543	2.2%	399	1,585	2.4%	319	1,505	1.8%
Downtown	6,205	9.7%	1,101	7,307	5.1%	1,945	8,150	12.1%	1,790	7,995	10.8%	1,819	8,024	10.4%
South Hayward BART - Mixed Use	327	0.5%	132	459	0.6%	143	469	0.9%	138	465	0.8%	125	451	0.7%
South Hayward BART - Urban Neighborhood	483	0.8%	264	747	1.2%	320	803	2.0%	300	783	1.8%	278	760	1.6%
Mission Corridor	1,447	2.3%	249	1696	1.2%	468	1,915	2.9%	438	1,885	2.6%	412	1,859	2.4%
Carlos Bee Quarry	4	0.0%	25	29	0.1%	40	44	0.2%	38	42	0.2%	35	39	0.2%
Total for PDAs	9,652	15.1%	1,960	11,612	9.1%	3,273	12,924	20.4%	3,103	12,755	18.6%	2,988	12,638	17.1%
Non-PDA Jobs	54,312	84.9%	19,506	73,758	90.9%	12,777	67,090	79.6%	13,543	67,855	81.4%	14,447	68,761	82.9%
Total	63,964	100.0%	21,466	85,370	100.0%	16,050	80,014	100.0%	16,646	80,610	100.0%	17,435	81,399	100.0%

The IVS did not distribute jobs to PDAs. Table 8 on the previous page shows how ABAG's four Alternative Scenarios allocate jobs among Hayward's PDAs. Staff finds the jobs allocated to the Cannery and the Carlos Bee Quarry to be too high, but believes the jobs allocated to the other PDAs are reasonable.

According to current ABAG data, Hayward currently has 1.41 jobs per household. With all three alternative scenarios, Hayward would have a jobs/households ratio of approximately 1.3 in 2040. As noted in the resolution forwarded to ABAG and MTC, Hayward must maintain a balance of jobs and housing to limit the need for automobile travel in the area and also to limit the impact to the City's General Fund. While the total number of jobs is slightly lower in the Core Concentration Scenario, staff finds that this scenario is preferable for both local and regional goals because it focuses the most jobs in Hayward's PDAs. However, as shown in Table 9 below, the ACTC Locally Preferred Scenario projects even fewer jobs for Hayward, which staff feels is most realistic, and distributes those jobs to areas including Hayward's established industrial core.

Table 9. Jobs Distribution under the Locally Preferred Alternative Scenario

PDA/GOA Name	Map Key for Mixed Use and Employ. Growth Areas	IVS	2010-2035 JOBS increase	% of City Total
Downtown	HAY2		3,189	20.7%
South Hayward BART (PDA)	HAY3_ab		939	6.1%
The Cannery (PDA)	HAY1		1,429	9.3%
Carlos Bee Quarry (GOA)	OAHAY3		36	0.2%
Mission Corridor (GOA)	OAHAY1		243	1.6%
Hayward: Jackson Street HWY 92	HayE1		636	4.1%
Hayward: Winton-Airport	HayE2		509	3.3%
Hayward: Cabot Street	HayE3		1,020	6.6%
Hayward: Cal State East Bay	HayE4		225	1.5%
Hayward: Industrial Pkwy	HayE5		640	4.2%
Hayward: Industrial Blvd-SHBART	HayE6		-	0.0%
Hayward: A street-Hesperian	HayMU1		460	3.0%
Hayward: Foothill Gateway	HayMU3		59	0.4%
Total all PDAs and GOAs			9,385	61.0%
Remainder of City			6,000	39.0%
Citywide Total		18,595	15,385	100.0%

Performance Targets - The primary purpose of SB 375 is to reduce GHG emissions from cars and light trucks. In September 2010, the California Air Resources Board adopted GHG targets for the Bay Area to reduce emissions from 2005 levels by 7% by 2020 and by 15% by 2035. In January

2011, ABAG and MTC adopted GHG emissions and other performance targets against which to measure the various growth scenarios. The targets include the following:

1. Reduce per capita CO₂ emissions from cars and light duty trucks by 15% by 2035
2. House 100% of the region's projected 25-year growth by income level
3. Reduce deaths from air pollution and traffic accidents.
4. Increase the average daily time walking or biking
5. Direct all non-agricultural development within the urban footprint
6. Decrease the share of residents' household income consumed by transportation and housing
7. Increase gross regional product (GRP)
8. Decrease per trip travel time

As shown on the attached Targets Scorecard (Attachment IV), there are relatively small differences between the Initial Vision Scenario and four Alternative Scenarios. The small differences in performance targets are because all of the scenarios represent different approaches to focused growth. None of the five scenarios meet the first mandated goal (the primary goal of SB 375) of reducing carbon dioxide emissions by at least 15% per person. ABAG expects that additional land use, transportation-related, and other policy measures will need to be considered to meet this and other targets.

The IVS and the Unconstrained Core Concentration scenarios cannot be used for the final SCS due to the Federal requirement that the RTP be realistic in terms of resources available for implementation; however, the analysis associated with the Unconstrained Core Concentration scenario may reveal certain strategies that might be incorporated into one of the constrained scenarios to help achieve the targets. If the SCS is not able to meet the goal of reducing carbon dioxide emissions by 15% per capita, then an Alternative Planning Strategy (APS) will have to be prepared. The APS would identify the principal impediments to achieving the targets within the SCS. The APS would also include a number of measures—such as alternative development patterns, infrastructure, or additional transportation measures or policies that would achieve the regional target.

The Constrained Core Concentration scenario achieves the greatest reduction in GHG emissions from cars and light trucks at the regional level, which is the primary goal of SB 375. Furthermore, as indicated on the Targets Scorecard, the Constrained Core Concentration scenario results in the greatest reduction in vehicle miles traveled (VMT) per person and the highest increase in average daily time spent walking and biking. However, the projections associated with the Constrained Core Concentration are not realistic for Hayward in that some growth will continue to occur outside the PDAs.

The Equity Analysis Scorecard (see Attachment V) shows the five performance measures that ABAG and MTC selected to determine which scenario(s) are best for communities of concern. There are very small differences between the scenarios for the five performance measures. Given that the differences between the equity analysis measures are so small, staff has not formed a recommendation based on the Scorecard.

Hayward's Comments on the Alternative Scenarios - ABAG has asked Bay Area jurisdictions to answer the following specific questions. Therefore, staff is seeking input from the Council and Planning Commission on the five questions listed below. Once Council and Commission provide input, staff intends to provide answers to ABAG. To help guide the discussion among the Council and the Commission, staff has provided some preliminary responses below each question, related to the five scenarios presented by ABAG.

1. Which of the five scenarios do you feel best accomplishes regional goals?

The Constrained Core Concentration best accomplishes regional goals because it results in the largest reduction of GHG emissions.

2. Which of the five scenarios do you feel best accomplishes local goals?

The Focused Growth Scenario best accomplishes local goals because it strikes a balance between focusing most of Hayward's growth in the PDAs and helping Hayward to meet the goals of its Climate Action Plan. However, the City of Hayward requests that the Locally Preferred Scenario developed by the Alameda County Transportation Commission, which better distributes growth to areas more likely to see new housing and jobs, be incorporated into ABAG's Preferred Scenario.

3. In building the alternative scenario housing distributions, ABAG considered several factors that are important in accommodating jobs and housing growth. Which do you feel are most important to your community or to the regional growth distribution?

4.

Factor	Importance
<ul style="list-style-type: none"> • Transit service coverage and frequency 	Extremely Important to the region and, related to job growth, somewhat important locally
<ul style="list-style-type: none"> • Proximity to employment 	Extremely Important
<ul style="list-style-type: none"> • Provision of minimum amount of housing to accommodate natural (births and deaths) growth within your community 	Extremely Important
<ul style="list-style-type: none"> • Appropriate level of density for your PDA Place Type 	Extremely Important
<ul style="list-style-type: none"> • Workforce housing 	Extremely Important

Factor	Importance
<ul style="list-style-type: none"> • Other? 	As noted in Resolution 11-051, Hayward needs support for schools, parks, and public safety services. Streamlined permitting for new development with respect to regulations of the California Environmental Quality Act, the Bay Area Air Quality Management District and the Regional Water Quality Control Board would be very beneficial.

5. Which of the SCS Performance Targets and Equity Measures are most important to your jurisdiction?

Target/Measure	Importance (1 is most important; 5 is least important)
Climate Protection	1
Adequate Housing for Region's Population	2
Reduction in Deaths from Particulate Matter	1
Reduction Pedestrian Injuries/Fatalities	1
Increase in Walking/Biking	2
Open Space & Agricultural Preservation	3
Reduction in Housing and Transportation Costs	3
Increase Economic Vitality (Gross Regional Product)	2
Minimizing Displacement	2
Reduction in Vehicle Miles Travelled	1
Reduction in Non-commute Travel Time	3
Reduction in Commute Time	2

6. Two Transportation Scenarios were tested within the five scenarios. The two scenarios are:

Transportation 2035 Network that mirrors the investment strategy from the adopted Transportation 2035 Plan, wherein approximately 80% of the projected twenty-five-year revenue goes toward maintenance of the existing transportation system and 20% is for priority roadway, transit and bike/pedestrian improvements, and;

Core Capacity Transit Network that allocates approximately 80% of the projected twenty-five-year revenue to maintenance and operations of the existing system and roughly 16% to core capacity transit improvements (such as service frequency improvements). Other priority roadway and bike/pedestrian improvements are also included with the remaining 3%.

The Transportation Scenarios were applied as follows:

Land Use Pattern	Transportation Network
Initial Vision Scenario	Transportation 2035 Network
Core Concentration – Unconstrained	Core Capacity Transit Network
Core Concentration - Constrained	Core Capacity Transit Network
Focused Growth Scenario	Core Capacity Transit Network
Outer Bay Area Growth Scenario	Transportation 2035 Network

Do you feel the transportation network assumed in the scenario you chose is appropriate?

Yes, the Core Capacity Transit Network is consistent with Hayward's desire to maintain public transportation options for current and future residents and employees. The spending ratio is also consistent with that of the draft Alameda Countywide Transportation Plan that City staff have participated in developing.

ECONOMIC IMPACT

If growth projections are realized through new development as approved by the City, such growth will have a significant beneficial impact on Hayward's economy. Additionally, directing the majority of growth to Hayward's PDAs will encourage compact growth where job centers and housing are located in close proximity to each other, which will help reduce vehicle miles travelled and result in lesser GHG emissions than would be realized without such compact growth, thereby helping the Bay region meet its SB375 mandate to reduce per capita GHG emissions from vehicles and light trucks.

FISCAL IMPACT

While the response to the SCS is mandated by State law (SB 375), the City and other local jurisdictions are not receiving any additional resources in terms of funding or staffing to complete this effort. Planning and Public Works staff has spent and will spend a large amount of time participating in the process associated with development of the SCS. For example, the Senior Planner and Transportation Manager attend three-hour meetings every other month and review, along with other staff, the large amount of materials generated by ABAG, MTC, and the Alameda County Transportation Commission. The resources that have been used and that will continue to be used to support these efforts will come from the City's General Fund. This will affect staff's ability to respond to Council priorities and perform other normal job functions.

As noted in the agenda report of April 19, 2011, if the jobs and housing growth anticipated for Hayward are actually realized, there would be a significant negative impact to the City's General Fund. While the increase in jobs and people to support local businesses would be good for the local economy, the residential growth would result in significant costs to the City – primarily in terms of providing public safety services. This point was clearly made in the resolution forwarded to ABAG and MTC (see Attachment I). Even if additional resources are provided by regional and state agencies to accommodate new growth, the City may need to consider the establishment of additional community facilities districts to fund the necessary public services for new households. This is especially true given the State's elimination of the City's Redevelopment Agency, which would have used tax increment revenue to assist with future development.

PUBLIC CONTACT

Work sessions regarding the development of the SCS were held with the Council on January 18, 2011 and the Planning Commission on January 27, 2011. Staff presented the Initial Vision Scenario at a joint meeting of the Council and Planning Commission on April 19, 2011. The ACTC has held several public workshops to discuss development of the Alameda Countywide Transportation Plan and the Transportation Expenditure Plan and the relationship of those plans to the development of the Sustainable Communities Strategy, including one held at Hayward City Hall on March 9, 2011 and one in San Leandro on October 19, 2011. The MTC Planning Committee and the ABAG Administrative Committee have been holding and continue to hold monthly meetings regarding the development of the SCS. Also, several committees and working groups supporting ABAG and MTC hold regular meetings. More information about these meetings is available on the Plan Bay Area website at http://www.planbayarea.org/plan_bay_area/meetings.htm

MTC and ABAG held a series of public workshops in the spring of 2011 and have scheduled several public meetings around the Bay Area throughout the month of January 2012. The meeting for Alameda County, which staff attended, was in Dublin on January 11, 2012. ACTC also holds regular meetings on the development of the Countywide Transportation Plan including Steering Committee meetings and Community and Technical Advisory Working Group meetings. Information on ACTC meetings is available at http://www.alamedactc.org/app_pages/view/3069. Staff from the Public Works and Development Services Departments will continue to participate in the County's Technical Advisory Working Group to provide input on the preparation of the CWTP and SCS.

NEXT STEPS

Staff will respond to ABAG regarding the five-question survey discussed above based on Council and Commission feedback. Staff will forward a resolution to ABAG and MTC incorporating comments from this process. ABAG has indicated that such comments will be incorporated into the preferred scenario, which is scheduled to be released in March 2012. After the preferred scenario is released, then work on the Environmental Impact Report (EIR) will commence.

The SCS and RTP will be adopted in early 2013. The Draft RHNA will be released in May 2012. The deadline to request revisions to the RHNA will be September 18, 2012. Staff plans to present the RHNA to Council in early September 2012. ABAG will adopt the Final RHNA in the spring of 2013. The City of Hayward will address the adopted RHNA in the next Housing Element update, which is required to be completed in 2014.

Following are the major steps that will lead to the adoption of the SCS and, ultimately, revision of Hayward's General Plan Housing Element.

- March 2012 Release Draft Preferred Scenario by ABAG and MTC
- May 2012 MTC and ABAG Adopt the Preferred Scenario
- May 17, 2012 Draft Methodology and Preliminary RHNA to be released
- July 19, 2012 ABAG Adopts RHNA Methodology
- July 20, 2012 ABAG Releases Draft RHNA

- September 18, 2012 Deadline to Request Revisions to Draft RHNA
- November 2012 ABAG/MTC to Release Draft SCS/RTP and Environmental Impact Report (EIR)
- April 2013 ABAG will Issue the Final RHNA.
- March 2013 ABAG/MTC will Adopt the SCS/RTP and Certify the EIR
- October 2014 Deadline for Adoption of revised Housing Element of General Plan

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

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution 11-051, adopted on May 17, 2011
- Attachment II Map of the Hayward PDAs
- Attachment III Map of Growth Areas (prepared by Alameda County Transportation Commission)
- Attachment IV Targets Scorecard
- Attachment V Equity Analysis Scorecard



CITY OF
HAYWARD
 HEART OF THE BAY

May 20, 2011

Ezra Rapport
 Executive Director
 Association of Bay Area Governments

Steve Heminger
 Executive Director
 Metropolitan Transportation Commission

P.O. Box 2050
 Oakland, CA 94604-2050

Re: Initial Vision Scenario for Sustainable Communities Strategy

Dear Mr. Rapport and Mr. Heminger:

Thank you for the opportunity to comment on the Initial Vision Scenario, which was prepared as the first step in developing the Sustainable Communities Strategy. Hayward staff presented the IVS to the Hayward City Council and Planning Commission during a joint work session on April 19, 2011. Subsequently, the Council adopted the attached Resolution, which summarizes the comments made by both the Council and Commission. Most importantly, there is a significant need for funding to support the growth that is anticipated, including funding associated with tax increment revenue related to redevelopment. Obviously, it is critical to retain redevelopment agencies to support these redevelopment efforts.

In response to the five questions asked by ABAG and MTC, feedback is provided in the attached resolution and below:

1. Is the proposed place type appropriate for your PDAs, GOAs? Given the availability of resources, is the proposed urban scale, mix of uses, and expected household growth appropriate?

Staff has reviewed the place type designations proposed for Hayward's PDAs and GOAs and found them to be consistent with Hayward's planning efforts for these areas. The number of jobs projected for Hayward is overly optimistic and well above historic job growth levels.

2. What transportation improvements would help support those PDAs and/or GOAs in your jurisdiction?
 - Improved safety for BART and AC Transit riders.

Development Services Department

777 B Street, Hayward, CA 94541-5007

Tel: 510/583-4234 Fax: 510/583-3650 TDD: 510/247-3340 Website: www.hayward-ca.gov

- Improved ambiance and attractiveness of the transportation facilities/stations.
- More frequent bus or shuttle service on all major corridors.
- Seamless connections between transit providers.
- Car sharing pods.
- Extension of rapid bus to Hayward BART and later South Hayward BART.

3. What additional funding would be needed to support housing growth?

Funding for public transportation is necessary to ensure that new housing helps to create complete, high-quality, and safe neighborhoods. Funding for infrastructure such as water, wastewater, and other utilities, in addition to funding for affordable housing and first-time home buyer assistance, would also support the anticipated housing growth. Also, especially in these times of fiscal challenges, funding to support public services, such as public safety services, will be needed to support the projected additional growth.

4. If the IVS growth estimate is too high, should some of the growth be shifted to another part of your jurisdiction, elsewhere in the County, or elsewhere in the region?

More detailed comments will be provided through our participation with the Alameda County Transportation Commission, but more households can be accommodated in the South Hayward BART PDA and the Mission Boulevard Corridor Growth Opportunity Area.

5. What are the challenges for your local jurisdiction to attract and retain jobs that match your local workforce?

The quality of Hayward's public schools are a significant challenge we have in attracting both residents and employers.

We look forward to continuing to work with ABAG, MTC and the Alameda County Transportation Commission throughout the process of developing the Sustainable Communities Strategy. If you have any questions, please contact me at (510) 583-4004 or by e-mail at david.rizk@hayward-ca.gov . Thank you.

Sincerely,



David Rizk, AICP
Development Services Director

Attachment – Resolution No. 11-051

- Cc: Ken Kirkey, Planning Director, ABAG
 Doug Kimsey, Planning Director, MTC
 Beth Walukas, Deputy Director of Planning, Alameda Co. Transportation Commission
 Fran David, City Manager
 Robert Bauman, Director of Public Works
 Don Frascinella, Transportation Manager
 Richard Patenaude, Planning Manager
 Erik Pearson, Senior Planner

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HAYWARD CITY COUNCIL

RESOLUTION NO. 11-051

Introduced by Council Member Peixoto

RESOLUTION FORMALIZING THE CITY OF HAYWARD'S
COMMENTS ON THE INITIAL VISION SCENARIO

WHEREAS, Senate Bill 375 requires the preparation of a regional Sustainable Communities Strategy (SCS) that coordinates transportation and housing planning; and

WHEREAS, the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC) are preparing the SCS with input from local jurisdictions throughout the Bay Area; and

WHEREAS, ABAG and MTC released the first draft of the SCS, known as the Initial Vision Scenario (IVS), on March 11, 2011; and

WHEREAS, the City of Hayward supports regional planning efforts to meet the requirements of SB 375 provided that funding and infrastructure exist to support the anticipated growth in jobs, housing, and the resulting increase in need for services; and

WHEREAS, the IVS assigns 14,982 new households and 18,595 new jobs to Hayward between 2010 and 2035; and

WHEREAS, the IVS assigns 7,990 new households for Hayward's Planned Development Areas and Growth Opportunity Areas; and

WHEREAS, the projected growth is a 32.4% increase in households and 28.1% increase in jobs between 2010 and 2035; and

WHEREAS, from 1980 to 2010, Hayward experienced a 25.7% increase in housing units and a 2.8% increase in jobs; and

WHEREAS, City of Hayward staff estimates that the fiscal impact of the projected households and jobs for 2035 represents an approximate annual deficit of \$13 million to the City's General Fund; and

WHEREAS, on April 19, 2011, the City Council and Planning Commission considered the IVS and expressed several concerns.

NOW, THEREFORE BE IT RESOLVED, based on the findings set forth above, that the City Council of the City of Hayward hereby asserts the following:

General

- The City of Hayward supports well-planned growth in an effort to reduce greenhouse gas emissions associated with vehicle miles traveled; however, resources must be provided to support such growth, including funding to ensure adequate public safety, quality schools, enhanced and safe public transit systems, quality retail establishments, and public parks.
- To the extent possible, jobs should be located near housing and/or public transportation to minimize the need for employees to use automobiles to get to work.
- Maintaining the City's Redevelopment Agency and increasing its ability to assemble developable parcels is critical to fostering local development near transit, especially development of high-quality affordable housing and economic development to increase business retention and attraction.
- Hayward must maintain a balance of jobs and housing. If job growth does not keep pace with housing growth, then more traffic will be generated as residents are required to travel farther to jobs.
- Support for improving local schools is critical to making Hayward a livable and sustainable community. The SCS must explicitly facilitate dialogue within the community (e.g., among school districts, planning agencies, regulatory agencies, parent groups, the business community, and transportation agencies) by identifying strategies and resources to improve academic improvement, school campus safety, and provision of amenities indicative of a successful and valued school district (e.g., music, sports, art, and other non-academic programs.)
- Funding for new and improved parks and other infrastructure are also necessary.
- The SCS needs to streamline local infill development by addressing requirements of the California Environmental Quality Act (CEQA) and other current regulations of regional agencies, such as the Air District and the Water Board, that add to the challenge of developing infill sites.
- The SCS should recognize and address the fact that there are significant benefits associated with commercial development and significant costs associated with residential development. This "fiscalization of land use" makes it a challenge for local jurisdictions to accept new housing without commercial development that generates sufficient tax revenue to provide these services.
- Funding for infrastructure such as water, wastewater, and other utilities, in addition to funding for affordable housing and first-time home buyer assistance, would support the anticipated housing growth.
- Staff has reviewed the place type designations proposed for Hayward's PDAs and GOAs and found them to be consistent with Hayward's planning efforts for these areas. are appropriate

Jobs

- The number of jobs projected for Hayward is overly optimistic and well above historic job growth levels.
- If the number of jobs does not materialize, then the cost to the City's General Fund will increase. If future estimates of projected jobs are reduced, then the fiscal impact of the revised projections will need to be reevaluated.
- Given that traffic modeling is partially based on projected job growth, the high number of jobs anticipated for Hayward may predict unrealistically high traffic volumes and associated unmitigatable and significant impacts, which would require environmental impact reports and adoption of statements of overriding consideration related to environmental analyses of future projects and/or the need for significant improvements to the transportation system to reduce those projected impacts.

Housing

- More of Hayward's growth should occur in the PDAs and GOAs. Specifically, the Mission Corridor GOA should be able to accommodate at least 1,000 additional new households (2,000 total) and the South Hayward BART PDA (the Mixed-Use Corridor and the Urban Neighborhood combined) could accommodate 700 additional households (3,500 total).
- Funding for public transportation is necessary to ensure that new housing helps to create complete, high-quality, and safe neighborhoods.

Transportation

- Expanded, innovative, and more frequent bus or other transit service is needed to support development in Hayward's PDAs and GOAs, as well as to link Hayward's BART stations to its industrial areas, where most of the City's jobs are located. Such transit service would support Hayward's efforts to attract and retain jobs for the local workforce.
- If AC Transit is not able to improve service in Hayward, then assistance to establish a locally operated bus or shuttle system should be explored.
- Additional funding for BART, parking pricing, and other transportation demand management strategies are also needed to support housing and job growth.
- Specific transportation improvements that are needed to support growth in Hayward include:
 - Improved safety for BART and AC Transit riders.
 - Improved ambiance and attractiveness of the transportation facilities/stations: BART and AMTRAK particularly, along with bus stops and shelters.
 - More frequent bus or shuttle service on all major corridors (15 minute headways).
 - Seamless connections between BART stations and major employers/activity centers, such as Southland Mall, California State University East Bay, Chabot College, and other employment/educational centers.
 - Car sharing pods at Chabot College, California State University East Bay, and the BART stations.

- Relaxed regulations for funding improvements that support alternative modes. For example, the Air District could eliminate cost matching requirements for projects such as electronic bike lockers, which would facilitate bike access to BART.
- More flexibility in funding (i.e., block grants) for local governments to support transportation infrastructure improvements in PDAs such as exemptions from CEQA to construct bike and pedestrian improvements.
- State law should be revisited to exempt infill projects located in PDAs from Level-Of-Service (LOS) standards.
- Extension of rapid bus to Hayward BART and later South Hayward BART.

BE IT FURTHER RESOLVED, that all of the Key Priorities and Potential Strategies identified in Section 4 of the IVS are necessary to support the projected housing and jobs and must be included in the SCS.

BE IT FURTHER RESOLVED, that the City of Hayward strongly urges ABAG and MTC to take the above concerns into consideration when preparing the Alternative Scenarios and, finally the Preferred Scenario.

IN COUNCIL, HAYWARD, CALIFORNIA May 17, 2011

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson
MAYOR: Sweeney

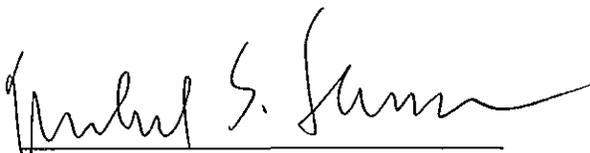
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

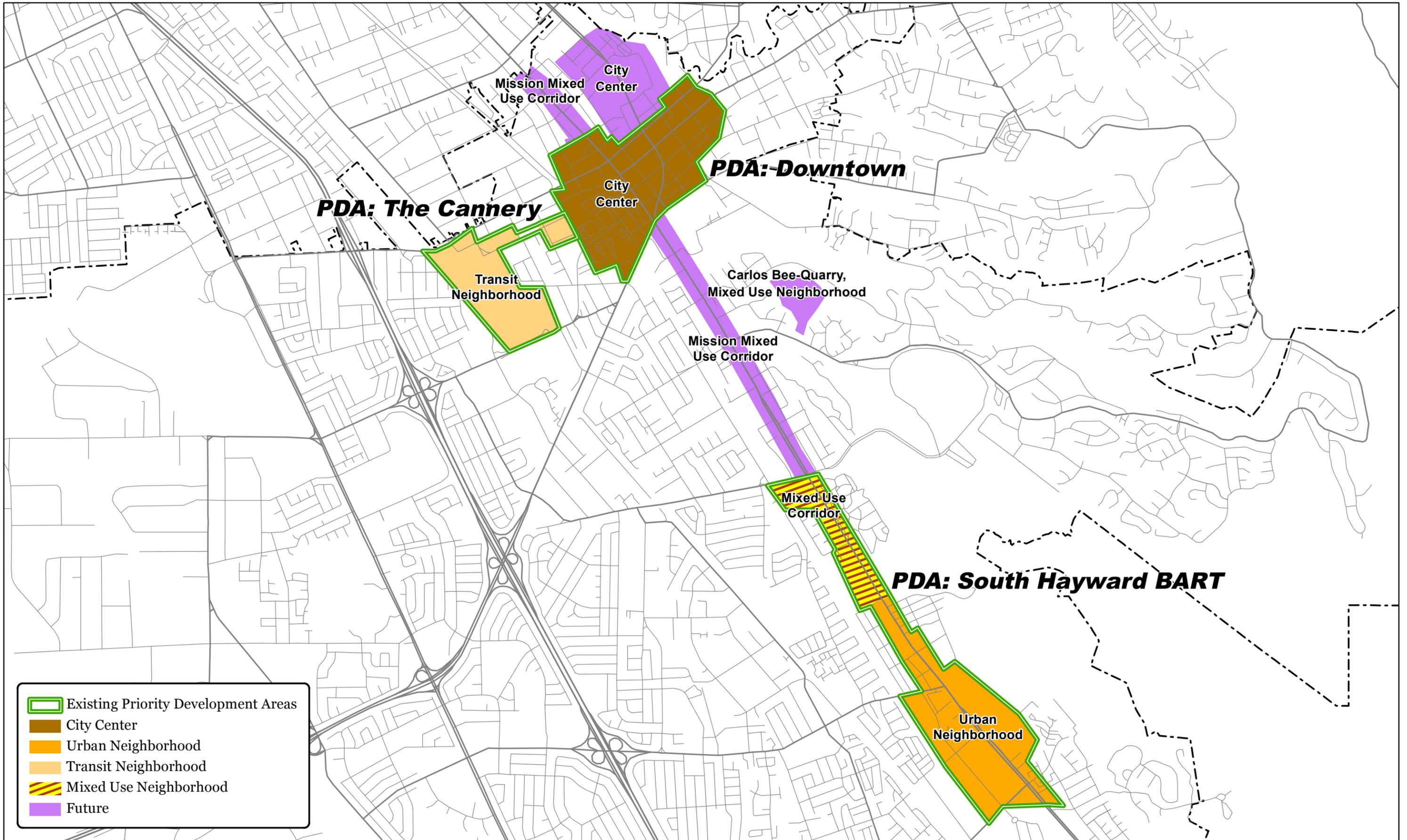
ATTEST: 
for City Clerk of the City of Hayward

APPROVED AS TO FORM:

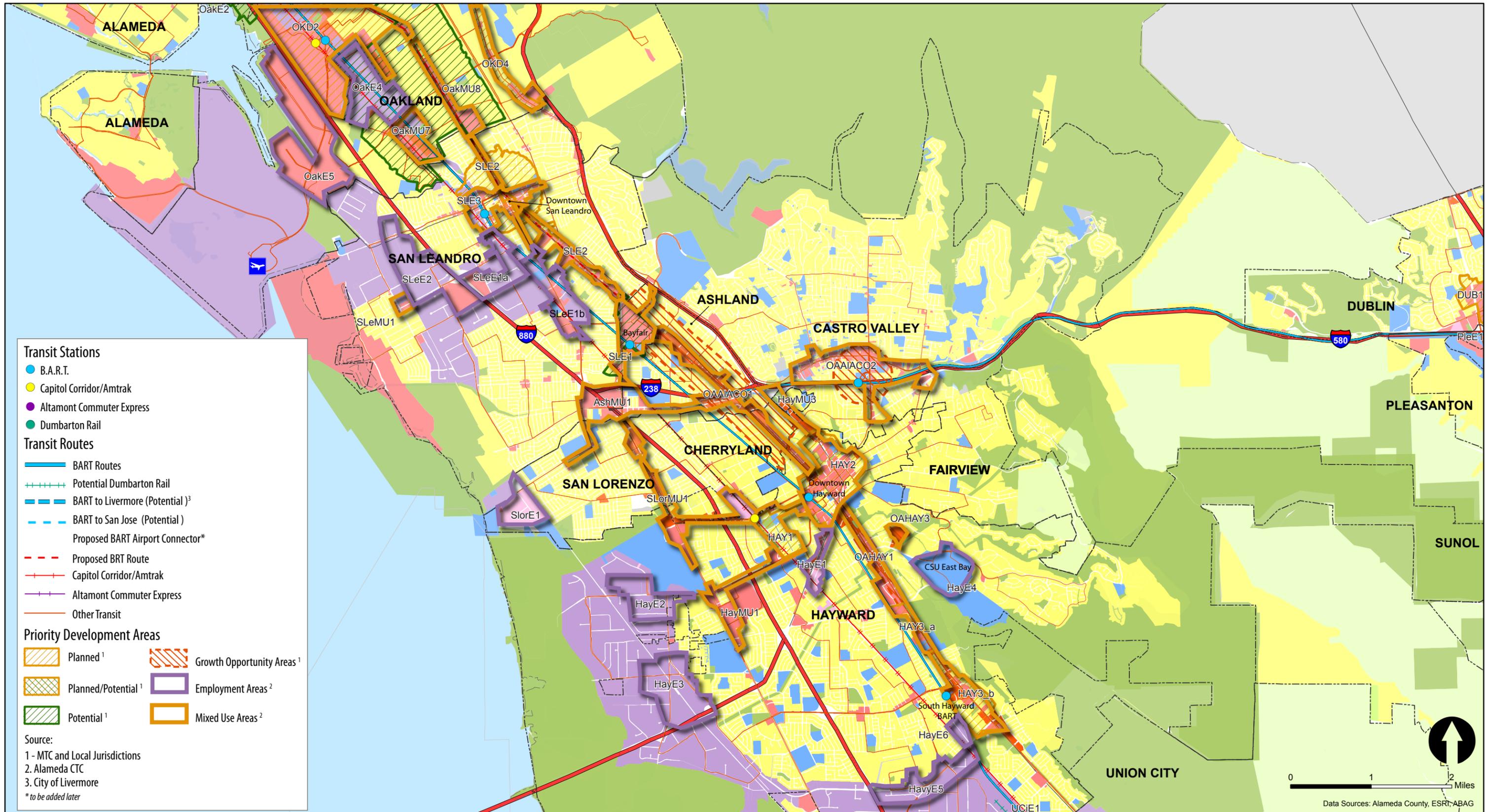

City Attorney of the City of Hayward



Hayward Priority Development Areas



- Existing Priority Development Areas
- City Center
- Urban Neighborhood
- Transit Neighborhood
- Mixed Use Neighborhood
- Future



Transit Stations

- B.A.R.T.
- Capitol Corridor/Amtrak
- Altamont Commuter Express
- Dumbarton Rail

Transit Routes

- BART Routes
- Potential Dumbarton Rail
- BART to Livermore (Potential)³
- BART to San Jose (Potential)
- Proposed BART Airport Connector*
- Proposed BRT Route
- Capitol Corridor/Amtrak
- Altamont Commuter Express
- Other Transit

Priority Development Areas

- Planned¹
- Planned/Potential¹
- Potential¹
- Growth Opportunity Areas¹
- Employment Areas²
- Mixed Use Areas²

Source:

- MTC and Local Jurisdictions
- Alameda CTC
- City of Livermore

* to be added later

General Plan Land Uses

- Agriculture/Resource Extraction
- Commercial
- Education/Public/Semi-Public
- Industrial
- Mixed Use: Residential & Commercial
- Rural Residential & Open Space
- Business Park/Industrial
- Other/Unknown
- Parks/Open Space
- Residential
- Alameda County Boundary
- City Boundary
- Oakland International Airport



ALAMEDA CTC
LOCALLY PREFERRED
SCS SCENARIO CONCEPT
DRAFT FOR DISCUSSION



SCENARIO ANALYSIS

WHAT ARE THE TARGETS AND HOW ARE THEY MEASURED?

1. Reduce per-capita CO2 emissions from cars and light-duty trucks by 15%

SB 375 requires the California Air Resources Board (CARB) to set targets for reducing emissions from cars and light-duty trucks. CARB adopted this target for use in Plan Bay Area; the target results are based on a measurement of pounds of carbon dioxide emissions from passenger vehicles for a typical weekday, on a per-person basis.

2. House 100% of the region's projected 25-year growth by income level (very-low, low, moderate, above-moderate) without displacing current low-income residents

SB 375 requires regions to plan for housing all projected population growth, by income level, to prevent growth in in-commuting. This target's results reflect the percentage of year 2035 total housing demand that can be accommodated in the nine-county Bay Area. Only the first two scenarios are able to meet this target, as they assumed higher in-region population levels. In the other three scenarios, some households must live outside the Bay Area (particularly in the San Joaquin County) and commute into the region for employment.

3a. Reduce premature deaths from exposure to fine particulates (PM2.5) by 10%

The Bay Area currently does not meet the federal standard for fine particulate matter, which is extremely hazardous to health. The targeted reduction for PM2.5 reflects the expected benefit from meeting the federal standard. This target's performance was assessed by Bay Area Air Quality Management District (BAAQMD) staff; their analysis considers the impacts of fine particulate (PM2.5) emissions, as well as NOx emissions that produce secondary PM2.5. Note that all direct PM2.5 emissions from vehicles were considered, but road dust and brake/tire wear were not included.

3b. Reduce coarse particulate emissions (PM10) by 30%

The Bay Area currently does not attain the state standard for coarse particulate matter. The targeted reduction for PM10 is consistent with the reduction needed to meet the state standard and achieve key health benefits. The target results reflect tailpipe emissions and road dust from all vehicles, but do not include coarse particulates from brake and tire wear.

3c. Achieve greater particulate emission reductions in highly impacted areas

A "Yes" rating for this target means that highly impacted areas achieve greater reductions in particulate emissions than the rest of the region. The target assessment identified CARE communities as "highly impacted areas"; CARE communities are defined by BAAQMD as lower-income communities in the Bay Area with high levels of particulate emissions from roads and ports.

4. Reduce by 50% the number of injuries and fatalities from all collisions (including bike and pedestrian)

This target is adapted from the State's 2006 Strategic Highway Safety Plan and reflects core goals of improving safety and reducing driving. The target measures the total number of individuals injured or killed in traffic collisions, regardless of transport mode.

5. Increase the average daily time walking or biking per person for transportation by 70% (for an average of 15 minutes per person per day)

This target relates directly to U.S. Surgeon General's guidelines on physical activity, for the purposes of lowering risk of chronic disease and increasing life expectancy. The target results are based on the average time spent walking or biking on a typical weekday, only for transportation purposes (i.e. does not include recreational walking or biking).

6. Direct all non-agricultural development (100%) within the urban footprint (existing urban development and urban growth boundaries)

SB 375 requires consideration of open space and natural resource protection, which supports accommodating new housing and commercial development within existing areas of urban growth. The intent of this target is to support infill development while protecting the Bay Area's agriculture and open space lands. By focusing on areas with existing urban development, as well as areas specifically selected for future growth by local governments, the target seeks

to avoid both excess sprawl and elimination of key resource lands. The target results are based on the percentage of total housing units located within the year 2010 urban footprint (defined as existing areas of development, as well as areas within existing urban growth boundaries).

7. Decrease by 10% the share of low-income and lower-middle income residents' household income consumed by transportation and housing

This target aims to bring Bay Area housing and transportation costs in line with the national average, as the region's costs are currently significantly higher than the rest of the country. The target focuses on cost impacts for low-income and lower-middle income residents (with household income less than \$60,000 in year 2000 dollars).

8. Increase gross regional product (GRP) by 90% — an average annual growth rate of approximately 2% (in current dollars)

This target is a key indication of the region's commitment to advance Plan Bay Area in a manner that supports economic growth and competitiveness. Growth patterns and transportation investments in the scenarios affect travel time, cost and reliability. The Plan Bay Area Economic Impact Assessment, developed by consultant Cambridge Systematics, reflects on the cost of on-the-clock travel and access to labor, suppliers, and markets. Any resulting increases in productivity make the region more competitive for attracting new businesses and jobs; this increases employment and wages, which are also reflected in the GRP target.

9a. Increase non-auto mode share by 10%

Mode share can be interpreted as the percent of trips made by a particular travel mode (walk, bike, drive, etc.); this target reflects the Plan Bay Area goal of reducing trips made using automobiles. The target benefits from service and infrastructure improvements for the transit, bicycle, and pedestrian networks. The numeric target shown in the table reflects the resulting 10% mode share increase from the forecasted 2005 non-auto mode share of 16%. This updated target language has been proposed to replace the previously adopted non-auto travel time reduction target.

9b. Decrease automobile vehicle miles traveled per capita by 10%

Vehicle miles traveled (VMT) per capita reflect both the total number of auto trips and the average distance of auto trips; this target would be supported by increased transit service, more opportunities for active transportation, and reduced travel distances between origins and destinations. Given significant traffic congestion in the region, it is critical to reduce VMT per person. The target results are based on model output for total auto vehicle miles traveled and are adjusted based on the total population for the relevant scenario.

10a. Increase local road pavement condition index (PCI) to 75 or better

The Pavement Condition Index (PCI) reflects the quality of the roadway surface — the more cracks and potholes form, the lower the Pavement Condition Index. The target reflects a goal of reaching a state of good repair on local roadways, which form the backbone of the transportation network in Priority Development Areas (i.e. key areas for focused growth in the Plan).

10b. Decrease distressed lane-miles of state highways to less than 10% of total lane-miles

This target's performance is based on anticipated state funding for highway maintenance. The region must maintain the existing highway infrastructure in order to support the goals of Plan Bay Area.

10c. Reduce share of transit assets exceeding their useful life to 0%

This target reflects a goal of replacing all transit assets on-time (i.e. at the end of their useful life); failure to do so would result in unreliable transit service. As frequent, reliable transit service is critical to support focused growth, this target reflects the need to maintain existing transit service in a state of good repair. This updated target language has been proposed to replace the previously adopted average transit asset age target.

HOW WERE THE SCENARIOS DEFINED AND HOW DO THEY DIFFER?

In June 2011, MTC and ABAG approved five alternative Plan Bay Area land use and transportation scenarios for evaluation and testing to demonstrate how the region might achieve a set of performance targets for the environment, the economy and social equity (see inside for details).

These scenarios place varying degrees of growth in Priority Development Areas (PDAs), which are defined as land near public transit that local officials have determined to be most suitable for development. Likewise, the scenarios recognize Priority Conservation Areas, places local officials have deemed worth keeping undeveloped for farm land, parks or open space. The first two scenarios assume stronger economic growth and financial resources, along with a higher level of housing growth to meet forecasted demand. The remaining three scenarios fall somewhat short of meeting future housing demand but reflect input received from local jurisdictions on the level of growth they think can reasonably be accommodated.

SCENARIOS	LAND USE PATTERN	TRANSPORTATION NETWORK
1 Initial Vision	Housing and job growth is concentrated in the PDAs, based on local land use priorities, available transit service, and access to jobs. The scenario is based on input from local jurisdictions on the level of growth they can reasonably accommodate given resources, local plans, and community support. 70 percent of the housing would be accommodated in PDAs. More than half of job growth is expected to occur in the region's 10 largest cities.	Transportation 2035 Plan Network – Investment strategy in MTC's adopted long-range transportation plan.
2 Core Concentration	Housing and job growth is concentrated in locations that are served by frequent transit services and within a 45-minute transit commute of Oakland, San Francisco, and San Jose. Also identifies several "game changers," or places with capacity for a high level of growth if coupled with supportive policies and resources. These areas include the Tasman Corridor in Santa Clara County, lands east of Oakland Airport to the Coliseum, the Concord Naval Weapons Station, and the San Francisco Eastern Waterfront, among others. Overall, 72 percent of the housing and 61 percent of the job growth is expected within the PDAs.	Core Capacity Transit Network – Increases transit service frequency along the core transit network
3 Focused Growth	Distributes growth most evenly throughout the region's transit corridors and job centers, focusing most household and job growth within the PDAs. 70 percent of the housing production and around 55 percent of the employment growth would be accommodated within PDAs. Provides more housing near transit stations and more local services in existing downtown areas and neighborhood centers.	Core Capacity Transit Network – See description above.
4 Constrained Core Concentration	Places more household and job growth in those PDAs situated along several transit corridors ringing the Bay in San Francisco, San Mateo and Santa Clara counties, and in portions of Alameda and Contra Costa counties. Some 79 percent of the housing production and 58 percent of the employment growth would be accommodated within PDAs. By concentrating more growth in the major downtowns and along key transit corridors, this scenario goes even further than the Focused Growth scenario in trying to maximize the use of the core transit network and provide access to jobs and services to most of the population.	Core Capacity Transit Network – See description above.
5 Outward Growth	Closer to recent development trends, places more growth in the cities and PDAs in the inland areas away from the Bay than those considered in the Focused Growth or the Constrained Core Concentration scenarios. Most housing and employment growth would still be accommodated in areas closest to the Bay, but with clusters of jobs and housing in key transit-served locations in the inland areas away from the Bay. Some 67 percent of housing production and 53 percent of employment growth would be in PDAs. While increased use of public transit would be limited in inland areas, some shorter commutes could be expected as jobs are created closer to residential communities.	Transportation 2035 Plan Network – See description above.

Scenarios were assessed to determine their impacts on the Bay Area. This table shows how each scenario performs with regard to the adopted Plan Bay Area performance targets.

TARGETS ▼																
	CLIMATE PROTECTION 1 Reduce CO ₂ emissions per person from cars and light-duty trucks	ADEQUATE HOUSING 2 House projected regional growth	HEALTHY & SAFE COMMUNITIES 3a Reduce premature deaths from exposure to fine particulate emissions 3b Reduce coarse particulate emissions 3c Achieve greater particulate emissions reduction in highly-impacted areas					4 Reduce injuries and fatalities from all collisions	5 Increase the average daily time walking or biking per person	OPEN SPACE & AGRICULTURAL PRESERVATION 6 Direct new non-agricultural development within urban footprint	EQUITABLE ACCESS 7 Reduce housing and transportation costs as share of low-income households' budgets	ECONOMIC VITALITY 8 Increase Gross Regional Product (GRP)	TRANSPORTATION SYSTEM EFFECTIVENESS 9a** Increase non-auto mode share 9b Reduce vehicle miles traveled (VMT) per person 10a Improve local road pavement condition index (PCI) 10b Reduce share of distressed state highway lane-miles 10c** Reduce share of transit assets exceeding their useful life			
NUMERIC GOALS* ▶	-15%	100%	-10%	-30%	Yes	-50%	+70%	100%	-10%	+90%	26%	-10%	+19%	-63%	-100%	
SCENARIOS ▼	-15% ↔ 0	0 ↔ 100%	-40% ↔ 0	-30% ↔ 0		-50% ↔ +50%	0 ↔ 70%	0 ↔ 100%	-10% ↔ +10%	0 ↔ +140%	0 ↔ 26%	-10% ↔ 0	0 ↔ +19%	-63% ↔ +63%	-150% ↔ +150%	
1 Initial Vision	-8%	100%	-23%	-6%		+26%	+15%	98%	-4%	131%	19%	-6%	+5%	+30%	+138%	
2 Core Concentration	-8%	100%	-27%	-9%		+23%	+20%	92%	+8%	134%	20%	-6%	+5%	+30%	+138%	
3 Focused Growth	-9%	98%	-32%	-13%		+19%	+14%	92%	+9%	113%	19%	-6%	+5%	+30%	+138%	
4 Constrained Core Concentration	-9%	98%	-32%	-13%		+18%	+15%	92%	+9%	113%	19%	-7%	+5%	+30%	+138%	
5 Outward Growth	-8%	98%	-31%	-11%		+20%	+10%	90%	+9%	113%	18%	-5%	+5%	+30%	+138%	

* Percent changes reflect differences between 2005 and 2035 conditions.

** Alternate target used.

Target results shown with white stripes signify that result is going in the wrong direction with respect to the adopted target.

EQUITY ANALYSIS OVERVIEW

TECHNICAL NOTES

Five equity performance measures were analyzed for each of the five Alternative Scenarios as well as the Base Year of 2005, based on key regional equity concerns identified by the Regional Equity Working Group: Affordability, Growing Equitably, Healthy Communities, Equitable Mobility, and Jobs-Housing Connections.

Communities of Concern were identified where there are currently multiple overlapping populations of concern related to transportation, housing, and land use: minority residents, low-income residents, people who don't speak English well or at all, households with no car, seniors 75 and over, people with disabilities, single-parent households, and over-burdened renters. Most of the region's communities of concern lie in the region's urban core, but there are also communities of concern located in suburban areas around the region.

Low-income households earning less than \$38,000 (in 2010 dollars) were compared to households earning more than that amount for the affordability performance measure.

HOUSING AND TRANSPORTATION AFFORDABILITY

This measure is the combined cost of housing and transportation for a household as a share of income by income level. Low income households spend a far greater share of their incomes on these costs than do higher income households. Housing costs reflect base-year Census Bureau data on share of income spent on housing costs by income group and forecast to 2035 based on regional income forecasts. Transportation costs are estimated by MTC's travel model and take into account auto ownership by income level as well as the costs associated with the amount and type of daily travel by both auto and transit.

DISPLACEMENT RISK

This metric identifies households currently considered "over-burdened renters" and relates these households' location to areas of proposed growth in the Alternative Scenarios. In a given area, if more than 15 percent of the housing units are occupied by renters who pay more than 50 percent of their income for housing (which is the definition of "over-burdened renters" used to help define communities of concern), and the projected growth in that area is more

than 30 percent above current conditions (the lowest average amount of growth across the region in the five scenarios), the over-burdened households in that area are considered at risk for displacement. Results are shown as a share of today's cost-burdened renters whose neighborhoods would see greater-than-average growth under the different scenarios.

VMT DENSITY

Calculating this measure relies on identifying affected roadways, such as those carrying 10,000 or more vehicles per day, and identifying areas of developed land near these heavily used roadways to include areas of residential, commercial, or industrial land within 1,000 feet of the centerline of the selected roadways. This calculation methodology is consistent with the Bay Area Air Quality Management District's (BAAQMD) "Recommended Methods for Screening and Modeling Local Risks and Hazards" (May 2011, version 2.0) as part of their California Environmental Quality Act (CEQA) review guidance for proposed land use projects.

The vehicle-miles of travel (VMT) for each affected roadway are forecasted using MTC's travel model across different scenarios.

NON-COMMUTE TRAVEL TIME

"Non-commute" travel defined for the purposes of this analysis includes travel not associated with a trip involving work or school. For example, going to the grocery store and back home would be included in this definition. These trip purposes include such activities as shopping, recreation, social visits, escorting others, eating out, and "other" trips. Results are extracted from MTC's travel model based on residential location across all scenarios and averaged for communities of concern and the remainder of the region.

COMMUTE TIME

This measure provides average travel time per trip for commute trips by all modes, based on the location of a worker's residence and place of work. Commute travel time is analyzed separately because travel time between home and work generally provides an indication of the proximity of jobs and housing for different socioeconomic groups. Results are extracted from MTC's travel model across all scenarios and then averaged for communities of concern and the remainder of the region.

The Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) conducted an Equity Analysis of alternative scenarios to help answer questions such as:

- What are the differences in the region for Communities of Concern now and looking into the future?
- Do the alternative scenarios improve conditions for identified Communities of Concern relative to the base year (2005)?
- Which scenario(s) provide similar or better results for the Bay Area's Communities of Concern compared to the rest of the region?

Five equity performance measures were analyzed for the five alternative scenarios selected by ABAG and MTC, as well as for a base year of 2005, and results produced for the region's identified communities of concern and for the remainder of the region in order to compare average results between the two types of communities

Results across the scenarios did not vary greatly; however, some results indicate challenges that may need to be addressed with additional policies and strategies not analyzed in any of the alternatives.



Scenarios were assessed for equity based on five measures chosen to reflect key regional equity issues. This table shows how each scenario performs for both the region's communities of concern and the rest of the region.

MEASURES ▼										
	1 HOUSING AND TRANSPORTATION AFFORDABILITY Share of income spent on housing and transportation costs <i>Households less than \$38K/year (2010\$)</i> <i>Households more than \$38K/year (2010\$)</i>		2 DISPLACEMENT RISK Share of today's overburdened-renter households at risk for displacement based on future growth patterns <i>Communities of Concern</i> <i>Remainder of Region</i>		3 VMT DENSITY Average daily miles of vehicle travel per square kilometer in residential and commercial areas near major roadways* <i>Communities of Concern</i> <i>Remainder of Region</i>		4 NON-COMMUTE TRAVEL TIME Average travel time in minutes for shopping, visiting, recreation, etc. <i>Communities of Concern</i> <i>Remainder of Region</i>		5 COMMUTE TIME Average commute travel time in minutes <i>Communities of Concern</i> <i>Remainder of Region</i>	
BASE YEAR ►	77%	41%	n/a	n/a	n/a	n/a	12.2	12.5	25.4	27.1
SCENARIOS ▼	10% ---- 100%	10% ---- 100%	0% ----- 50%	0% ----- 50%	0 ----- 3,200	0 ----- 3,200	0 ----- 15	0 ----- 15	0 ----- 30	0 ----- 30
1 Initial Vision	77%**	43%	38%	10%	2,900	1,000	12.8	13.1	28.5	28.7
2 Core Concentration	84%	44%	40%	10%	3,100	1,000	12.9	13.1	27.6	28.7
3 Focused Growth	85%	44%	35%	7%	2,900	1,000	12.7	12.9	27.3	27.7
4 Constrained Core Concentration	85%	44%	35%	7%	3,000	1,000	12.7	12.9	27.4	27.8
5 Outward Growth	85%	44%	30%	7%	2,800	1,100	12.5	12.8	27.3	27.8

* The location of "major roadways" is based on 2035 network volumes, so a base year comparison is not provided.

** ABAG revised the regional income forecast after completing the Initial Vision Scenario. Scenarios 2-5 have a greater number and share of low income households.

DATE: January 24, 2012
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Hayward Municipal Election – June 5, 2012

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) calling for and ordering a General Municipal Election on June 5, 2012; and requesting the Alameda County Board of Supervisors to authorize reimbursable services from the Registrar of Voters.

DISCUSSION

The Hayward General Municipal Election will be conducted on June 5, 2012, for the purpose of electing four Council Members for terms of four years each. The first day for issuing nomination papers is Tuesday, February 14, 2012, and the last day is Friday, March 9, 2012, at 5:00 p.m. If an incumbent decides not to seek re-election, the nomination period extends to Wednesday, March 14, 2012. The ballot placement listing will be determined on March 15, 2012. The General Municipal Election Calendar (Attachment II) provides a list of pertinent dates for the election.

The City of Hayward has been consolidating its municipal elections with the California State Primary since 1996. As provided by statute, the Council may request the consolidation from the Alameda County Board of Supervisors and request that services be provided by the Registrar of Voters. The Registrar will provide the following services: verify signatures on nomination papers; prepare and supply indices to precinct information; provide voter registration information; assist in election services as required in the conduct of this election; and provide services to complete the canvass of returns. With this consolidation, the City's sample ballot and optional candidate statements will be incorporated into the Alameda County Voter Pamphlet.

It is recommended that the 200-word limit be maintained on the optional candidate statement as in the past, and that the costs of printing and translating to Spanish, Chinese, Tagalog, and Vietnamese be assessed to the candidate. The candidate statement cost is approximately \$2,200. The final cost will be adjusted by the Alameda County Registrar of Voters after the final cost for election services provided is determined.

The 2012 Consumer Price Index adjustment for the City's Campaign Voluntary Expenditure Limit has been calculated to be \$61,326. The Hayward Municipal Code Section 2-13.02(c), states that if a candidate accepts the voluntary expenditure limit for his or her campaign, then s/he is entitled to accept the established \$1,000 contribution limit, now adjusted to \$1,203 per contributor. If a candidate rejects the voluntary expenditure limit, then the contribution limit is \$297 per contributor. During the election cycle, campaign disclosure documents for all candidates will be posted on the City's website within forty-eight hours of receipt, as individual addresses will need to be redacted from the reports.

FISCAL IMPACT

The budget for the consolidation of Hayward's General Municipal Election is \$180,000, which is included in the current budget for the City Clerk's Office.

PUBLIC CONTACT

Information regarding the election is available on the City's website at <http://www.hayward-ca.gov/departments/cityclerk/Elections060512.shtm>

The call and notice of the Hayward Municipal Election will be published in the Hayward Daily Review on Tuesday, January 31, 2012.

NEXT STEPS

The General Municipal Election Calendar 2012 provides important dates for the election. The tentative date for the official canvass of the Hayward Municipal Election and installation of the four Council Members is scheduled for July 10, 2012.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution for Municipal Election 2012
- Attachment II General Municipal Election Calendar

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD CALLING FOR A GENERAL MUNICIPAL ELECTION AND REQUESTING THE BOARD OF SUPERVISORS OF ALAMEDA COUNTY TO PROVIDE FOR THE CONSOLIDATION OF A GENERAL MUNICIPAL ELECTION OF THE CITY OF HAYWARD WITH THE STATE OF CALIFORNIA PRIMARY ELECTION TO BE HELD ON JUNE 5, 2012, FOR THE PURPOSE OF ELECTING FOUR MEMBERS OF THE CITY COUNCIL FOR TERMS OF FOUR YEARS

WHEREAS, the City Council of the City of Hayward called a General Municipal Election to be held on June 5, 2012, for the purpose of electing a four Members of the City Council for terms of four years; and

WHEREAS, a State of California Statewide Primary Election will be held on Tuesday, June 5, 2012; and

WHEREAS, the voters of Hayward have elected to consolidate the City of Hayward General Municipal Election with the State of California Primary Election, utilizing the same precincts, polling places, and election officers.

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

1. Order a call for a General Municipal Election for the purpose of electing four Members of the City Council as set forth above.
2. The Board of Supervisors of Alameda County is hereby requested to order the consolidation of the General Municipal Election of the City of Hayward with the State Primary to be held on Tuesday, June 5, 2012, insofar as the City is concerned, and to further provide that within the territory affected by said order of consolidation, to wit, the City of Hayward, the election precincts, polling places, and voting booths shall in every case be the same and there shall be only one set of election officers in each of said precincts, and to further provide that the candidates for the City Council hereinabove set forth shall be set forth in the form of ballot to be used at the State Primary Election



GENERAL MUNICIPAL ELECTION CALENDAR
Tuesday, June 5, 2012

DAYS PRIOR TO ELECTION	DATE	ACTION TAKEN	CODE SECTION
113 88	February 13, 2012 - March 9, 2012	Filing Period - Candidate nomination papers to be obtained and filed during this period. <i>(City Hall closed on Monday, February 13, 2012- Lincoln's Birthday)</i>	EC 10220
88	March 9, 2012	Last day for the City to request election services/consolidation from the Alameda County Board of Supervisors.	EC 10002
87 83	March 10, 2012 - March 14, 2012	Extended candidate filing period. Filing is extended if an incumbent eligible for re-election does not file for re-election prior to 5:00 p.m., March 9, 2012. Incumbents are not eligible to file during the extended period.	EC 10225
82	March 15, 2012	Random Alpha Drawing by Secretary of State. It is conducted to determine the order in which candidate names will appear on the ballot.	EC 13112
75	March 22, 2012	First Pre-Election Campaign Statement due.	GC 84200.7
57 14	April 9, 2012 - May 22, 2012	Filing period for Write-In Candidates.	EC 8601
40 21	April 26, 2012 - May 15, 2012	Voter Information and Sample Ballot Pamphlet mailing period.	EC 13303-04, 13306
29 7	May 7, 2012 - May 29, 2012	Vote-By-Mail (VBM) ballots may be obtained between these dates. After May 29, 2012, VBM ballots may be obtained at the Registrar of Voter's office.	EC 3001
15	May 21, 2012	Last day to register to vote.	EC 2102, 2107
12	May 24, 2012	Second Pre-Election Campaign Statement due.	GC 84200.7
0	June 5, 2012	Election Day – Polls open at 7:00 a.m. and close at 8:00 p.m.	EC 1000
28	July 3, 2012	Last day for County to certify election results.	EC 15372
35	July 10, 2012	Council to adopt and certify election results.	EC 10262- 10263

EC = California Elections Code
GC = California Government Code
<http://www.leginfo.ca.gov/calaw.html>

DATE: January 24, 2012

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: First Amendment to Debt Service Reserve Forward Delivery Agreement:
2002 Association of Bay Area Governments (ABAG) Lease Revenue Bonds

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to execute the proposed First Amendment to the Debt Service Reserve Forward Delivery Agreement related to the 2002 ABAG Lease Revenue Bonds issuance.

BACKGROUND

In 2002, the City of Hayward (the “City”) was a participant in the issuance by the Association of Bay Area Governments of its \$14,355,000 Lease Revenue Bonds (California Capital Projects), Series 2001-2. The debt was issued to finance equipment, street lights, facility needs and to payoff prior obligations from 1992/1994 bonds related to the purchase and lease of property. Currently, the budgeted debt expense is \$86,033 per year, and is part of the 2012 budget. The total balance is a little over \$1.4 million.

In connection with the Bonds, the City of Hayward, together with the other original participating cities (Grass Valley, Solano Beach, and South Lake Tahoe), entered into a debt service reserve fund forward agreement, where the provider advanced moneys to the cities at the time of the Bond closing and the provider was provided with the right to receive investment earnings on the reserve fund.

DISCUSSION

On October 18, 2011, the City took action to approve a First Amendment to the Agreement that bond counsel (Quint & Timming) had drafted in early 2011 to correct an erroneous Exhibit D to the Agreement. However, while the City of Hayward took action on this amendment draft, because it did not include the necessary provisions to remove the Cities of South Lake Tahoe and Solano Beach from the agreement, it was never effective (neither the Trustee nor the Provider executed that version).

The City is now being asked to execute a revised First Amendment that includes the removal of the Cities of South Lake Tahoe and Solano Beach from the agreement, since they have matured or refunded their bond debt, as well as including the correct Exhibit D to the Agreement.

The erroneous exhibit attached to the Agreement relates to the timing of the return, or credit, of each city's portion of the reserve fund when its portion of the Bonds is fully paid. The reserve is established when the debt is issued, and gradually as the balance is paid down, is returned to the City. The original schedule was incorrect beginning in the year 2011 through the end of the obligation. There is no change in the total amount returned to the city. This exhibit is further amended to exclude the Cities of South Lake Tahoe and Solano Beach.

As a party to the Agreement, it is necessary for the City of Hayward City Council to approve the First Amendment via resolution, and authorize the City Manager to sign and approve the amendment to the 2002 Agreement (Attachment II).

FISCAL IMPACT

There is no fiscal impact as a result of authorizing this amendment, and there are no legal or changes in the payment schedule or total amount of the debt service.

NEXT STEPS

Approve the resolution, and authorize the City Manager to complete the amendment to the 2002 Agreement.

Prepared and Recommended by: Tracy Vesely, Director of Finance

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution Authorizing the City Clerk to complete the amendment to the 2002 Agreement.
- Attachment II: Amendment to the 2002 Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE FORM AND AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO THAT CERTAIN DEBT SERVICE RESERVE FORWARD DELIVERY AGREEMENT, DATED AS OF JANUARY 10, 2002, BY AND AMONG THE CITY, THE CITIES OF GRASS VALLEY, SOLANA BEACH AND SOUTH LAKE TAHOE, WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE, AND FIRST UNION NATIONAL BANK, AS PROVIDER, IN CONNECTION WITH THE ISSUANCE BY THE ASSOCIATION OF BAY AREA GOVERNMENTS OF ITS \$14,355,000 LEASE REVENUE BONDS (CALIFORNIA CAPITAL PROJECTS) SERIES 2001-2, ISSUED IN PART TO FINANCE CAPITAL PROJECTS FOR THE CITY, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

BE IT RESOLVED, by the City Council (the "Council") of the City of Hayward (the "City"), as follows:

WHEREAS, the City, the Cities of Grass Valley, Solana Beach and South Lake Tahoe, Wells Fargo Bank, National Association, as trustee, and First Union National Bank (since succeeded by Wells Fargo Bank, National Association), as provider, have heretofore entered into a Debt Service Reserve Forward Delivery Agreement, dated as of January 10, 2002 (the "2002 Agreement"), in connection with the issuance by the Association of Bay Area Governments of its \$14,355,000 Lease Revenue Bonds (California Capital Projects) Series 2001-2(the "Bonds"), issued in part to finance capital projects for the City; and

WHEREAS, the Bonds with respect to the City of South Lake Tahoe have matured; and

WHEREAS, the Bonds with respect to the City of Solana Beach are being refunded; and

WHEREAS, the Participants, the Trustee and the Provider wish to amend the provisions of the Original Agreement as herein provided for the purpose of (1) terminating the portion of the Original Agreement relating to the portion of the Bonds related to the City of South Lake Tahoe and the City of Solana Beach and (2) continuing the portion of the Original Agreement relating to the portion of the Bonds related to the City of Grass Valley and the City of Hayward; and

WHEREAS, it has been determined that it is necessary to amend the 2002 Agreement to correct an erroneous Exhibit D attached thereto and to insure that each affected city receives credit for its respective share of the reserve fund when its portion of the Bonds is fully paid; and

WHEREAS, it is necessary that the City, as a party to the 2002 Agreement, approve such amendment; and

WHEREAS, the approval of the amendment to the 2002 Agreement and the execution thereof will impose no costs or liabilities upon the City.

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

Section 1. An amendment to the 2002 Agreement, in the form on file with the City Clerk, be and is hereby approved, and the Mayor, the City Manager and the Finance Director, or the designee of any such official, are hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official, and the City Clerk is hereby authorized and directed to attest to such official's signature.

Section 2. The Mayor, the City Manager, the Finance Director, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution.

Section 3. The City Clerk shall certify to the passage and adoption of this Resolution, which shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

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

**FIRST AMENDMENT TO DEBT SERVICE RESERVE
FORWARD DELIVERY AGREEMENT**

THIS FIRST AMENDMENT TO DEBT SERVICE RESERVE FORWARD DELIVERY AGREEMENT (the “First Amendment”) effective as of November 14, 2011 (the “Effective Date”) is entered into by and among **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as trustee (the “Trustee”), **CITIES OF GRASS VALLEY, HAYWARD, SOLANA BEACH AND SOUTH LAKE TAHOE**, collectively as Participants (each a “Participant” and collectively, the “Participants”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, successor in interest to Wachovia Bank, National Association and First Union National Bank, as provider (the “Provider”).

WITNESSETH:

WHEREAS, the Participants, the Trustee and the Provider have previously entered into the Debt Service Reserve Forward Delivery Agreement dated as of January 10, 2002 (the “Original Agreement”) respecting the Association of Bay Area Governments Lease Revenue Bonds (California Capital Projects) Series 2001-2 (the “Bonds”) issued to finance capital projects for the Participants;

WHEREAS, the Bonds with respect to the City of South Lake Tahoe have matured;

WHEREAS, the Bonds with respect to the City of Solana Beach are being refunded;

WHEREAS, the Participants, the Trustee and the Provider wish to amend the provisions of the Original Agreement as herein provided for the purpose of (1) terminating the portion of the Original Agreement relating to the portion of the Bonds related to the City of South Lake Tahoe and the City of Solana Beach and (2) continuing the portion of the Original Agreement relating to the portion of the Bonds related to the City of Grass Valley and the City of Hayward.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

INTENTION OF PARTIES, AGREEMENT PROVISIONS

The Participants, the Provider and the Trustee have entered into this First Amendment pursuant to Section 9.05 of the Original Agreement to amend their rights and obligations set forth in the Original Agreement. The terms of the Original Agreement, as amended by this First Amendment (as so amended, the “Agreement”), shall govern the rights and obligations of the Participants, the Provider and the Trustee in connection with the transactions contemplated by the Agreement. Capitalized terms used but not defined in this First Amendment shall have the respective meanings assigned thereto in the Original Agreement.

ARTICLE II
AMENDMENTS

Section 2.01. Amendments to Definitions. The Original Agreement shall be amended as follows:

(a) The Original Agreement shall be amended by deleting the definition of Participants in its entirety and in place thereof inserting the following and all references in the Original Agreement to the City of Solana Beach and/or the City of South Lake Tahoe as Participants shall be disregarded:

“*Participants*” means, collectively, the Cities of Grass Valley and Hayward, each a city duly organized and validly existing under the laws of the State of California, and its successors.

(b) The Original Agreement shall be amended by deleting the definition of Qualified Dealer in its entirety and in place thereof inserting the following:

“*Qualified Dealer*” means Wells Fargo Securities LLC, or its successors or assigns, or any other dealer in Eligible Securities selected by the Provider.

Section 2.02. Amendment to Section 9.01. Section 9.01 to the Original Agreement is hereby amended by deleting such section and replacing it with the following:

Section 9.01. Notices and Delivery Instructions. All notices, demands or other communications hereunder shall be given or made in writing and shall be delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, or overnight delivery service or facsimile to the party to whom they are directed at the following addresses, or facsimile numbers or at such other addresses or facsimile numbers as may be designated by notice from such party to all other parties:

To the Provider: Wells Fargo Bank, N.A.
CIB Group
301 South College Street, DC08
Charlotte, NC 28288-0601
Attention: Mr. Austin Fenn
Telephone: (704) 715-9758
Facsimile: (704) 383-3986

Wells Fargo Bank, N.A.
CIB Group
One Wachovia Center
301 South College Street, DC 8
Charlotte, NC 28288-0600
Attention: Mr. Ed Sprague
Director
Telephone: (704) 383-5485

Delivery: BK of NYC/FUNBBT
ABA #: 021000018

Payments to Provider: Wells Fargo Bank, NA
ABA#: 121000248
Acct: 01014890064228
Ref: ABAG 2002

Provider Settlements: Municipal Support
Telephone: (704) 383-9408 or (704) 374-2146
Facsimile: (704) 715-1982 or (704) 383-9139

US Government and Agency Issues:
Fed Book Entry
ABA 021000018
Bk of NYC/FUNBBT

Mortgage Backed Securities:
Bk of NYC/FUNBTMBS
ABA 021000018

DTC Book Entry
Participant: 2072
Agent Bank: 52196
Institutional ID: 52196

Physical:
The Bank of New York
1 Wall Street
3rd Floor-Window B
ASP# 117629

Global Instructions: CEDEL No. 86013

To the Trustee: Wells Fargo Bank, N.A.
Corporate Trust Services
MAC No. A0119-181
333 Market Street, 18th Floor
San Francisco, CA 94105
Attention: Bakul Mehta
Telephone: (415) 371-3355
Facsimile: (415) 371-3400

[WIRE INSTRUCTIONS FOR FEE AMOUNT]

Bank: Wells Fargo Bank Minnesota, N.A.
ABA: 091-000-019
BNFA: 0001038377
BNF: Wells Fargo Trust Clearing
OBI: FFC to Account #12135700 – ABAG 2001-2 BOND
PROCEEDS ACCT

[WIRE INSTRUCTIONS FOR CASH DELIVERIES OTHER
THAN THE FEE AMOUNT]

Wells Fargo Bank Minnesota, N.A.
ABA #: 091-000-019
Account: 0001038377
Name: Wells Fargo Trust Clearing
Ref.: ABAG 2001-2 Capital Proj
Account: 121357
Attention: FFC TO AC #12135702 Grass Valley Reserve Ac /
Ac. 12135705 Hayward Reserve Ac
Attn: Bakul Mehta/Grace Lee

[FOR DELIVERY OF BOOK ENTRY GOVERNMENT
OBLIGATIONS]

Minneapolis Fed:
WF MPLS/TRUST
ABA 091-000-019
Account 1818-7 Trust Clearing

[FOR DELIVERY OF DTC-ELIGIBLE SECURITIES]

Depository Trust Company (DTC):
DTC Number: 2027
Account Number: 94866
Institution Number: 94866

[FOR DELIVERY OF PTC-ELIGIBLE SECURITIES]

Participants Trust Company (PTC):
NORWST

Issuer's Tax Payer
ID #: 94-2832478

To the Participants: City of Grass Valley
125 East Main Street
Grass Valley, CA 95945
Attention: Ms. Maryanne Hoffler, Accounting Supervisor
Telephone: (530) 274-4712
Facsimile: (530) 274-4399

City of Hayward
777 B Street, 3rd Floor
Hayward, CA 94541
Attention: Ms. Tracy Vesely
Telephone: (510) 583-4010
Facsimile: (510) 583-3645

To the Bond Insurer: Ambac Assurance Corporation
One State Street Plaza
New York, NY 10004
Attention: Ms. Susanne Amodeo
Telephone: (212) 208-3268
Facsimile: (212) 480-3682

Any notice, demand or other communication given in a manner prescribed in this Section shall be deemed to have been delivered on receipt.

Section 2.03. Amendment to Exhibit D. Exhibit D to the Original Agreement is hereby deleted in its entirety and replaced by Exhibit D attached hereto; and all references in the Original Agreement to Exhibit D shall be references to Exhibit D as hereby amended.

ARTICLE III

FULL FORCE AND EFFECT

The Original Agreement is hereby amended to the extent provided in this First Amendment and, except as specifically provided herein, the Original Agreement shall remain in full force and effect in accordance with its terms.

ARTICLE IV

GOVERNING LAW

THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS FIRST AMENDMENT SHALL BE GOVERNED AS PROVIDED IN SECTION 9.11 OF THE ORIGINAL AGREEMENT.

ARTICLE V

HEADINGS

Section headings in this First Amendment are included herein for convenience of reference only and shall not have any effect for purposes of interpretation or construction of the terms of this First Amendment.

ARTICLE VI

COUNTERPARTS

This First Amendment may be signed in any number of counterpart copies, but all such copies shall constitute one and the same instrument.

ARTICLE VII

REPRESENTATIONS

Each party hereto hereby represents and warrants to the other that this First Amendment has been duly authorized and validly executed by it and that the Agreement as hereby amended constitutes its valid obligation enforceable in accordance with its terms. The representations and warranties contained in the Original Agreement are hereby remade by each party hereto as of the Effective Date. For the avoidance of doubt, all references in such representations and warranties to defined terms shall be deemed to refer to such terms as defined in the Original Agreement, as amended by this First Amendment.

ARTICLE VIII

CLOSING CONDITIONS

Section 8.01. The parties hereto agree that this First Amendment shall become effective only upon the occurrence of each of the following conditions:

- (a) delivery to the Provider and the Participants of an executed original opinion of counsel to the Trustee, in the form of Exhibit A;
- (b) delivery to the Provider and the Trustee of an executed original opinion of counsel to the Participants, in the form of Exhibit B;
- (c) delivery to the Provider of a resolution or resolutions from the Cities of Grass Valley, Hayward, Solana Beach and South Lake Tahoe pursuant to which each Participant is authorized to enter into this First Amendment; and
- (d) payment by the Provider to the Trustee a fee of \$8,500 on November 14, 2011 in connection with the termination of the portion of the Original Agreement relating to the portion of the Bonds related to the City of South Lake Tahoe and payment by the Provider to the Trustee a fee of \$4,800 on November 14, 2011 in connection with the

Section 8.02. Post Closing Conditions. In the event that the Provider elects to close this First Amendment without requiring that all of the conditions set forth in Section 8.01 be satisfied, the Participants covenant and agree that they shall cause all such unsatisfied conditions to be satisfied and cause all original executed signature pages to this First Amendment to be delivered to the Provider within three Business Days of the Effective Date. In the event that all such documents are not received by the Provider within three Business Days of the Effective Date, the Participants shall pay, on demand, the fees and expenses of counsel to the Provider incurred in connection with the satisfaction of this Section 8.02.

ARTICLE IX

FEES

The Provider hereby agrees to pay to the Trustee a fee of \$8,500 on November 14, 2011 in connection with the termination of the portion of the Original Agreement relating to the portion of the Bonds related to the City of South Lake Tahoe. The fee shall be paid to the following account of the Trustee:

BANK: WELLS FARGO BANK, N.A.
 ABA: 121000248
 BNF AC: 0001038377
 BNF NAME: WELLS FARGO TRUST CLEARING
 OBI: FFC TO AC #12135712 SOUTH LAKE TAHOE RESV.AC
 ATTN: BAKUL MEHTA/GRACE LEE

The Provider hereby agrees to pay to the Trustee a fee of \$4,800 on November 14, 2011 in connection with the termination of the portion of the Original Agreement relating to the portion of the Bonds related to the City of Solana Beach . The fee shall be paid to the following account of the Trustee:

BANK: WELLS FARGO BANK, N.A.
 ABA: 121000248
 BNF AC: 0001038377
 BNF NAME: WELLS FARGO TRUST CLEARING
 OBI: FFC TO AC #12135709 SOLANA BEACH RESERVE FD
 ATTN: BAKUL MEHTA/GRACE LEE

ARTICLE X

RELEASE OF CITY OF SOUTH LAKE TAHOE AND CITY OF SOLANA BEACH

Upon the execution and delivery of this First Amendment by all the parties hereto and the written consent of the Bond Insurer, the Cities of South Lake Tahoe and Solana Beach shall be released from their rights, duties and obligations under the Agreement and shall have no further rights, duties or obligations thereunder. The Cities of Grass Valley and Hayward hereby confirm

their obligations in Section 9.13 of the Original Agreement that the payment of Termination Amount and/or Loss by the Participants under the Original Agreement, as amended by this First Amendment, shall be a joint and several obligation of the City of Grass Valley and the City of Hayward.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed and delivered as of the date and year first written above.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Provider

By _____
Name _____
Title _____

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee

By _____
Name _____
Title _____

CITY OF GRASS VALLEY

By _____
Name _____
Title _____

CITY OF SOUTH LAKE TAHOE

By _____
Name _____
Title _____

[Signatures continued on following page]

CITY OF HAYWARD

By _____
Name _____
Title _____

CITY OF SOLANA BEACH

By _____
Name _____
Title _____

Consented to:

AMBAC ASSURANCE CORPORATION,
as Bond Insurer

By _____
Name _____
Title _____

EXHIBIT A

OPINION OF COUNSEL TO TRUSTEE

[LETTERHEAD OF COUNSEL TO TRUSTEE]

November 14, 2011

City of Grass Valley
125 East Main Street
Grass Valley, CA 95945

City of Hayward
777 B Street
Hayward, CA 94541

City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

City of South Lake Tahoe
1901 Airport Road, Suite 210
South Lake Tahoe, CA 96150

Wells Fargo Bank, National Association
CIB Group
One Wachovia Center
301 South College Street
Charlotte, NC 28288-0601

Association of Bay Area Governments
Lease Revenue Bonds
(California Capital Projects)
Series 2001-2

Ladies and Gentlemen:

We have acted as counsel to Wells Fargo Bank, National Association (the “Trustee”) in connection with the execution and delivery by the Trustee of the First Amendment to Debt Service Reserve Forward Delivery Agreement, dated as of November 14, 2011 (the “First Amendment”), by and among the Trustee, the Cities of Grass Valley, Hayward, Solana Beach and South Lake Tahoe (collectively, the “Participants”) and Wells Fargo Bank, National Association, successor in interest to Wachovia Bank, National Association and First Union National Bank (the “Provider”) with respect to that Debt Service Reserve Forward Delivery Agreement dated as of January 10, 2002 (the “Original Agreement”) by and among the Participants, the Trustee and the Provider. Capitalized terms used herein and not defined herein have the respective meanings given to them in the First Amendment.

In connection with the rendering of this opinion, we have examined the Original Agreement, the First Amendment, the Financing Documents and such other documents, records, certificates and instruments as we have deemed necessary in connection with the rendering of

this opinion (such documents are collectively referred to herein as the “Documents”). In such examination we have assumed, without any independent investigation or inquiry on our part: (i) the genuineness of all signatures (other than those of the Trustee) on each of the Documents; (ii) the legal capacity of all natural persons who have signed the Documents; (iii) the authenticity of all Documents submitted to us as originals, the conformity to the original documents of all Documents submitted to us as certified, facsimile or photostatic copies or in electronic form and the authenticity of the originals of all such Documents; (iv) that each of the parties (other than the Trustee) to the Documents has been duly formed and organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or establishment; (v) that each of the parties (other than the Trustee) to the Documents (A) has duly authorized, executed and delivered such Documents, (B) has all requisite power and authority to enter into and perform its respective obligations under such Documents and (C) has obtained, secured or made all consents and approvals of, notice to, or registrations required with or by any governmental authorities, agencies or instrumentalities in connection with its execution, delivery and performance of, the Documents to which it is a party; (vi) the execution, delivery and performance by each of the parties (other than the Trustee) of such Documents to which it is a party will not contravene any provision of such party’s articles of incorporation, by-laws, articles of organization, operating agreement, certificate of formation, limited liability company agreement or other governing instrument; and (vii) that there are no other agreements or understandings among the parties to such Documents, written or oral, and there is no usage of trade or course of prior dealings among the parties thereto that would, in any case, define, supplement, alter or qualify the terms of such Documents. As to all matters of fact we have relied in good faith on certificates and other statements of public officials and officers and other representatives of the Trustee, and we have made no inquiries to establish or verify these or any other facts material to this opinion.

In giving the opinions expressed below we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State of California (the “State”). We express no opinion as to the validity or enforceability of any choice of law, choice of forum or waiver provision contained in the Original Agreement or the First Amendment. We express no opinion as to the availability of equitable remedies to persons seeking to enforce the obligations of the Trustee under the Original Agreement, as amended by the First Amendment.

Based upon the foregoing examination and review, we are of the opinion that:

(a) The Trustee has full legal right, power and authority to enter into the First Amendment.

(b) The First Amendment has been duly authorized, executed and delivered by the Trustee.

(c) Assuming for purposes of the opinion expressed in this paragraph (c) that the Original Agreement and the First Amendment were governed by and construed in accordance with the law of the State, the Original Agreement, as amended by the First Amendment, is a legal, valid and binding obligation of the Trustee, enforceable against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency and

similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(d) The execution and delivery by the Trustee of the First Amendment and the performance of its obligations under the Original Agreement, as amended by the First Amendment, do not and will not conflict with or constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under, its charter or bylaws, or the Financing Documents or any other agreement, instrument, judgment, injunction or order applicable to it or any of its property.

We are furnishing this opinion to you solely for your benefit and no other person is entitled to rely hereon. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose. This opinion is given as of the date hereof and we expressly disclaim any responsibility to update this opinion or advise you of any changes of law, facts or circumstances of any kind that may occur after the date hereof which might affect the opinion expressed herein.

Very truly yours,

EXHIBIT B

OPINION OF COUNSEL TO PARTICIPANTS

[LETTERHEAD OF COUNSEL TO PARTICIPANTS]

November 14, 2011

Wells Fargo Bank, National Association, as Trustee
Suite 2530
120 Kearney Street
San Francisco, CA 94104

Wells Fargo Bank, National Association
CIB Group
One Wachovia Center
301 South College Street
Charlotte, NC 28288-0601

Association of Bay Area Governments
Lease Revenue Bonds
(California Capital Projects)
Series 2001-2

Ladies and Gentlemen:

We have acted as counsel to the Cities of Grass Valley, Hayward, Solana Beach and South Lake Tahoe (collectively, the “Participants”) in connection with its execution and delivery of the First Amendment to Debt Service Reserve Forward Delivery Agreement, dated as of November 14, 2011 (the “First Amendment”), by and among the Participants, Wells Fargo Bank, National Association (the “Trustee”) and Wells Fargo Bank, National Association, successor in interest to Wachovia Bank, National Association and First Union National Bank (the “Provider”) with respect to the Debt Service Reserve Forward Delivery Agreement dated as of January 10, 2002 by and among the Participants, the Trustee and the Provider (the “Original Agreement”). Capitalized terms used herein and not defined herein have the respective meanings given to them in the First Amendment.

In connection with the rendering of this opinion, we have examined the Original Agreement, the First Amendment, the Financing Documents and such other documents, records, certificates and instruments as we have deemed necessary in connection with the rendering of this opinion (such documents are collectively referred to herein as the “Documents”). In such examination we have assumed, without any independent investigation or inquiry on our part: (i) the genuineness of all signatures (other than those of the Participants) on each of the Documents; (ii) the legal capacity of all natural persons who have signed the Documents; (iii) the authenticity of all Documents submitted to us as originals, the conformity to the original

documents of all Documents submitted to us as certified, facsimile or photostatic copies or in electronic form and the authenticity of the originals of all such Documents; (iv) that each of the parties (other than the Participants) to the Documents has been duly formed and organized and is validly existing and in good standing under the laws of the jurisdiction of its incorporation or establishment; (v) that each of the parties (other than the Participants) to the Documents (A) has duly authorized, executed and delivered such Documents, (B) has all requisite power and authority to enter into and perform its respective obligations under such Documents and (C) has obtained, secured or made all consents and approvals of, notice to, or registrations required with or by any governmental authorities, agencies or instrumentalities in connection with its execution, delivery and performance of, the Documents to which it is a party; (vi) the execution, delivery and performance by each of the parties (other than the Participants) of such Documents to which it is a party will not contravene any provision of such party's articles of incorporation, by-laws, articles of organization, operating agreement, certificate of formation, limited liability company agreement or other governing instrument; and (vii) that there are no other agreements or understandings among the parties to such Documents, written or oral, and there is no usage of trade or course of prior dealings among the parties thereto that would, in any case, define, supplement, alter or qualify the terms of such Documents. As to all matters of fact we have relied in good faith on certificates and other statements of public officials and officers and other representatives of the Participants, and we have made no inquiries to establish or verify these or any other facts material to this opinion.

In giving the opinions expressed below we do not purport to be experts in or generally familiar with or qualified to express legal opinions based on the laws of any jurisdiction other than the federal laws of the United States of America and the laws of the State of California (the "State"). We express no opinion as to the validity or enforceability of any choice of law, choice of forum or waiver provision contained in the Original Agreement or the First Amendment. We express no opinion as to the availability of equitable remedies to persons seeking to enforce the obligations of the Participants under the Original Agreement, as amended by the First Amendment.

Based upon the foregoing examination and review, we are of the opinion that:

(a) The Participants have full legal right, power and authority to enter into the First Amendment and to authorize and direct the Trustee, pursuant to the Original Agreement, as amended by the First Amendment, to make purchases of the Qualified Securities in accordance with the terms therein.

(b) The First Amendment has been duly authorized, executed and delivered by the Participants.

(c) The stipulation of New York law as the governing law of the Original Agreement and the First Amendment is enforceable under the laws of the State.

(d) Assuming for purposes of the opinion expressed in this paragraph (d) that the Original Agreement and the First Amendment were governed by and construed in accordance with the laws of the State, the Original Agreement, as amended by the First Amendment, is a legal, valid and binding obligation of the Participants, enforceable

against it in accordance with the terms thereof, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(e) The Participants' execution and delivery of the First Amendment and the performance of its obligations under the Original Agreement, as amended by the First Amendment, do not and will not conflict with or constitute or result in a default under, a breach or violation of, or the creation of any lien or encumbrance on any of its property under the Financing Documents or any other agreement, instrument, judgment, injunction or order applicable to it or any of its property.

(f) The Participants are not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or its revenues or assets (irrespective of their use or intended use) from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) or (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be made subject to in any suit, action or proceedings relating to the Original Agreement, as amended by the First Amendment, brought validly *ex contractu* in the courts of any jurisdiction and no such immunity (whether or not claimed) may be attributed to the Participants or its revenues or assets.

(g) All consents, authorizations and approvals requisite for the Participants' execution and delivery of the First Amendment and performance of the Original Agreement, as amended by the First Amendment, have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental authority, regulatory body or any other entity is required for such execution, delivery or performance.

(h) The Eligible Securities to be delivered under the Original Agreement, as amended by the First Amendment, constitute Permitted Investments as defined in the Indenture.

(i) The obligation of the Participants to replenish the Reserve Fund pursuant to Section 5.05 of the Indenture constitutes its absolute and unconditional obligation.

We are furnishing this opinion to you solely for your benefit and no other person is entitled to rely hereon. This opinion is not to be used, circulated, quoted or otherwise referred to for any other purpose. This opinion is given as of the date hereof and we expressly disclaim any responsibility to update this opinion or advise you of any changes of law, facts or circumstances of any kind that may occur after the date hereof which might affect the opinion expressed herein.

Very truly yours,

EXHIBIT D

<u>Delivery Date</u> ⁻	<u>Bond Payment Date</u> [*]	<u>Scheduled Reserve Amount</u>	<u>Cities Of Grass Valley Portion</u> ^{**}	<u>Hayward Portion</u> ^{**}
12/1/2011	6/1/2012	\$192,000	\$103,500	\$88,500
6/1/2012	12/1/2012	192,000	103,500	88,500
12/1/2012	6/1/2013	155,500	98,000	57,500
6/1/2013	12/1/2013	155,500	98,000	57,500
12/1/2013	6/1/2014	144,000	92,500	51,500
6/1/2014	12/1/2014	144,000	92,500	51,500
12/1/2014	6/1/2015	132,000	87,000	45,000
6/1/2015	12/1/2015	132,000	87,000	45,000
12/1/2015	6/1/2016	119,000	81,000	38,000
6/1/2016	12/1/2016	119,000	81,000	38,000
12/1/2016	6/1/2017	105,500	74,500	31,000
6/1/2017	12/1/2017	105,500	74,500	31,000
12/1/2017	6/1/2018	91,500	68,000	23,500
6/1/2018	12/1/2018	91,500	68,000	23,500
12/1/2018	6/1/2019	77,000	61,000	16,000
6/1/2019	12/1/2019	77,000	61,000	16,000
12/1/2019	6/1/2020	61,500	53,500	8,000
6/1/2020	12/1/2020	61,500	53,500	8,000
12/1/2020	6/1/2021	45,500	45,500	
6/1/2021	12/1/2021	45,500	45,500	
12/1/2021	6/1/2022	37,000	37,000	
6/1/2022	12/1/2022	37,000	37,000	
12/1/2022	6/1/2023	28,500	28,500	
6/1/2023	12/1/2023	28,500	28,500	
12/1/2023	6/1/2024	19,500	19,500	
6/1/2024	12/1/2024	19,500	19,500	
12/1/2024	6/1/2025	10,000	10,000	
6/1/2025	12/1/2025	10,000	10,000	

* If any Delivery Date or Bond Payment Date specified above is not a Business Day, such date will be the immediately succeeding Business Day; provided, however, that with respect to any date specified as a Bond Payment Date, the determination of whether such date is a Business Day shall be made without giving effect to clauses (c), (d), (e), (f) or (g) of the definition of Business Day.

** For informational purposes only

DATE: January 24, 2012

TO: Mayor and City Council
Redevelopment Agency Board Chair and Members

FROM: Assistant City Manager

SUBJECT: Adoption of Revised Enforceable Obligations Payment Schedule (EOPS)
Required Under ABx1 26 (the Redevelopment “Dissolution Act”)

RECOMMENDATION

That the Agency Board adopts the attached resolution (Attachment I) to: (1) adopt an amended Enforceable Obligation Payment Schedule pursuant to Part 1.8 of the California Community Redevelopment Law and (2) authorize the Agency’s Executive Director to comply with noticing and other requirements associated with the amendment of the Enforceable Obligation Payment Schedule, including but not limited to filing the Notice of Adoption of Amendment to Enforceable Obligation Payment Schedule.

BACKGROUND

Between June 28 and June 30, 2011, the Governor approved the State Budget for FY 2011/12, and signed a number of implementing trailer bills. Two of these trailer bills significantly modified the California Community Redevelopment Law (“CRL”) and fundamentally altered the future of California redevelopment: ABx1 26 (the “Dissolution Act”) and ABx1 27 (the so called “Voluntary Program Act” or “VARP”) (together, the “Redevelopment Restructuring Acts”). The Dissolution Act first immediately suspended all new redevelopment activities and incurrence of indebtedness, and dissolved redevelopment agencies, effective October 1, 2011. The VARP then allowed redevelopment agencies to avoid dissolution under the Dissolution Act by opting in to an “alternative voluntary redevelopment program” that requires annual contributions to local schools and special districts.

On December 29, 2011, the California Supreme Court delivered its decision in the *California Redevelopment Association v. Matosantos* case, finding ABx1 26 (the “Dissolution Act”) largely constitutional and ABx1 27 (the “so-called” Voluntary Program Act) unconstitutional. The Court’s bifurcated decision means that all California redevelopment agencies, including the Redevelopment Agency of the City of Hayward (the “Redevelopment Agency”), will be dissolved under the Dissolution Act, and none will have the opportunity to opt into continued existence under the “so-called” Voluntary Program Act. The Hayward City Council had previously adopted an “opt-in” ordinance on August 2, 2011 to participate in the VARP.

As a result of the Supreme Court's decision, the Redevelopment Agency will be dissolved effective February 1, 2012. The Redevelopment Agency's non-housing funds and assets (and the Redevelopment Agency's existing housing fund balance) will then be turned over to a successor agency (the "Successor Agency") charged with the responsibility of paying off the former Redevelopment Agency's existing debts, disposing of the former Redevelopment Agency's properties and assets and winding down the affairs of the former Redevelopment Agency, redistributing remaining property tax revenues to the local government entities in the County that receive these revenues (the "Taxing Entities"), and eventually winding up the affairs of the former Redevelopment Agency.

The Redevelopment Agency's affordable housing assets, other than its existing housing fund balance, will be turned over to a successor housing agency (the "Successor Housing Agency") to continue performing affordable housing activities. The former Redevelopment Agency's unencumbered assets (including the affordable housing fund balance) will be remitted to the County Auditor-Controller for distribution to the Taxing Entities.

On January 10, 2012, the City Council elected to serve as the Successor Agency to the Redevelopment Agency and the City Council elected not to assume the Redevelopment Agency's housing functions and instead elected the Hayward Housing Authority to serve as the Successor Housing Agency.

Section 34167(h) of the Dissolution Act required redevelopment agencies to adopt an Enforceable Obligation Payment Schedule (EOPS) listing all of their obligations within sixty (60) days of the effectiveness date of the Dissolution Act. The EOPS is critical to the Redevelopment Agency and now the Successor Agency because it identifies those enforceable obligations, contracts, and other items that the Redevelopment Agency must continue to make payments in order to avoid default, litigation or other negative outcome related to nonpayment.

To avoid defaulting under its enforceable obligations, the Agency prepared an EOPS, under protest and reserving the Agency's rights to recognize and perform any and all obligations listed therein without regard to the provisions of the Redevelopment Restructuring Acts. The Agency Executive Director administratively approved the EOPS on August 30, 2011, posted it to the City's website, and forwarded it to the County Auditor/Controller. This action allowed the Redevelopment Agency to continue to make payments on enforceable obligations until such time as the Agency Board could officially adopt the EOPS at the next Board meeting, which occurred September 13, 2011. This original EOPS identified payments to be made by the Agency through December 2011 and is attached as Attachment II.

DISCUSSION

The Redevelopment Agency (before February 1) and its Successor Agency (starting February 1) can only make payments on enforceable obligations (other than bonded indebtedness) listed on an EOPS until such time as the first recognized obligation payment schedule (the "ROPS") has been prepared by the Successor Agency, certified and then approved by the Successor Agency's Oversight Board to take over the function initially served by the EOPS. The process for

preparing, certifying and approving the ROPS may take well into May, thereby potentially leaving a gap between the period initially covered by the EOPS (through December 31, 2011) and the effectiveness of the first ROPS—a gap that could lead to an inability to pay, and the resulting default under, various enforceable obligations.

With the resolution of the Supreme Court lawsuit and the dissolution of the Redevelopment Agency, the EOPS must be revised and amended to allow for payment of enforceable obligations through June 2012 or until such time as a ROPS has been prepared by the Successor Agency, certified by an external auditor and approved by the Oversight Board. Staff is updating the EOPS prepared in August 2011 and is requesting Council approval of the amended EOPS with this action tonight. Due to the compressed timeframes for implementing the provisions of the Dissolution Act, staff is still working to revise and update the EOPS (Attachment III) and will distribute this to Council before the meeting.

The amended EOPS will be substantially similar to the EOPS adopted in September but will be updated to reflect payments required through June 2012. In addition, because the Agency must dissolve as of January 31, 2012, staff is modifying the EOPS to reflect necessary changes, e.g. the elimination of Agency employee payroll once required layoff noticing provisions have been met. Attachment II provides the Agency's original EOPS adopted in August 2011. It lists all of the Agency's enforceable obligations and includes the following information for each obligation:

- Project name associated with the obligation;
- Payee;
- Description of the nature of the work, product, service, facility or other thing of value for which payment is to be made; and
- Payments the Agency is obligated to make, by month, through December 2011.

As identified in the Enforceable Obligation Payment Schedule, the Agency has several obligations that it must continue to pay after August 29, 2011. Some of the obligations include:

- The repayment agreement between the Redevelopment Agency and the General Fund totaling approximately \$7.8 million;
- The loan from Housing Authority funds to the Agency to allow for payment of the FY10 and FY11 SERAF payments;
- A variety of consulting contracts for work currently underway, including environmental remediation, development of the Mission Blvd Specific Plan, and others;
- Legal fees;
- Agency employee payroll;
- Loans with property owners for the Foothill Façade Improvement Program;
- Agency insurance costs;
- Obligations related to existing development agreements, (e.g. utility payments for Cinema Place parking garage);
- The cooperative agreement between the Agency and the City;
- The cooperative agreement between the Agency and the Housing Authority; and
- Pass through obligations to other taxing entities.

Staff will commence preparation of the ROPS prior to the March 1, 2012 deadline for its initial adoption.

Once the Oversight Board for the Successor Agency is established per the provisions of the Dissolution Act, the Oversight Board will ultimately approve or disapprove payment of the obligations listed on the ROPS, with the County Auditor-Controller and the State Controller reserving the right to challenge any payments made. The Successor Agency will be required to update the ROPS every six months to allow for continued payment of obligations.

Any amendment to the EOPS must be adopted at a public meeting and there are no special notice requirements. Once adopted, the amended EOPS will again be posted on the Redevelopment Agency's website and the required notice will be transmitted to the State Department of Finance, State Controller, and County Auditor-Controller. The Council, acting as the Successor Agency, can make any necessary amendments to the adopted EOPS at any of its future public meetings if any are necessary prior to the preparation, certification and adoption of the initial ROPS.

The review and action taken by the Agency is exempt under Section 15378(b)(4) of the California Environmental Quality Act ("CEQA") in that the activity is not defined as a "project," but instead is an action required to continue a governmental funding mechanism and does not commit funds to any specific project or program. A Notice of Exemption may be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

ECONOMIC AND FISCAL IMPACT

Adopting the Enforceable Obligations Payment Schedule will allow the Successor Agency to continue to make payments on its enforceable obligations between December 31, 2011 and June 30, 2012.

NEXT STEPS

Following appointment of the Oversight Board, staff will work with the Successor Agency to secure approval of the ROPS to ensure continued payment of the former Redevelopment Agency's obligations. If there are budget actions necessary to implement the changes made to the EOPS before the ROPS is prepared, certified and approved, staff will bring these back to Council at a future meeting.

Prepared and Recommended by: Kelly McAdoo Morariu, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution Adopting a Revised Enforceable Obligations Payment Schedule

Attachment II: City of Hayward RDA Enforceable Obligations Payment Schedule (as of August 30, 2011)

Attachment III: City of Hayward Revised Enforceable Obligations Payment Schedule (to be distributed prior to the meeting)

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. _____

Introduced by Agency Member _____

RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING AND ADOPTING A REVISED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE PURSUANT TO PART 1.8 OF THE REDEVELOPMENT LAW

WHEREAS, Assembly Bill 1X 26 (the “Dissolution Act”) and Assembly Bill 1X 27 (the “so-called” Voluntary Redevelopment Program Act”) were enacted on June 28, 2011, to significantly modify the Community Redevelopment Law (Health & Safety Code §33000, et seq., the “Redevelopment Law”); and

WHEREAS, on August 11, 2011, the California Supreme Court agreed to review the California Redevelopment Association’s and League of California Cities’ petition challenging the constitutionality of the Redevelopment Restructuring Acts; and

WHEREAS, on December 29, 2011, the California Supreme Court ruled that the Dissolution Act is largely constitutional and the so-called Voluntary Redevelopment Program Act is unconstitutional; and

WHEREAS, the Court’s decision means that all California redevelopment agencies will dissolve on February 1, 2012 pursuant to the Dissolution Act; and

WHEREAS, pursuant to Section 34169 of the Redevelopment Law, the Redevelopment Agency was required to adopt an Enforceable Obligations Payment Schedule by August 29, 2011; and

WHEREAS, the Agency Executive Director administratively prepared and adopted an Enforceable Obligation Payment Schedule, under protest and reserving the Agency’s rights to recognize and perform any and all obligations listed therein without regard to the provisions of the Redevelopment Restructuring Acts, on August 30, 2011, because the Agency’s governing board members were on summer recess through August 29, 2011; and

WHEREAS, the Agency Board adopted the Enforceable Obligation Payment Schedule at the September 13, 2011 meeting; and

WHEREAS, the City Council adopted a resolution on January 10, 2012 electing to serve as the Successor Agency to the Redevelopment Agency; and

WHEREAS, as further set forth in the staff report accompanying this Resolution (the “Staff Report”), under the terms of various Agency contracts and obligations, the Agency is

required to make payments on its enforceable obligations listed on its Enforceable Obligation Payment Schedule after August 29, 2011; and

WHEREAS, the Agency up through February 1, 2012 and the Successor Agency after February 1, 2012 must continue to make payments on its enforceable obligations between December 31, 2011 and June 30, 2012 and therefore must approve a revised and amended Enforceable Obligation Payment Schedule; and

WHEREAS, the Board desires to adopt an amended Enforceable Obligation Payment Schedule; and

WHEREAS, under Title 14 of the California Code of Regulations, Section 15378(b)(4), the adoption of the Enforceable Obligation Payment Schedule is exempt from the requirements of the California Environmental Quality Act ("CEQA"), in that it is not a project as the adoption of the Enforceable Obligation Payment Schedule will not have the potential of causing a significant environmental effect and it can be seen with certainty that there is no possibility that the adoption of the Enforceable Obligation Payment Schedule will have any significant effect on the environment; and

WHEREAS, the Agency Board has reviewed and duly considered the Staff Report, the Enforceable Obligation Payment Schedule, and documents and other written evidence presented at the meeting;

NOW, THEREFORE, BE IT RESOLVED, that the Agency Board finds that the above Recitals are true and correct and have served, together with the supporting documents, as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, that the Agency Board finds, under Title 14 of the California Code of Regulations, Section 15378(b)(4), that this resolution is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project. The City Council therefore authorizes staff to file a Notice of Exemption with the County Clerk of the County of Alameda in accordance with the CEQA guidelines.

BE IT FURTHER RESOLVED, that the Agency Board hereby approves the revised and amended Enforceable Obligation Payment Schedule.

BE IT FURTHER RESOLVED, that the Agency Board authorizes the Agency's Executive Director to make any necessary adjustments to the Enforceable Obligation Payment Schedule to ensure that the Successor Agency can make payments as required.

BE IT FURTHER RESOLVED, that the Agency Board authorizes and directs the Agency's Executive Director to: (1) post the amended Enforceable Obligation Payment Schedule on the City's website; (2) designate an Agency representative to whom all questions related to the Enforceable Obligation Payment Schedule can be directed; (3) notify, by mail or electronic means, the County Auditor-Controller, the Department of Finance, and the Controller of the City's action to adopt the amended Enforceable Obligation Payment Schedule and to provide

those persons with the internet website location of the posted schedule and the contact information for the City's designated contact; and (4) to take such other actions and execute such other documents as are appropriate to effectuate the intent of this Resolution and to implement the Enforceable Obligation Payment Schedule on behalf of the Agency.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect upon adoption.

HAYWARD, CALIFORNIA, January 24, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: AGENCY MEMBERS:
 CHAIR:

NOES: AGENCY MEMBERS:

ABSTAIN: AGENCY MEMBERS:

ABSENT: AGENCY MEMBERS:

ATTEST:

Secretary of the Redevelopment Agency of the City
of Hayward

APPROVED AS TO FORM:

General Counsel

Name of Redevelopment Agency: Hayward Redevelopment Agency

Page 1 of 2 Pages

Project Area(s) All**ENFORCEABLE OBLIGATION PAYMENT SCHEDULE**

Per AB 26 - Section 34167 and 34169 (*)

Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Total Due During Fiscal Year	Payments by month ²						
					Aug	Sept	Oct	Nov	Dec	Total ³	
1) 2004 Tax Allocation Bonds	Wells Fargo	Bond issue to fund non-housing projects	62,788,730.00	3,369,681.00		1,684,840.50					\$ 1,684,840.50
2) 2006 Tax Allocation Bonds	Wells Fargo	Bond issue to fund non-housing projects	23,005,214.00	639,340.00		319,670.00					\$ 319,670.00
3) Repayment Agreement with City of Hayward	City of Hayward	To fund start-up costs of Hayward Redevelopment Project Area	7,789,843.00	800,000.00	800,000.00						\$ 800,000.00
4) SERAF	Hayward Housing Authority	Loan for SERAF FY10 and FY11 payments	3,876,516.00	0.00							\$ -
5) Low-Mod Housing Set Aside ¹	Hayward Housing Authority	20% Low & Mod Income Housing Set Aside Required by H & S Code	25,865,977.00	2,036,839.00					1,018,419.50		\$ 1,018,419.50
6) Contract for Restaurant Consulting	Five Star Restaurant	One-on-one restaurant consulting/retail attraction	14,287.50	14,287.50		14,287.50					\$ 14,287.50
7) Contract for Foothill Façade Program	SZFM Design Studio Inc	Develop façade improvement design for two blocks on Foothill Blvd.	4,664.85	4,664.85		4,664.85					\$ 4,664.85
8) Foothill Façade Loans	Multiple Property Owners	Matching loan funds for property owners along Foothill Blvd for façade improvement program	1,108,000.00	1,108,000.00					1,108,000.00		\$ 1,108,000.00
9) Tenant Improvement Loan	TBD	Loan for tenant improvement costs in Cinema Place project	25,000.00	25,000.00					25,000.00		\$ 25,000.00
10) Employee Costs	Employees of Agency	Payroll for employees	736,718.00	736,718.00	61,368.17	61,368.17	61,368.17	61,368.17	61,368.17	61,368.17	\$ 306,840.85
11) Agency insurance costs	City of Hayward	Liability Insurance	54,042.00	54,042.00	4,503.50	4,503.50	4,503.50	4,503.50	4,503.50	4,503.50	\$ 22,517.50
12) Legal fees	Goldfarb Lipman LLP	Outside legal counsel	66,880.48	66,880.48	5,573.37	5,573.37	5,573.37	5,573.37	5,573.37	5,573.37	\$ 27,866.87
13) Legal fees	Goldfarb Lipman LLP	Outside legal counsel	137.79	137.79	137.79						\$ 137.79
14) Contract for South Hayward Form Based Code	Hall Alminana, Inc	Consultant to prepare new form-based code for South Hayward BART/Mission Blvd. Area	2,313.47	2,313.47		2,313.47					\$ 2,313.47
15) Contract for Mission Blvd Specific Plan	Hall Alminana, Inc	Consultant to prepare specific plan for Mission Blvd corridor	213,649.44	213,649.44		53,412.36	53,412.36	53,412.36	53,412.36	53,412.36	\$ 213,649.44
16) Contract for Form Based Code EIR	Lamphier-Gregory	Consultant to prepare Supplemental Environmental Impact Report for South Hayward Form Based Code	5,653.17	5,653.17		5,653.17					\$ 5,653.17
17) Cost Allocation	City of Hayward	Payment for Administrative services (payroll, HR, etc) and overhead expenses	408,014.00	408,014.00	34,001.17	34,001.17	34,001.17	34,001.17	34,001.17	34,001.17	\$ 170,005.85
18) BIA Support	Hayward Business Improvement Association	Financial assistance to Downtown Business Association	55,000.00	55,000.00	4,583.33	4,583.33	4,583.33	4,583.33	4,583.33	4,583.33	\$ 22,916.67
19) Community Promotions	Various	Support to local non-profit organizations	75,000.00	75,000.00	6,250.00	6,250.00	6,250.00	6,250.00	6,250.00	6,250.00	\$ 31,250.00
20) Public Art	City of Hayward	Financial support for public art/graffiti abatement program in RDA project area	90,000.00	90,000.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	\$ 37,500.00
21) Contract for Security Services	ABC Security Services	Security Patrol Services for Cinema Place garage	64,160.20	64,160.20	5,346.68	5,346.68	5,346.68	5,346.68	5,346.68	5,346.68	\$ 26,733.40
22) Contract for Security Alarm	ADT Security Services	Alarm Service for Cinema Place garage	2,093.81	2,093.81	174.48	174.48	174.48	174.48	174.48	174.48	\$ 872.40
23) Contract for Elevator Maint and Repair	Mitsubishi Electric	Cinema Place Elevator	6,206.74	6,206.74					6,206.74		\$ 6,206.74
24) Contract for Sweeping	Montgomery Sweeping Service	Cinema Place Garage Sweeping	9,360.00	9,360.00	780.00	780.00	780.00	780.00	780.00	780.00	\$ 3,900.00
25) Utilities	PGE	Cinema Place Garage Utilities	24,500.00	24,500.00	2,041.67	2,041.67	2,041.67	2,041.67	2,041.67	2,041.67	\$ 10,208.35
26) Utilities	City of Hayward	Cinema Place Water Utilities	500.00	500.00	41.67	41.67	41.67	41.67	41.67	41.67	\$ 208.35
27) Contract for Env Remediation Work	AEDIS Architecture & Planning	Burbank School Env Remediation Work	6,504.54	6,504.54		6,504.54					\$ 6,504.54
28) Contract for Env Remediation Work	TRC	Burbank School Env Remediation Work	20,000.00	20,000.00		20,000.00					\$ 20,000.00
29) Contract for Mural	Andrew Kong Knight	Cinema Place Mural	11,643.53	11,643.53		5,821.77	5,821.77				\$ 11,643.53
30) Contract for Eng Services	FBA, Inc	Engineering Services - deconstruct Centennial Hall	4,800.00	4,800.00		4,800.00					\$ 4,800.00
											\$ -
Totals - This Page			\$ 126,335,409.52	\$ 9,854,989.52	\$ 932,301.84	\$ 2,254,132.20	\$ 191,398.17	\$ 185,576.41	\$ 2,343,202.65	\$ 5,906,611.26	
Totals - Page 2			\$ 67,692,872.79	\$ 1,316,272.79	\$ -	\$ 70,936.79	\$ 45,968.79	\$ 45,968.79	\$ 1,032,427.44	\$ 1,195,301.81	
Totals - Other Obligations			\$ -	\$ 1,202,681.71	\$ -	\$ -	\$ 1,202,681.71	\$ -	\$ -	\$ 1,202,681.71	
Grand total - All Pages			\$ 194,028,282.31	\$ 12,373,944.02	\$ 932,301.84	\$ 2,325,068.99	\$ 1,440,048.67	\$ 231,545.20	\$ 3,375,630.08	\$ 8,304,594.79	

* This Enforceable Obligation Payment Schedule (EOPS) is to be adopted by the redevelopment agency no later than late August. It is valid through 12/31/11. It is the basis for the Preliminary Draft Recognized Obligation Payment Schedule (ROPS), which must be prepared by the dissolving Agency by 9/30/11. (The draft ROPS must be prepared by the Successor Agency by 11/30/11.)

If an agency adopts a continuation ordinance per ABX1 27, this EOPS will not be valid and there is no need to prepare a ROPS.

Note 1: The Total Outstanding Obligation Column for the Low-Moderate Housing Set Aside reflects the net present dollar value of the 20% tax increment through the life of the RDA project area.

Note 2: August payments only reflect payments to be made after 8/29/2011

Note 3: This total only reflects payments required between 8/29/2011 and 12/31/2011 and not the total outstanding obligation.

Name of Redevelopment Agency: Hayward Redevelopment Agency
 Project Area(s) All

ENFORCEABLE OBLIGATION PAYMENT SCHEDULE
 Per AB 26 - Section 34167 and 34169 (*)

	Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Total Due During Fiscal Year	Payments by month ¹					Total ²
						Aug	Sept	Oct	Nov	Dec	
31)	Contract for Env Remediation	ACC Environmental Consultants	Environmental Services - 22292 Foothill Blvd	3,580.00	3,580.00		3,580.00				\$ 3,580.00
32)	Contract for Env Remediation	TRC	Residual Burbank Site - Removal Action Work	72,882.77	72,882.77		24,294.26	24,294.26	24,294.26		\$ 72,882.77
33)	Contract for Env Remediation	AMEC Geomatrix Inc	Env Remediation - Cinema Place	195,070.82	195,070.82		21,674.54	21,674.54	21,674.54	21,674.54	\$ 86,698.14
34)	Contract for Access Study	Nelson/Nygaard	Access Study - South Hayward BART TOD	1,388.00	1,388.00		1,388.00				\$ 1,388.00
35)	Contract for Financial Analysis	Keyser Marston	Financial Analysis	20,000.00	20,000.00		20,000.00				\$ 20,000.00
36)	Contract for CFD #2	Goodwin Consulting Group	Consultant to assist with creation of Community Facilities District #2 - Cannery Area	10,108.30	10,108.30						\$ -
37)	Contract for Financial Analysis	Keyser Marston Associates	Consultant to assist with financial analysis of RDA projects	2,490.00	2,490.00						\$ -
38)	Contract for Weed Removal	Art Cuevas Landscaping	Weed removal - various properties	1,935.50	1,935.50					1,935.50	\$ 1,935.50
39)	Contract for Water Testing	SWRCB	Water testing at Cinema Place - monitoring of site	8,817.40	8,817.40					8,817.40	\$ 8,817.40
40)	Cooperative Agreement (see subagreements below)	City of Hayward	To fund public improvements in the RDA project area	26,713,600.00							\$ -
40a)	Mission/South Hayward BART Public Improvements (one-time)			12,700,000.00							\$ -
40b)	Facilitate Redevelopment of City Center Campus (one-time)			4,500,000.00							\$ -
40c)	Reevaluate and update Downtown Plan (one-time)			500,000.00							\$ -
40d)	Complete Downtown Gateways Project (one-time)			200,000.00							\$ -
40e)	Acquiring Mission Blvd Properties (one-time)			5,500,000.00							\$ -
40f)	Implementation of Downtown Retail Attraction Program (one-time)			2,500,000.00							\$ -
40g)	Implementation of Neighborhood Revitalization Programs (one-time)			250,000.00							\$ -
40h)	Remediation of Residual Burbank Site (one-time)			250,000.00							\$ -
40i)	Cinema Place Garage Maintenance (annual)			66,600.00							\$ -
40j)	Business Improvement District Funding (annual)			55,000.00							\$ -
40k)	Management of Agency Owned Properties (annual)			20,000.00							\$ -
40l)	Community Promotions (annual)			75,000.00							\$ -
40m)	Public Art (annual)			90,000.00							\$ -
40n)	Ongoing env monitoring at Burbank School (annual)			7,000.00							\$ -
41)	Cooperative Agreement (see subagreements below)	Hayward Housing Authority	To fund affordable housing projects in the City	39,663,000.00							\$ -
41a)	B&Grand Senior Housing (one-time)			1,320,000.00							\$ -
41b)	A&Walnut Ownership Development (one-time)			1,210,000.00							\$ -
41c)	South Hayward BART Senior and Family Housing (one-time)			7,700,000.00							\$ -
41d)	Leidig Court (one-time)			220,000.00							\$ -

41e)	Habitat for Humanity Ownership Development (one-time)		1,650,000.00							\$ -
41f)	Purchase, Rehab, and Sale of Foreclosed Homes (one-time)		891,000.00							\$ -
41g)	237 Units Promised under 238 Settlement Agreement (one-time)		15,642,000.00							\$ -
41h)	Rehab of Existing Rental Housing Developments (annual)		1,650,000.00							\$ -
41i)	First-time Homebuyer Program (annual)		5,500,000.00							\$ -
41j)	Project Independence (Rental Assistance to Emancipated Youth) (annual)		330,000.00							\$ -
41k)	Housing Rehab Loan and Minor Home Repair Programs (annual)		550,000.00							\$ -
41l)	Monitoring and Enforcement for existing affordable housing projects and programs (annual)		3,000,000.00							\$ -
42)	First-time Homebuyer Program for 238 Settlement Agreement		1,000,000.00	1,000,000.00					1,000,000.00	\$ 1,000,000.00
										\$ -
										\$ -
Totals - This Page			\$ 67,692,872.79	\$ 1,316,272.79	\$ -	\$ 70,936.79	\$ 45,968.79	\$ 45,968.79	\$ 1,032,427.44	\$ 1,195,301.81

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 If an agency adopts a continuation ordinance per ABX1 27, this EOPS will not be valid and there is no need to prepare a ROPS.
 Note 1: August payments only reflect payments to be made after 8/29/2011
 Note 2: This total only reflects payments required between 8/29/2011 and 12/31/2011 and not the total outstanding obligation.

Name of Redevelopment Agency: Hayward Redevelopment Agency

Page 1 of 1 Pages

Project Area(s) All

OTHER OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34167 and 34169 (*)

	Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Total Due During Fiscal Year ¹	Payments by month ²					Total ³
						Aug	Sept	Oct	Nov	Dec	
1)	Pass Through Obligation	County General Fund	Pass Through Obligation	0.00	294,312.38			294,312.38			\$ 294,312.38
2)	Pass Through Obligation	Chabot-Las Positas Comm Coll	Pass Through Obligation	0.00	33,001.87			33,001.87			\$ 33,001.87
3)	Pass Through Obligation	Hayward U.S.D.	Pass Through Obligation	0.00	114,902.11			114,902.11			\$ 114,902.11
4)	Pass Through Obligation	New Haven U.S.D.	Pass Through Obligation	0.00	1,155.67			1,155.67			\$ 1,155.67
5)	Pass Through Obligation	County Sch TMR 1887	Pass Through Obligation	0.00	6.87			6.87			\$ 6.87
6)	Pass Through Obligation	County Sch PHY HDCP	Pass Through Obligation	0.00	25.58			25.58			\$ 25.58
7)	Pass Through Obligation	County Sch TMR PH CAP	Pass Through Obligation	0.00	0.57			0.57			\$ 0.57
8)	Pass Through Obligation	County Sch TMR PH TUIT	Pass Through Obligation	0.00	3.46			3.46			\$ 3.46
9)	Pass Through Obligation	County Supt Instr Pupils	Pass Through Obligation	0.00	2,164.85			2,164.85			\$ 2,164.85
10)	Pass Through Obligation	County Supt Juv Hall Ed	Pass Through Obligation	0.00	448.09			448.09			\$ 448.09
11)	Pass Through Obligation	County Supt Service	Pass Through Obligation	0.00	1,345.60			1,345.60			\$ 1,345.60
12)	Pass Through Obligation	County Supt Capital	Pass Through Obligation	0.00	1,036.82			1,036.82			\$ 1,036.82
13)	Pass Through Obligation	County Supt Dev Center	Pass Through Obligation	0.00	1,258.71			1,258.71			\$ 1,258.71
14)	Pass Through Obligation	County Supt Audio Vis Cap	Pass Through Obligation	0.00	269.79			269.79			\$ 269.79
15)	Pass Through Obligation	Flood Control	Pass Through Obligation	0.00	1,959.45			1,959.45			\$ 1,959.45
16)	Pass Through Obligation	Flood Control Zone 2	Pass Through Obligation	0.00	17,146.99			17,146.99			\$ 17,146.99
17)	Pass Through Obligation	Flood Control Zone 3A	Pass Through Obligation	0.00	12,162.44			12,162.44			\$ 12,162.44
18)	Pass Through Obligation	Flood Control Zone 4	Pass Through Obligation	0.00	569.77			569.77			\$ 569.77
19)	Pass Through Obligation	B.A. Air Quality Mgmt	Pass Through Obligation	0.00	2,732.84			2,732.84			\$ 2,732.84
20)	Pass Through Obligation	Mosq. Abatement	Pass Through Obligation	0.00	1,339.50			1,339.50			\$ 1,339.50
21)	Pass Through Obligation	AC Transit Sp Dist 1	Pass Through Obligation	0.00	68,346.65			68,346.65			\$ 68,346.65
22)	Pass Through Obligation	BART	Pass Through Obligation	0.00	8,032.49			8,032.49			\$ 8,032.49
23)	Pass Through Obligation	HARD	Pass Through Obligation	0.00	89,233.18			89,233.18			\$ 89,233.18
24)	Pass Through Obligation	E.B. Regional Park	Pass Through Obligation	0.00	59,958.79			59,958.79			\$ 59,958.79
25)	Pass Through Obligation	EBMUD	Pass Through Obligation	0.00	1,213.66			1,213.66			\$ 1,213.66
26)	Pass Through Obligation	City of Hayward	Pass Through Obligation	0.00	235,030.64			235,030.64			\$ 235,030.64
27)	ERAF Payment	County/State of CA	Statutory requirement	0.00	255,022.94			255,022.94			\$ 255,022.94
28)											\$ -
Totals - Other Obligations				\$ -	\$ 1,202,681.71	\$ -	\$ -	\$ 1,202,681.71	\$ -	\$ -	\$ 1,202,681.71

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If an agency adopts a continuation ordinance per ABX1 27, this EOPS will not be valid and there is no need to prepare a ROPS.

Note 1: These are the 2010 payment amounts and will be adjusted; the 2011 payments will be calculated and payable as of October 1, 2011.

Note 2: August payments only reflect payments to be made after 8/29/2011

Note 3: This total only reflects payments required between 8/29/2011 and 12/31/2011 and not the total outstanding obligation.

Attachment III (Revised EOPS) will be distributed prior to Tuesday's Council meeting.

DATE: January 24, 2012

TO: Mayor and City Council

FROM: Director of Public Works – Engineering & Transportation

SUBJECT: Resolution Authorizing the City Manager to Negotiate and Execute a Ground Lease for Phase I and an Option Agreement with Master Lease for Phases I-V with Hayward Airport Development, LLC on a Parcel of Land at Hayward Executive Airport

RECOMMENDATION

That Council adopts the attached resolution (Attachment I) authorizing the City Manager to negotiate and execute a Ground Lease for Phase I and an Option Agreement with Master Lease for Phases I-V with Hayward Airport Development, LLC for a parcel of land at Hayward Executive Airport.

BACKGROUND

The City issued a Request for Proposals (RFP) on April 15, 2009, for development of a portion of the California Air National Guard (CANG) site at the Hayward Executive Airport consisting of 16.63 acres of land. The RFP was intended to spur renovation and civilian use of the existing 24,000 square foot large aircraft storage hangar (with additional square feet of associated office space) as well as the construction, operation, and management of additional privately-owned aircraft storage hangars. Staff received four proposals by the submission deadline of May 29, 2009, and after evaluation, staff determined the proposal from Hayward Airport Development LLC (HAD) to be the most responsive and responsible.

At the time of the RFP, it was the desire of the City that the Air National Guard convey a release of the property to the City, contingent on acceptance of responsibility for all future cleanups. In a letter dated June 24, 2011, the National Guard Bureau did commit to the cleanup and release of the property contingent on a right-of-entry from the City that granted future access for mitigation and monitoring activities. On October 18, 2011, Council adopted a resolution authorizing the City Manager to negotiate and execute Supplemental Agreement 10, returning twenty-four acres of the twenty-seven acre site to the City, as well as a right-of entry-agreement for a four-year period. Achievement of this milestone allowed lease negotiations for Phase I of the HAD development to proceed in earnest.

DISCUSSION

As reported at the October 27, 2011 Council Airport Committee (CAC) meeting and discussed again at the CAC special meeting on December 12, 2011, staff has been in lease negotiations with HAD regarding Phase I of the CANG site. The CANG Request for Proposals stipulated that the successful applicant may provide self-fueling services. During negotiations, staff anticipated that self-fueling authorization would not be required; rather, a cooperative agreement would be negotiated for the delivery of fuel between Field Aviation, as the designated FBO on that side of the Airport, and HAD.

However, on November 14, 2011, the Trustee for Field Aviation informed staff that development plans would not be moving forward. As a result, HAD has requested permission to install a jet fuel storage tank on its leasehold for self-fueling, and staff supports this request. Similar to the existing requirements for dispensing fuel on the airport by a FBO, HAD will pay fuel flowage charges, but based on 3% of its total gross cost of dispensed fuel rather than 3% of total fuel revenue, since they will not be selling fuel in the usual manner. (Our standard FBO rate is five cents per gallon OR 3% of total fuel revenue.) The design and installation of fuel storage tanks on the airport are subject to review and approval by the Hayward Fire Department (HFD). The HFD has not yet reviewed or approved the installation of fuel storage tanks on Phase I of the HAD leasehold, but a process is in place to do so based on previous proposed installations at the airport.

At the present time, it is not possible to enter into a lease for the entire Air National Guard (ANG) site released to the City because of the remaining cleanup required. The original proposal had anticipated five phases to the development. The first phase includes the large ANG hangar along with sufficient ground area for operations and access to the existing Taxiway (see Attachment II). The Phase I lease will be for five years with two five-year extensions.

The original CANG RFP mentioned above had established a minimum rent requirement at the standard \$0.30/square foot per year for ground rent for the entire site proposed for development. All four proposers, including HAD, reflected the \$0.30 rate in their response to the CANG RFP. However, during the past two years of periodic negotiations with HAD while waiting on release of the site, staff determined that the City should receive higher rent for the area covered by the existing CANG hangar. At the Council Airport Committee meeting of December 12, 2011, staff reported that the rent for Phase I will be based on \$0.52/s.f. per year for building space and the standard \$0.30/s.f. per year for ground rent.

After that meeting, other airport operators have questioned how the \$0.52/s.f. per year was established even though it was above the original proposal. Staff reexamined the various factors considered including: (1) the rate for City-owned hangars, (which is about \$3.76/s.f. per year); (2) the requirement to also lease additional land area (in addition to the hangar area); (3) the age of the hangar; and (4) the need to invest \$1,500,000 to make the hangar and site useable; (5) the risk and financing difficulties of dealing with a brown-field site; and (6) the disruption caused to HAD by the remaining cleanup to be done by the US Air Force.

After reevaluating those factors and with the agreement of HAD, the City is now proposing, and HAD has agreed to, rent of \$1.00/s.f. per year for the useable hangar area and the office space being used, and \$0.52/s.f./year for the space being donated by HAD for a Tuskegee Airmen Museum

(HAD will pay this rent for the next fifty years and will allow the museum to use this space rent-free). Total initial rent per year has been increased by \$7,742 based on these changes and will be \$52,619.

As mentioned above, in order to occupy Phase I, HAD has indicated an estimated initial investment of \$1.5 million, which will cover renovation and improvements to the ANG hangar, as well as new utility extensions and necessary pavement repairs to the access apron. Also as part of Phase I, HAD is providing about 2,000 square feet of rent-free office space in the hangar to use for a Tuskegee Airmen Museum. Consistent with the original RFP, HAD will be entering into an option agreement with the City, based on \$.075/sf for the remainder of the land that incorporates Phases II-V of the ANG site. As part of the option agreement, a proposed master lease incorporating Phase I and the remaining Phases II-V has been drafted with an anticipated time frame for each phase predicated on completion of the cleanup work by the Air Force. Phase V, which will be the commercial development along Winton Ave, will have a higher ground rent of \$0.50/s.f., while the remaining area will follow the standard ground rent rate, which is presently \$0.30/sf, subject to the customary rental increases over time. (See Attachment II for map of phased development).

Similar to other recent new lease developments, HAD will be paying \$25,000 towards the Airport's Aircraft Rescue and Fire Fighting Services (ARFF) in addition to Phase I rent. With this lease development, staff has also established an ARFF contribution rate for other new hangar developments at \$1.00/sf of new building consistent with prior developments. These ARFF revenues will be utilized for future operations and equipment replacement of the ARFF Apparatus and the cost of ARFF services on the airport. Based on hangar construction planned for Phases II-IV, an additional \$156,000 will be contributed to the ARFF.

ECONOMIC IMPACT

The overall economic impact of this ground lease to the City will be relatively modest. However, HAD has indicated that, when all phases are fully built out, they will store additional aircraft, presumably resulting in increased fuel consumption and additional employment opportunities.

FISCAL IMPACT

The revenue impact for the HAD development will be significant for the Hayward Airport. The proposed lease calls for payments in each phase, with reduced rent during construction, as follows:

- Phase I: Ground rent of \$4,385 per month, based on a yearly rate of \$1.00 per sq. ft. for Hangar Premises and Office Premises, \$0.52 per sq.ft. for Museum Premises, and \$0.30 per sq. ft. for Aircraft Apron Premises, subject to the City's standard rent adjustments. Rent is calculated at fifty percent of the ground lease rate during Phase I construction.
- Phase II: Ground rent of \$2,130 per month, based on a yearly rate of \$0.30 per sq. ft. on 85,213 sq. ft. with option payments calculated at twenty-five percent of the ground lease rate, and rent calculated at fifty percent of the ground lease rate during Phase II construction.
- Phase III: Ground rent of \$2,643 per month, based on a yearly rate of \$0.30 per sq. ft. on 105,213 sq. ft. with option payments calculated at twenty-five percent of the ground rent rate,

and rent calculated at fifty percent of the ground lease rate during Phase III construction.

Phase IV: Ground rent of \$6,166 per month, based on a yearly rate of \$0.30 per sq. ft. on 246,652 sq. ft. with option payments calculated at twenty-five percent of the ground rent rate, and rent calculated at fifty percent of the ground lease rate during Phase IV construction.

Phase V: Ground rent of \$7,239 per month, based on a yearly rate of \$0.50 per sq. ft. on 173,739 sq. ft. with option payments calculated at twenty-five percent of the ground lease rate, and rent calculated at fifty percent of the ground lease rate during Phase V construction.

Under Phase I and the option payment for the remaining Phases II-V, the leasehold will contribute total revenue annually of \$98,467. After completion of all phases, the leasehold will contribute an annual total of \$270,756 to the Airport Operating Fund. Timing of buildout of all phases will depend on the cleanup by the Air National Guard but is estimated to occur within seven years.

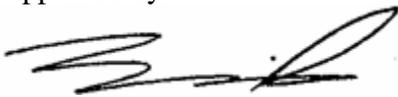
PUBLIC CONTACT

Staff advertised the RFP on April 15, 2009 in accordance with normal and customary procedures. The Council Airport Committee selected Hayward Airport Development on July 23, 2009. Staff provided additional updates to the CAC on July 22, 2010, March 7, 2011, October 27, 2011, and December 12, 2011.

Prepared by: Douglas McNeeley, Airport Manager

Recommended by: Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments: Attachment I: Resolution
Attachment II: HAD Site Location Map

HAYWARD CITY COUNCIL

RESOLUTION NO. 12- ____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A GROUND LEASE FOR PHASE I AND A OPTION AGREEMENT WITH MASTER LEASE FOR PHASES I-V WITH HAYWARD AIRPORT DEVELOPMENT, LLC ON A PARCEL OF LAND AT HAYWARD EXECUTIVE AIRPORT

WHEREAS, the City of Hayward (“City”) owns and operates the Hayward Executive Airport; and

WHEREAS, the City wishes to lease certain property on the airport in Plot R of the Air National Guard Lease Parcel;

WHEREAS, the City issued a Request for Proposals to publically advertise the property for lease; and

WHEREAS, four organizations responded to the Request for Proposals, and after evaluation of the proposals, Hayward Airport Development LLC was determined to be the most responsive and responsible proponent;

NOW, THEREFORE, BE IT RESOLVED, that the City Manager is authorized to negotiate and execute a ground lease with Hayward Airport Development LLC for Phase I and an Option Agreement with Master Lease for Phases I-V in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

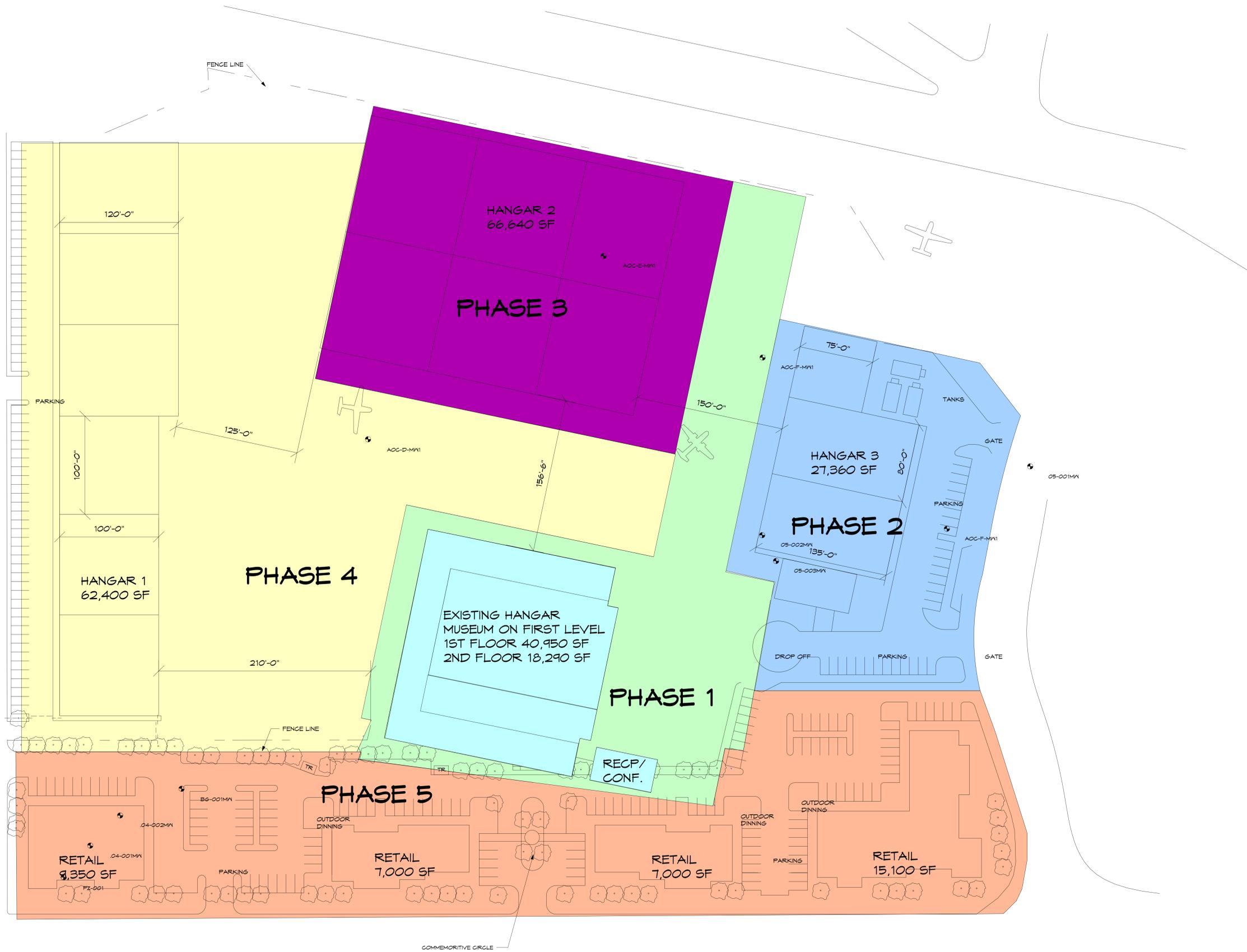
City Attorney of the City of Hayward

HAYWARD HANGAR/SP AVIATION

DEVCON
DEVCON CONSTRUCTION
DEVCON INCORPORATED
 690 Gibraltar Drive
 Milpitas, California 95035
 (408)942-8200 Lic. #399163

LAND USE PER PHASE

PHASE 1 (INCLD. TAXI WAY)	129,692 SQ. FT. / 2.84 ACRES
PHASE 2	85,219 SQ. FT. / 1.95 ACRES
PHASE 3	105,109 SQ. FT. / 2.43 ACRES
PHASE 4	246,652 SQ. FT. / 5.66 ACRES
PHASE 5	119,194 SQ. FT. / 3.91 ACRES
TOTAL	734,954 SQ. FT. / 16.81 ACRES



GENERAL NOTES:
 CONTRACTOR SHALL FIELD VERIFY ALL JOB CONDITIONS AND DIMENSIONS. VARIATIONS THEREOF FROM THE DRAWINGS MUST BE REPORTED TO THE ARCHITECT.

DETAILS INDICATED ON THE DRAWINGS ARE REPRESENTATIVE AND TYPICAL. ALL ATTACHMENTS AND CONNECTIONS SHALL CONFORM TO BEST PRACTICE AND SHALL BE THE CONTRACTOR'S RESPONSIBILITY.

THIS DRAWING EMBODIES IDEAS, DESIGNS, ARRANGEMENTS, PLANS AND SPECIFICATIONS WHICH ARE PROPRIETARY TO DEVCON CONSTRUCTION INC. AND WHICH WERE DESIGNED, CREATED, DEVELOPED AND DEVELOPED FOR USE SOLELY IN CONNECTION WITH THE SPECIFIED PROJECT. NO TRANSFER OF ANY RIGHTS THEREIN IS INTENDED OR EFFECTED BY DELIVERY HEREOF, AND EXCEPT UPON THE WRITTEN PERMISSION OF DEVCON CONSTRUCTION INC. THE DRAWING IS NOT TO BE DISCLOSED TO OTHERS, REPRODUCED OR COPIED IN WHOLE OR IN PART, OR USED IN THE FABRICATION OR CONSTRUCTION OF BUILDINGS, STRUCTURES, FOUNDATIONS, OR ANY PORTIONS THEREOF, FOR OTHER THAN THE SPECIFIED PROJECT.

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REVISIONS

NO.	DATE	DESCRIPTION	BY

PROPOSED MASTER SITE PLAN

JOB NO. 09-304	SHEET NO.
DATE: 11/03/11	A1.0
DRAWN: BKW	
CHECKED: SLY	
ISSUE:	OF SHEETS

1 SITE PLAN TRUE NORTH
 1" = 40'-0"