



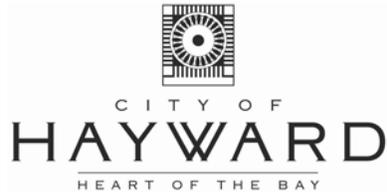
CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
JANUARY 14, 2014

**MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE MARK SALINAS
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER GREG JONES
COUNCIL MEMBER AL MENDALL**

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SPECIAL CITY COUNCIL MEETING FOR JANUARY 14, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 4:00 PM

1. PUBLIC COMMENTS

2. Public Employment

Pursuant to Government Code 54957

➤ Performance Evaluation

City Manager

3. Conference with Labor Negotiators

Pursuant to Government Code 54957.6

➤ Lead Negotiators: City Manager David; City Attorney Lawson; Assistant City Manager McAdoo; Human Resources Director Robustelli; Finance Director Vesely; Deputy City Attorney Vashi; Director of Maintenance Services McGrath; Senior Human Resources Analyst Collins; Senior Human Resources Analyst Monnastes; Jack Hughes, Liebert, Cassidy and Whitmore

Under Negotiation: All Groups

4. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Pending Litigation

McGraw v. Top Grade, et al., Alameda County Superior Court Case No. HG12617574

5. Conference with Legal Counsel

Pursuant to Government Code 54956.9

➤ Anticipated Litigation (Two Cases)

6. Adjourn to Special City Council Meeting

SPECIAL CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Mayor Sweeney

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.

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 any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

CONSENT

1. Approval of Minutes of the Special City Council Meeting on December 10, 2013
[Draft Minutes](#)
 2. Approval of Minutes of the City Council Meeting on December 17, 2013
[Draft Minutes](#)
 3. 238 Bypass Corridor Settlement Agreement Update
***** Report will be available no later than January 13, 2014 *****
 4. Authorization for City Manager to Execute a Master Lease Purchase Agreement for the Purchase of Police and Fire Department Vehicles
[Staff Report](#)
[Attachment I](#)
-

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

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



PUBLIC HEARING

5. Introduction and Adoption of an Ordinance to Approve an Amendment to the City of Hayward's Contract with the California Public Employees Retirement System (CalPERS) and Authorizing Staff to Execute the Contract (Report from Human Resources Director Robustelli)

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

LEGISLATIVE BUSINESS

6. Adoption of Negative Declaration and Request for Text Amendment (PL-2013-0437 TA) to: (1) Add a definition for Transitional and Supportive Housing to Section 10-1.3500 of the Zoning Ordinance; (2) Amend Table 9 of Section 10-24.300 of the South Hayward BART/Mission Boulevard Form-Based Code by removing reference to both Transitional and Supportive Housing as Allowed Functions; and (3) Replace Section 10-1.145 of the Zoning Ordinance with new Section 10-1.145 related to Reasonable Accommodation for Persons with Physical Disabilities. Applicant: City of Hayward (*Report from Development Services Director Rizk*)
***** Report continued to January 28, 2014 *****
7. Adoption of Interim Urgency Ordinance Imposing a Temporary Moratorium on the Development, Establishment and Operation of New Small-Format and Large-Scale Tobacco Retailers and all New E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The Adoption of the Ordinance is Exempt from Environmental Review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378 (Report from Development Services Director Rizk)

[Staff Report](#)

[Attachment I Interim Urgency Ordinance](#)

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 REGULAR MEETING – 7:00 PM, TUESDAY, JANUARY 21, 2014

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 before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*



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





**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 10, 2013, 7:00 p.m.**

The Council meeting was called to order by Mayor Pro Tempore Salinas at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Peixoto.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Mendall
MAYOR PRO TEMPORE Salinas
Absent: MAYOR Sweeney

Mayor Pro Tempore Salinas noted that Mayor Sweeney attended the Closed Session, but he did not feel well to proceed with the regular meeting and he went home.

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson reported that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; met with legal counsel pursuant to Government Code 54956.9 regarding one case; and met with legal counsel pursuant to Government Code 54956.9 regarding Net Connection Hayward, LLC v. City of Hayward U.S. District Court Case No. 13-1212; IBiz, LLC v. City of Hayward, U.S. District Court Case No. 13-1537; City of Hayward v. Chances Are, LLC et. Al. Alameda County Superior Court Case No. RG 13681065; Chances Are, LLC v. City of Hayward, U.S. District Court Case No. 13-2383. Mr. Lawson noted that there was no reportable action.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, expressed concern for the residents' safety and noted that the streets needed more police officers.

Ms. Sue Merrill, South Hayward Parish Executive Director, mentioned there were no winter shelters in Hayward and asked the City to partner with the South Hayward Parish and Community Action Network to address homeless concerns in the community.

Ms. Rene Rettig, United Merchants Downtown Hayward representative, asked the City to increase security for the downtown and make it a high priority. Ms. Rettig submitted a petition from the United Merchants Downtown Hayward requesting that the City allocate funds for the reinstatement of bicycle patrol officers.

Mr. Alfredo Rodriguez, Vintage Alley business owner, concurred with the request for increased security for the downtown.

Mr. Elie Goldstein, Kraski's business owner, thanked the City for its plan to improve the security in

the downtown area.

Mr. S.J. Samiul, Hayward resident, reported that trees at the Standard Pacific Homes development had been illegally destroyed. Mr. Samiul acknowledged the work done by Hayward police/community officers and invited all to become friends of the Hayward Library, Hayward Neighborhood Alert, and Hayward schools.

Council Member Zermeño asked staff to consider the requests expressed during public comments.

CONSENT

1. Approval of Minutes of the City Council Meeting on November 19, 2013

It was moved by Council Member Halliday, seconded by Council Member Peixoto, and carried with Mayor Sweeney absent, to approve the minutes of the City Council Meeting on November 19, 2013.

PUBLIC HEARING

2. Introduction of Ordinance Amending the Hayward Municipal Code by Adding Article 16 to Chapter 4 Regarding Simulated Gambling Devices and Proposed Revisions to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500); the Project is Exempt from Environmental Impact Analysis, Per the California Environmental Quality Act; Text Amendment Application No. PL-2013-0388 TA; Applicant: City of Hayward

Staff report submitted by City Attorney Lawson and Development Services Director Rizk, dated December 10, 2013, was filed.

City Attorney Lawson, Development Services Director Rizk, and Lieutenant Martinez provided a synopsis of the report. Mr. Lawson noted that the Council was in receipt of a letter from Downey Brand Attorneys, LLP, representing Ron Doyle and Net Connection Hayward, LLC.

Mayor Pro Tempore Salinas opened the public hearing at 7:35 p.m.

Mr. Jay Palega, Net Connection LLC employee, disagreed with the claim that internet gaming businesses constituted a nuisance and noted that the business was his means of financial support.

Ms. Azalea Hernandez, Net Connection LLC employee, noted that Net Connection's patrons were not responsible for the loitering in the area.

Mr. Kim Huggett, Hayward Chamber of Commerce President, urged the Council to support staff's recommendation to amend the Hayward Municipal Code regarding simulated gambling devices.

Mayor Pro Tempore Salinas closed the public hearing at 7:44 p.m.

Council Member Halliday offered a motion for the adoption of the resolution making required findings and determining the proposed amendments exempt from environmental impact analysis per CEQA, and introduced two ordinances adding Article 16 to Chapter 4 related to simulated gambling



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devices and amending Hayward Municipal Code Section 10-1.3500 related to internet cafes.

Council Members Jones, Zermeño, and Mendall seconded the motion.

Council Member Halliday noted that the misrepresentation of the type of activity that the businesses would be conducting was the most disturbing aspect of the allegations.

Council Member Jones noted the issue was about misrepresentation and deceiving deliberately the City about the business operations. Mr. Jones supported the effort to provide structure and regulate businesses that were in operation. He added that in the future a different Council could entertain developing the regulatory framework for gambling.

Council Member Zermeño supported the motion and noted that if businesses wanted to apply for a gambling business, they should go through the proper channels.

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

AYES: Council Members Zermeño, Jones, Halliday, Peixoto, Mendall
Mayor Pro Tempore Salinas
NOES: None
ABSENT: Mayor Sweeney
ABSTAINED: None

Resolution 13-179, “Resolution Determining Project is Exempt from Environmental Impact Analysis Pursuant to the California Environmental Quality Act and Approving the Enactment of Chapter 4, Article 16 of the Hayward Municipal Code Prohibiting Simulated Gambling Devices and Related Amendments to the Definitions Section of the Hayward Zoning Ordinance (Section 10-1.3500)”

Introduction of Ordinance 13-_, “Ordinance of the City of Hayward, California Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices”

LEGISLATIVE BUSINESS

3. FY 2013 Preliminary Year-End General Fund Review

Staff report submitted by Director of Finance Vesely, dated December 10, 2013, was filed.

Director of Finance Vesely provided a synopsis of the report.

Discussion ensued among Council and City staff. Council members offered the following recommendations to staff: set a policy for the level of funding for unfunded liabilities; continue to encourage economic development; continue to pressure the State to get back revenue derived from the community in order to meet local obligations; and brand Hayward.

Mayor Pro Tempore Salinas opened the public hearing at 8:42 p.m.

Mr. Jim Drake, Hayward resident, expressed concern about the City's financial situation, unfunded liabilities, and safety issues.

Mayor Pro Tempore Salinas closed the public hearing at 8:45 p.m.

The report was informational and therefore no action was taken.

4. Council FY 2015 & FY 2016 Recommended Priorities

Staff report submitted by City Manager David, dated December 10, 2013, was filed.

City Manager David provided a synopsis of the report. Council members expressed support for the suggested priorities, the overarching performance measures, and preliminary performance measures. Council members offered the following recommendations for the Council priorities: continue and enhance the partnership between the Hayward Unified School District (HUSD) and the Hayward Police Department through the School Resource Officer Program; offer recreational opportunities for children to help them succeed; add to the priorities the partnership between the Hayward Area Recreation and Park District and HUSD through the Hayward Local Agencies Committee (HLAC); ensure that the perception of safety by residents/businesses is measured through the bi-annual survey.

Mayor Pro Tempore Salinas opened the public hearing at 9:01 p.m.

Ms. Sara Lamnin, Hayward resident, appreciated the inclusion of homelessness under the Green priority and suggested adding a metric about ending homelessness in Hayward.

Mayor Pro Tempore Salinas closed the public hearing at 9:04 p.m.

Council Member Mendall noted that there were priorities that did not fit into categories such as: community health, health portals, tobacco regulations, school test scores, Hayward Promise Neighborhood, homelessness, economic development, and recreation opportunities for the youth.



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Mr. Mendall added that the Council missed an opportunity to align definitions and find a home for the orphan priorities.

Council Member Halliday offered a motion to adopt the recommended Council priorities for FY 2015 & FY 2016, approve the preliminary performance measures associated with each priority, and approve the process whereby staff would refine performance measures throughout the budget development process for Council's final approval with adoption of the FY 2015 & FY 2016 budget.

Council Member Peixoto seconded the motion.

It was moved by Council Member Halliday, seconded by Council Member Peixoto, and carried with Mayor Sweeney absent, to adopt the recommended Council priorities for FY 2015 & FY 2016, approve the preliminary performance measures associated with each priority, and approve the process whereby staff would refine performance measures throughout the budget development process for Council's final approval with adoption of the FY 2015 & FY 2016 budget.

City Manager David noted that staff would bring back to Council a resolution capturing the recommendation and would include items that were identified during the discussion.

5. Introduction of Ordinances to Adopt the 2013 California Fire Code, 2013 California Building Code (CBC), 2013 California Historical Building Code, 2013 California Existing Building Code, 2013 California Green Building Standards Code, 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and to Repeal Chapter 10, Article 22 of the Municipal Code (Green Building Requirements for Private Development). The Project is Exempt from Environmental Review Pursuant to Section 15378(b)(1) of the CEQA Guidelines

Staff report submitted by Building Official Lepori, Senior Plan Checker Osborne, and Fire Marshall Westfield, dated December 10, 2013, was filed.

Director of Development Services Rizk announced the report and introduced Building Official Lepori and Fire Chief Contreras who provided a synopsis of the report.

Fire Chief Contreras noted that preamble (1) of Section 903.2.20 - Existing Buildings - of the Fire Prevention Code was intended to clarify the meaning of an "alteration" and not intended as a requirement; therefore, he recommended amending Section 903.2.20 of the Fire Prevention Code by removing Item (1).

Discussion ensued among Council and City staff about the proposed Code amendments.

Mayor Pro Tempore Salinas opened the public hearing at 9:20 p.m.

Mr. Tom Silva, Hayward resident and Rental Housing Owners Association representative, requested that Council refrain from considering the 2012 International Property Maintenance Code (IPMC) and the International Residential Code and noted that these items could be brought back to Council as part of the amendment to the Residential Rental Inspection Ordinance. Mr. Silva added the IPMC lacked peer review.

Mayor Pro Tempore Salinas closed the public hearing at 9:28 p.m.

Council Member Jones suggested that the Council Sustainability Committee's recommendation to Council, related to green building standards, be amended by changing the language from "developers for residential projects of at least twenty units be required to offer solar systems as an optional upgrade" to "developers for residential projects, regardless of the number of units, be required to offer solar systems as an optional upgrade."

Council Members Mendall and Halliday concurred with Council Member Jones' recommendation.

Council Members Halliday and Zermeño were amenable to not take action on the item related to the 2012 International Code for Property Maintenance in order to allow for further review, as requested by Mr. Silva.

Council Member Zermeño offered a motion to adopt the resolutions and introduce the ordinances adopting the 2013 California Fire Code, 2013 California Building Code, 2013 California Green Building Standards Code, 2013 California Residential Code, 2012 International Code for Property Maintenance, 2013 California Mechanical Code, 2013 California Electrical Code, 2013 California Plumbing Code, and repealing Chapter 10, Article 22 of the Municipal Code. The motion was carried with an amendment to Section 903.2.20 of the Fire Prevention Code for the City of Hayward by removing Item (1); holding the introduction of Section 101.4.4 of Appendix Chapter 1 of the Building Code for the City of Hayward, related to the provisions of the 2012 International Property Maintenance Code, for further review; and recommending that developers for residential projects, regardless of the number of units, be required to offer solar systems as an optional upgrade.

Council Member Halliday seconded the motion.

Council Member Salinas supported the motion and encouraged stakeholders to contact City staff for further discussion.

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried, to adopt the following. The motion was carried with an amendment to Section 903.2.20 of the Fire Prevention Code for the City of Hayward by removing Item (1); holding the introduction of Section 101.4.4 of Appendix Chapter 1 of the Building Code for the City of Hayward, related to the provisions of the 2012 International Property Maintenance Code, for further review; and recommending that developers for residential projects, regardless of the number of units, be required to offer solar systems as an optional upgrade.



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AYES: Council Members Zermeño, Jones, Halliday, Peixoto, Mendall
Mayor Pro Tempore Salinas
NOES: None
ABSENT: Mayor Sweeney
ABSTAINED: None

Resolution 13-180, “Resolution Finding and Determining the Need for Changes or Modification to the California Fire Code, 2013 Edition”

Introduction of Ordinance 13-_, “An Ordinance Establishing a Fire Prevention Code for the City of Hayward; Adopting the California Fire Code, 2013 Edition, Prescribing Regulations Governing Conditions Hazardous to Life and Property from Fire Or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 10-14, as Amended, and All Other Ordinances and Parts of Ordinances in Conflict Therewith”

Resolution 13-181, “Resolution Finding and Determining the Need for Changes or Modifications to the 2013 California Building Code”

Introduction of Ordinance 13-_, “An Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, and Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Ordinance No. 10-17, and All Amendments Thereto; and Repealing Article 22 of Chapter 10 of Hayward Municipal Code (Green Building Requirements for Private Development)”

Resolution 13-182, “Resolution Finding and Determining the Need for Changes or Modifications to the 2013 California Mechanical Code”

Introduction of Ordinance 13-_, “An Ordinance Establishing a Mechanical Code for the City of Hayward, Regulating the Alteration, Construction, Installation and Repair of Ventilating, Refrigeration, and Heat Producing Equipment (Mechanical Equipment); Providing for the Issuance of Permits and Collection of Fees and Prescribing Penalties for Violation of Said Mechanical Code; and Repealing Ordinance No. 10-20 and All Amendments Thereto”

Resolution 13-183, “Resolution Finding and Determining the Need for Changes or Modifications to the 2013 California Electrical Code”

Introduction of Ordinance 13-__, “An Ordinance to be Known and Designated as the Electrical Code of the City of Hayward; Regulating the Installation, Alteration, Repair, and Maintenance of Electrical Wiring, Electrical Fixtures, and Other Electrical Appliances and Equipment; Providing for the Issuance of Permits and Collection of Fees; and Repealing Ordinance No. 10-21 and All Amendments Thereto”

Resolution 13-184, “Resolution Finding and Determining the Need for Changes or Modifications to the 2013 California Plumbing Code”

Introduction of Ordinance 13-__, “An Ordinance Repealing Ordinance No. 10-22 and All Amendments Thereto, and Establishing a Plumbing Code for the City of Hayward, Regulating the Construction, Alteration, Repair, and Maintenance of Plumbing; Providing for the Issuance of Permits and Collection of Fees”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Jones reported the SantaCon Hayward event, held on December 7, 2013, was a success and noted that participants raised over \$1,700 for the Hayward Animal Shelter, identified 12 animals for free adoption, and helped generate \$5,000 in business activity.

Council Member Salinas reported he attended the public forum related to the Commission on Accreditation for Law Enforcement Agencies (CALEA) on December 9, 2013, and noted the session was well attended.

Council Member Zermeño encouraged Hayward students to prepare for final exams.

ADJOURNMENT

Mayor Pro Tempore Salinas adjourned the meeting at 9:44 p.m.

APPROVED:

Mark Salinas
Mayor Pro Tempore, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, December 17, 2013, 7:00 p.m.**

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

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

Mayor Sweeney noted that Council Member Mendall had a back problem and he may have to leave the meeting early.

CLOSED SESSION ANNOUNCEMENT

Mayor Sweeney reported that the Council met in closed session regarding a performance evaluation of the City Manager pursuant to Government Code 54957; met with legal counsel pursuant to Government Code 54956.9 regarding anticipated litigation; and met with labor negotiators pursuant to Government Code 54957.6 regarding all groups. There was no reportable action.

PRESENTATIONS

Presentation by Congressman Swalwell

Congressman Swalwell, representing the Fifteenth District of California, shared that he had been attending Council meetings and outreach events throughout his district in order to keep constituents engaged. He also provided an update on his efforts with legislation/initiatives: supported a two-year budget agreement; supported a Bay Area Rapid Transit (BART) application to obtain Transit Security Grant Program funds for Transbay Tube security improvements; introduced his first bill, H.R. 952, the Main Street Revival Act; introduced the Restarting Local Economies Act of 2013; supported the comprehensive immigration reform; supported passing a minimum wage federally; supported a three-year federal Community Oriented Policing Services (COPS) grant application, which the Hayward Police department received; advocated for the appointment of a qualified Veterans Affairs Regional Director for the area; and supported the Affordable Care Act (ACA). Mayor and Council Members thanked Congressman Swalwell and praised him for his efforts to help Hayward.

Certificates of Commendation

Mayor Sweeney read two certificates of commendation recognizing the outstanding scholastic achievements of Reynaldo Muro Hernandez, 3rd Grader at Southgate Elementary, and Anna

Fomitchev, 4th Grader at Stonebrae Elementary School. The City of Hayward Public Library added Reynaldo's favorite book, *Magic Tree House: Sea Monsters* by Mary Pope Osborne, to its permanent collection of library books in his name and also added Anna's favorite book, *Shiloh* by Phyllis Reynolds Naylor, to its permanent collection of library books in her name. On behalf of the Hayward City Council, Mayor Sweeney commended both students for their outstanding academic achievements, exemplary attendance, and positive character traits. Hayward Unified Superintendent Stan Dobbs and Executive Director of Elementary Education Fernando Yañez thanked the Council and the Rotary Club of Hayward for their partnership in recognizing both students.

PUBLIC COMMENTS

Ms. Wynn Greich, Hayward resident, spoke on the negative health impacts caused by atrazine, chloramine and fluoride in drinking water.

Mr. Jim Drake, Hayward resident, spoke about safety issues and the need to hire more police officers.

The following speakers spoke in support of regulations for the sale of tobacco and tobacco-related products and offered the following comments: San Francisco prohibits the sale of tobacco in pharmacies; electronic cigarettes and hookah lounges were becoming problematic for the youth; a tobacco retailer license would subject establishments to be in compliance with operational standards; youth had easy access to tobacco products; and proposed regulations would regulate tobacco sales near schools. Ms. Lamnin recommended that the word "nicotine" be included in the ordinance and the tobacco retailer license, that retailers that conform with regulations be recognized, provide public education about tobacco use via Channel 15, and that regulations be applied across-the-board.

Mr. Bob Gordon, San Francisco resident

Ms. Jocelyn Bonilla, Youth Decoy Program member

Ms. Karishma Khatri, Youth Decoy Program member

Ms. Traci Cross, Hayward resident and Eden Youth and Family Center project coordinator

Ms. Janice Louie, Alameda County Public Health Department representative

Ms. Tiffany Neira, Hayward Coalition for Healthy Youth member

Ms. Evelyn Moua, Alameda County Public Health Department intern

Mr. Peter Bufete, Hayward resident

Ms. Sara Lamnin, South Hayward Parish and Hayward Community Action Network representative

The following speakers spoke in support of a voter-approved revenue measure that would provide funding for a new Library and Community Learning Center.

Ms. Judy Harrison, Hayward resident and Friends of the Library president

Mr. Rick Imsdahl, Hayward resident

Ms. Paola Diaz, CSUEB student and Hayward Promise Neighborhood Program tutor

Mr. Peter Bufete, Library Commission member

Ms. Kari McAllister, Library Commission chair

Ms. Lynn Roberts, Hayward resident

Mr. Phil Roberts, Hayward resident



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The following Service Employees International Union (SEIU) Local 1021 employees and representatives expressed they were frustrated over labor negotiations and unfair labor practice; and urged the Council to help achieve a fair contract.

Ms. Kristine Rott
Ms. Linda Reid
Ms. Mary French
Ms. Duce O'Bayley
Mr. Justin Temores
Ms. Jessica Perkinson
Ms. Bethany Bender
Mr. Michael Stotts

Mr. John Stead-Mendez, Berkeley resident and SEIU Local 1021 Deputy Executive Director, submitted a Local Revenue Forecast study conducted by Beacon Economics.

Mr. Gil Hesia, SEIU 1021 Local member, submitted a Resolution adopted by the Alameda Labor Council Executive Committee in support of City of Hayward workers.

Ms. Alysabeth Alexander, SEIU Local 1021 Vice President of Politics, referred to a petition of over 5,000 signatures garnered from Hayward residents in support of City of Hayward workers.

Mr. S.J. Samiul, Hayward resident, encouraged residents to become friends of the Hayward Library and Hayward Neighborhood Alert; spoke about the Calpine Power Plant; claimed that Standard Pacific Homes development was destroying trees; and urged Council to give Library workers a salary raise.

WORK SESSION

1. Establishment of Zoning Regulations Related to the Retail Sales of Tobacco and Tobacco-Related Products, Including Electronic Cigarettes, Within the City of Hayward

Staff report submitted by Associate Planner Ajello, dated December 17, 2013, was filed.

Development Services Director Rizk announced the report and introduced Associate Planner Ajello who provided a synopsis of the report.

Discussion ensued among Council and City staff. The Council concurred to move forward with a moratorium to prohibit the establishments of new tobacco, e-cigarette and related establishments; supported the annual Tobacco Retailer License fee and suggested reducing the number of violations

that would be necessary to revoke a license; agreed to consider increasing the license fee in support of educational efforts; ban sale of tobacco products in pharmacies; outright ban small tobacco retailers; and directed staff to research the possibility of expanding the prohibition to larger retailers.

2. Financing Mechanisms for the City’s Critical Facility Needs and Update on Polling Results##

Staff report submitted by Assistant City Manager McAdoo and Director of Finance Vesely, dated December 17, 2013, was filed.

Assistant City Manager McAdoo provided a synopsis of the report.

Discussion ensued among Council and City staff. The Council concurred that staff move forward with further discussion and with the proposed community outreach about a possible 2014 funding measure for the purpose of learning if the community is in agreement with such a voter-approved revenue measure. There was further consensus for the Council Budget and Finance Committee to continue to be involved and provide input regarding a possible local sales tax as well as a bond measure.

Council Member Mendall left the Council Chambers at approximately 10:08 p.m.

CONSENT

Consent Items 3, 13, 16, 17, and 21 were removed for further discussion.

3. Approval of Minutes of the City Council Meeting on December 3, 2013

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried with Mayor Sweeney abstaining and Council Member Mendall absent, to approve the minutes of the City Council Meeting on December 3, 2013.

4. Adoption of an Ordinance Adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Halliday, and carried with Council Member Mendall absent; to adopt the following:

Ordinance 13-17, “Ordinance of the City of Hayward, California adding Article 16 to Chapter 4 of the Hayward Municipal Code Regarding Prohibition of Simulated Gambling Devices”

5. Adoption of an Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices



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Staff report submitted by City Clerk Lens, dated December 17, 2013,
was filed.

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

Ordinance 13-18, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, Relating to Simulated Gambling Devices”

6. Adoption of an Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations

Staff report submitted by City Clerk Lens, dated December 17, 2013,
was filed.

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

Ordinance 13-19, “An Ordinance Amending Chapter 11, Article 3, Appendix “A” of the Hayward Municipal Code by Adopting the Revised Wastewater Discharge Regulations”

7. Adoption of an Ordinance Establishing a Fire Prevention Code for the City of Hayward; Adopting the California Fire Code, 2013 Edition, Prescribing Regulations Governing Conditions Hazardous to Life and Property from Fire or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 10-14, As Amended, and All Other Ordinances and Parts of Ordinances in Conflict Therewith

Staff report submitted by City Clerk Lens, dated December 17, 2013,
was filed.

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

Ordinance 13-20, “An Ordinance Establishing a Fire Prevention Code for the City of Hayward; Adopting the California Fire Code, 2013 Edition, Prescribing Regulations Governing Conditions Hazardous to Life and Property from Fire Or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 10-14, as Amended, and All Other Ordinances and Parts of Ordinances in

Conflict Therewith”

8. Adoption of an Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, and Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Ordinance No. 10-17, and All Amendments Thereto; and Repealing Article 22 of Chapter 10 of Hayward Municipal Code (Green Building Requirements for Private Development)

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Ordinance 13-21, “An Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, and Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Ordinance No. 10-17, and All Amendments Thereto; and Repealing Article 22 of Chapter 10 of Hayward Municipal Code (Green Building Requirements for Private Development)”

9. Adoption of an Ordinance Establishing a Mechanical Code for the City of Hayward, Regulating the Alteration, Construction, Installation and Repair of Ventilating, Refrigeration, and Heat Producing Equipment (Mechanical Equipment); Providing for the Issuance of Permits and Collection of Fees and Prescribing Penalties for Violation of Said Mechanical Code; and Repealing Ordinance No. 10-20 and All Amendments Thereto

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Ordinance 13-22, “An Ordinance Establishing a Mechanical Code for the City of Hayward, Regulating the Alteration, Construction, Installation and Repair of Ventilating, Refrigeration, and Heat Producing Equipment (Mechanical Equipment); Providing for the Issuance of Permits and Collection of Fees and Prescribing Penalties for Violation of Said Mechanical Code; and Repealing Ordinance No. 10-20 and All Amendments Thereto”



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-
10. Adoption of an Ordinance to be Known and Designated as the Electrical Code of the City of Hayward; Regulating the Installation, Alteration, Repair, and Maintenance of Electrical Wiring, Electrical Fixtures, and Other Electrical Appliances and Equipment; Providing for the Issuance of Permits and Collection of Fees; and Repealing Ordinance No. 10-21 and All Amendments Thereto

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Ordinance 13-23, “An Ordinance to be Known and Designated as the Electrical Code of the City of Hayward; Regulating the Installation, Alteration, Repair, and Maintenance of Electrical Wiring, Electrical Fixtures, and Other Electrical Appliances and Equipment; Providing for the Issuance of Permits and Collection of Fees; and Repealing Ordinance No. 10-21 and All Amendments Thereto”

11. Adoption of an Ordinance Repealing Ordinance No. 10-22 and All Amendments Thereto, and Establishing a Plumbing Code for the City of Hayward, Regulating the Construction, Alteration, Repair, and Maintenance of Plumbing; Providing for the Issuance of Permits and Collection of Fees

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Ordinance 13-24, “An Ordinance Repealing Ordinance No. 10-22 and All Amendments Thereto, and Establishing a Plumbing Code for the City of Hayward, Regulating the Construction, Alteration, Repair, and Maintenance of Plumbing; Providing for the Issuance of Permits and Collection of Fees”

12. Adoption of an Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City

Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Ordinance 13-25, “An Ordinance Amending Chapter 11, Article 2 of the Hayward Municipal Code Relating to Metered Service Charges Outside City”

13. Approval of Final Tract Map 8086 – Camden Place Development by Standard Pacific Homes (Applicant/Owner); the Project is Located on Multiple Parcels Totaling 10.9 Acres Generally Located Between Eden Avenue and Saklan Road, North of Middle Lane in the Mt. Eden Area

Staff report submitted by Development Review Services Engineer Nguyen, dated December 17, 2013, was filed.

In response to Council Member Halliday’s inquiry about the claim of trees that were illegally removed, Development Services Director Rizk noted that the trees were removed without required permits and without an approved replacement mitigation plan; however, staff was working with Standard Pacific to have a mitigation plan developed, a removal permit issued, a fine imposed for the illegal removal of the trees, and to post bond to ensure preservation of the large Oak tree and additional trees that could be impacted by the construction.

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

Resolution 13-190, “Resolution Approving Final Map for Tract 8086 and Authorizing the City Manager to Execute a Subdivision Agreement”

14. Approval of Final Tract Map 7991 – Apricot Lane Development (Residual Burbank School Site) by the Successor Agency (Owner)/ Urban Dynamic, LLC (Applicant/Developer) - The Project Site is Located at the Southwest Corner of B Street and Myrtle Street, East of Burbank Elementary School

Staff report submitted by Development Review Services Engineer Nguyen, dated December 17, 2013, was filed.

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

Resolution 13-185, “Resolution Approving Final Map for Tract 7991, Making Certain Findings Related Thereto, and Authorizing the City Manager to Execute a Subdivision Agreement and Other Documents to Effectuate the Required



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Improvements for the Development, Subject to the Successor Agency Obtaining the Requisite State Approvals”

15. Approval of Final Map Tract 7893 – Regency Square Development by KB Home South Bay Inc. (Applicant/Owner) - The Project Site is Located Generally at the Intersection of Orchard Avenue and Traynor Street, Westerly of Soto Road

Staff report submitted by Development Review Services Engineer Nguyen, dated December 17, 2013, was filed.

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

Resolution 13-186, “Resolution Approving Final Map for Tract 7893 and Authorizing the City Manager to Execute a Subdivision Agreement”

16. Authorization for the City Manager to Negotiate and Execute an Agreement with Noll & Tam Architects and Planners for Professional Design Services for the Hayward 21st Century Library & Community Learning Center

Staff report submitted by Assistant City Engineer Owusu, dated December 17, 2013, was filed.

Mayor Sweeney opened the public hearing to allow for public comment on the item.

Mr. Jim Drake, Hayward resident, spoke about the importance of having a competitive bidding process. It was noted that staff was in compliance.

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

Resolution 13-191, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Noll and Tam Architects and Planners for Professional Design Services Associated with the Hayward 21st Century Library & Community Learning Center Project, Project No. 06992”

Resolution 13-192, “Resolution Amending Resolution 13-105, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2014, For a Transfer of

Funds from the Donations Fund (Fund 250) to the Capital Projects (Governmental) Fund (Fund 405); and for an Appropriation of Funds From the Capital Projects (Governmental) Fund to the Hayward 21st Century Library & Community Learning Center Project, Project No. 06992”

17. Authorization for the City Manager to Negotiate and Execute an Agreement with Ross Drulis Cusenbery Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9

Staff report submitted by Assistant City Engineer Owusu, dated December 17, 2013, was filed.

Mayor Sweeney opened the public hearing to allow for public comment on the item.

Mr. Jim Drake, Hayward resident, spoke about the importance of having a competitive bidding process. It was noted that staff was in compliance.

It was moved by Council Member Salinas, seconded by Council Member Halliday, and carried with Council Member Mendall absent, to adopt the following:

Resolution 13-193, “Resolution Authorizing the City Manager to Negotiate and Execute a Professional Services Agreement with Ross Drulis Cusenberry Architecture for Professional Services for the Facilities Needs Assessment Study and Master Planning for the Police Administration Building, and Fire Stations 1-6 and 9”

18. Adoption of Resolution Extending the Inclusionary Interim Relief Ordinance for a Six-Month Period

Staff report submitted by Housing Development Specialist Cortez, dated December 17, 2013, was filed.

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

Resolution 13-187, “Resolution Extending for Six Months Provisions of an Ordinance Providing Interim Relief from Certain Inclusionary Housing Provisions and Finding that the Extension is Exempt from the California Environmental Quality Act (CEQA)”

19. Resolution Appointing Council Member Halliday to the Alameda County Mosquito Abatement District Board of Trustees



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Staff report submitted by City Clerk Lens, dated December 17, 2013, was filed.

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

Resolution 13-188, “Resolution Appointing Council Member Halliday as City of Hayward Representative to the Alameda County Mosquito Abatement District Board of Trustees”

20. Final Map Tract 7736, Application No. PL-2006-0069, Stonebrae Country Club Village B – Stonebrae L.P. (Subdivider) – Request to Amend Condition of Approval No. 171 Related to Construction of the Second Water Storage Reservoir in the Highland 1530 Zone, and Authorization for the City Manager to Negotiate and Execute an Agreement for Reimbursement of Costs

Staff report submitted by Director of Public Works – Utilities & Environmental Services Ameri, dated December 17, 2013, was filed.

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

Resolution 13-189, “Resolution Amending Condition of Approval No. 171 Pertaining to Construction of the Second Water Storage Reservoir at the Highland 1530 Zone for Final Map Tract 7736, Stonebrae Country Club Village B, and Authorizing the City Manager to Negotiate and Execute an Agreement with Stonebrae L.P. for Reimbursement by Stonebrae of All Costs”

21. Authorization to Amend a Professional Services Agreement with Townsend Public Affairs, Inc. to Extend the Term of the Agreement Through the End of FY2014 for Assistance in Securing State and Federal Funding and Legislative Advocacy Services

Staff report submitted by Assistant City Manager McAdoo, dated December 17, 2013, was filed.

Mayor Sweeney opened the public hearing to allow for public comment on the item.

Mr. Jim Drake, Hayward resident, spoke about the importance of having a competitive bidding process.

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

Resolution 13-194, “Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to a Professional Services Agreement with Townsend Public Affairs, Inc., to Assist in Securing State and Federal Funding for Affordable Housing, Economic Development, Public Safety, Library, Infrastructure, and Transportation Related Activities and Public Facilities”

PUBLIC HEARING

22. Adoption of a Resolution of Intention to Approve an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS)

Staff report submitted by Senior Human Resources Analyst Collins, dated December 17, 2013, was filed.

Human Resources Director Robustelli announced the report and introduced Senior Human Resources Analyst Collins who provided a synopsis of the report.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 10:19 p.m.

Council Member Salinas offered a motion to adopt the resolution of intention to approve an amendment to the contract with CalPERS and add Section 20516 “Employee Sharing Cost of Additional Benefits” for new local fire members.

Council Member Peixoto seconded the item.

It was moved by Council Member Salinas, seconded by Council Member Peixoto, and carried with Council Member Mendall absent, to adopt the following:

Resolution 13-195, “Resolution of Intention to Approve an Amendment to Contract between the Board of Administration, California Public Employees’ Retirement System and the City of Hayward”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Salinas wished everyone a Merry Christmas and Happy Holidays. Mr. Salinas noted that the Kids’ Breakfast Club would be cooking and serving breakfast at Burbank Elementary School during winter break starting on December 23, 2013.

Council Member Zermeño wished everyone a Feliz Navidad and Próspero Año Nuevo.



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Mayor Sweeney, on behalf of the Council, wished everyone a Merry Christmas and a healthy and happy New Year.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 10:26 p.m. in memory of Mr. Marvin Burrows. Mr. Burrows was a great community activist; was a leader in the lesbian, gay, bisexual, transgender (LGBT) community for equal rights for same sex couples; supported Meals on Wheels by delivering meals to low-income seniors; advocated for health benefits for domestic partners and for the youth at the Lighthouse Community Center; and was a genuine friend. Mayor Sweeney requested that staff work with his family to find a suitable place to plant a tree in memory of Mr. Burrows.

APPROVED:

Michael Sweeney
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward

DATE: January 14, 2014

TO: Mayor and City Council

FROM: Director of Finance

SUBJECT: Authorization for City Manager to Execute a Master Lease Purchase Agreement for the Purchase of Police and Fire Department Vehicles

RECOMMENDATION

That City Council approves the attached resolution authorizing the City Manager to execute 1) a Master Equipment Lease Purchase Agreement for Police and Fire Department Vehicles, and 2) other documents necessary to procure equipment lease financing for \$1,335,000 from Holman Capital Corporation.

BACKGROUND

The Maintenance Services Department manages a fleet of over 360 vehicles. Each year certain vehicles are due for scheduled replacement. The useful lives of many vehicles have been extended beyond best practices due to funding constraints. The vehicles to be financed this year are one (1) Seagrave Type 1 Fire Engine and twelve (12) replacements for the Police Department: six (6) for Patrol, two (2) for Investigations, and four (4) motorcycles for Traffic.

Over the past several years, the City has taken advantage of low-interest rate leases to spread the cost of equipment purchases over a portion of their useful lives. Staff recommends continuing to use lease financing for the current year equipment acquisitions.

DISCUSSION

Staff is requesting approval for a Master Equipment Lease Purchase Agreement to finance thirteen motor vehicles for a total estimated cost of \$1,355,000 as described in Table 1.

Table 1 – Lease/Purchase Vehicles

	Type	Loan Term	Number/Type of Vehicles	Loan Amount
1	Fire Vehicle	10 years	(1) Type 1 Engine	\$820,000
2	Police Vehicles	4 years	(12) Police Vehicles: Six Patrol, Four Motorcycles, and two Investigations Vehicles	\$535,000
Total				\$1,355,000

All equipment scheduled for replacement has exceeded its useful life. Police service vehicles are rotated out of service at 100,000 miles due to age, condition, mileage, and maintenance expense; and vehicles reach the end of their useful service life between four and seven years (four years for

patrol vehicles, up to seven years for investigation and other administrative police service vehicles). Fire apparatus generally have a longer useful life, ranging from ten – fifteen years.

The vehicles scheduled for replacement will be taken out of service as soon as the new vehicles have been placed into service, and all but the Fire Engine will be scheduled for auction. The replaced Fire Engine will be retained as a reserve vehicle.

Capital Lease Financing - A Request for Proposals was sent to eight providers of municipal lease financing. Three proposals were received as summarized in Table 2.

Table 2 – Bid Summary

Name of Company	10-Year			4-Year		
	Rate	Payments	Total Payments	Rate	Payments	Total Payments
Holman Capital	3.05%	\$ 48,112.85	\$ 962,257.00	2.26%	\$ 70,320.17	\$ 562,561.36
Umpqua Bank	3.44%	\$ 48,808.56	\$ 976,171.20	2.61%	\$ 70,629.32	\$ 565,034.56
Muni Finance	4.25%	\$ 50,755.48	\$ 1,015,109.60	3.50%	\$ 72,247.96	\$ 577,983.68

The lease purchase agreement for thirteen vehicles is for planned replacements, with no additions to the fleet. The lease structure is divided into a ten-year rate for the purchase of the fire vehicle (due to longer vehicle life span) and a four-year rate for the purchase of the police vehicles. The lowest cost proposal was submitted by Holman Capital. The fire vehicle will be financed over a ten-year term (twenty semi-annual payments of \$48,113); and the police vehicles will be financed over a four-year term (eight semi-annual payments of \$70,320) to finance the \$1,355,000 total cost.

All vehicles being purchased this year will have significantly cleaner burning engines and will be more fuel efficient as compared to the vehicles they are replacing. The patrol cars will have the latest engine management system on the V-8 engines. This latest technology will shut the engine down to run on either 4 or 6 cylinders when the vehicle requires less load. This cylinder shut-down technology will greatly increase fuel economy and emit fewer tail pipe emissions into the environment, while maintaining vehicle capacity for police operations.

ECONOMIC IMPACT

There is no direct economic impact of this action.

FISCAL IMPACT

These City vehicle purchases are appropriated in the Fleet Capital Fund, which is the fund for all General Fund fleet purchases, and are part of the currently approved FY 2014 Capital Improvement Budget. The FY 2014 amount in the Fleet Capital Fund for the replacement of the fire and police vehicles is \$1,355,000. While direct cash purchase is the preferable mechanism for fleet replacement, this fund does not currently have adequate capital resources to purchase fleet vehicles out-right. Pursuant to Council policy to strive toward the most economical method of purchasing its fleet vehicles, the General Fund Ten-Year Plan includes increased allocations to the Fleet Capital Fund to fully fund future vehicle purchases starting in FY 2017 and eliminating the need for future lease financing.

Payments on existing and future leases are budgeted in the Fleet Operating Fund. This fund has \$1.08 million budgeted for debt service payments in FY 2014, which will cover the costs for the existing and new leases. These ongoing debt service payments are funded through charges to departments for replacement and maintenance of vehicles. Lease payments for the next five years for existing and new vehicle lease acquisitions are listed below.

Table 3: Uses of Debt Service Payments

Type of Obligation	Vehicles	Term (years)	Issue Date	Interest Rate	Total Lease Purchase	Annual Debt Service				
						FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Lease/purchase	1 fire apparatus	10	Jan-2014	3.05%	\$ 962,257	48,113	96,226	96,226	96,226	96,226
Lease/purchase	12 vehicles	4	Jan-2014	2.26%	\$ 562,561	70,320	140,460	140,460	140,460	70,230
Lease/purchase	13 vehicles	4	Oct-2012	1.30%	\$ 520,000	\$ 133,826	\$ 133,826	\$ 133,826	\$ 66,913	\$ -
Lease/purchase	23 vehicles	4	Oct-2011	2.05%	\$ 851,992	\$ 212,998	\$ 212,998	\$106,499	\$ -	\$ -
Lease/purchase	3 fire apparatus	10	Sept-2011	3.24%	\$ 1,991,524	\$ 234,749	\$ 234,749	\$234,749	\$234,749	\$ 234,749
Lease/purchase	6 vehicles	7	Sept-2010	2.88%	\$ 818,558	\$ 129,957	\$ 129,957	\$129,957	\$129,957	\$ 64,978
Lease/purchase	4 vehicles	4	Sept-2010	2.28%	\$ 360,000	\$ 94,678	\$ 46,870	\$ -	\$ -	\$ -
Loan from Sewer Fund	utility vehicles	7	Oct-2009	2.00%	\$ 1,000,000	\$ 151,548	\$ 148,690	\$148,690	\$ -	\$ -
TOTAL					\$ 7,066,892	\$1,076,190	\$1,143,777	\$990,407	\$668,305	\$ 466,183

NEXT STEPS

Once the lease/purchase agreement is finalized, City staff will issue a Request for Proposal for vehicle purchases.

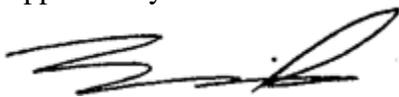
PUBLIC CONTACT

The Lease Financing RFP was opened on December 3, 2013. The lease documents are on file and available for review with the City Clerk and Finance Department.

Prepared by: Tracy Vesely, Director of Finance

Recommended by: Tracy Vesely, Director of Finance
 Matt McGrath, Director of Maintenance Services

Approved by:



Fran David, City Manager

Attachments: I - Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD,
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN
EQUIPMENT LEASE-PURCHASE AGREEMENT AND AN ESCROW AGREEMENT
FOR THE ACQUISITION OF NEW POLICE AND FIRE VEHICLES

WHEREAS, the City of Hayward (the “City”) is authorized by the laws of the State of California to purchase, acquire, and lease personal property for the benefit of the City and its inhabitants and to enter into contracts with respect thereto; and

WHEREAS, it is necessary for the City to acquire thirteen new vehicles, to wit: twelve vehicles for the Police Department and one new fire apparatus, to replace vehicles that have been extended beyond their useful life; and

WHEREAS, the City issued a Request for Proposals for lease/purchase financing and the successful bidder was Holman Capital Corporation; and

WHEREAS, in order to acquire such equipment, the City proposes to enter into a Master Equipment Lease Purchase Agreement with Holman Capital Corporation (the “Lessor”) and an Escrow Agreement with the Lessor and Deutsche Bank National Trust Company as escrow agent.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, that the City Manager is hereby directed to negotiate and execute a Master Equipment Lease Purchase Agreement with Homan Capital and an Escrow Agreement with Holman Capital Corporation and Deutsche Bank National Trust Company, and any other documents necessary to complete the transaction, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: January 14, 2014

TO: Mayor and City Council

FROM: Human Resources Director

SUBJECT: Introduction and Adoption of an Ordinance to Approve an Amendment to the City of Hayward's Contract with the California Public Employees Retirement System (CalPERS) and Authorizing Staff to Execute the Contract

RECOMMENDATION

That the City Council introduces and adopts an Ordinance to approve an amendment to the City of Hayward's contract with CalPERS and authorizing the City Manager to execute said amendment to add Section 20516 "Employees Sharing Additional Cost" for new local fire members.

BACKGROUND AND DISCUSSION

On December 17, 2013, the City Council adopted a Resolution of Intent to amend its contract with CalPERS to add Section 20516 "Employees Sharing Additional Cost" for new local fire members. This action was taken to amend the CalPERS contract so that the agreements reached during recent discussions with IAFF LOCAL 1909 (Firefighters) for cost sharing are applicable to new CalPERS members.

Effective July 4, 2011, the existing contract with CalPERS allows members of the Fire Units to contribute up to a maximum of 15.607% toward the City's employer contribution. The Fire Units currently contribute 6% toward the employer's contribution in addition to paying the full 9% employee share for a total contribution of 15%.

The current agreement between IAFF Local 1909 and the City provides that new employees who may be impacted by the Public Employees' Pension Reform Act of 2013 (PEPRA) will pay the legislatively mandated equal share or 15%, whichever is greater. Under PEPRA, new members are those who were not enrolled in CalPERS prior to January 1, 2013. PEPRA requires new members to pay an equal share of the normal cost of the retirement benefit, which is 11.25% in FY 2013. This amount is less than the 15% the bargaining unit has agreed to. Therefore, under the terms of the existing agreement with IAFF Local 1909, the new members must contribute 3.75% toward the employers' share. However, the City's existing contract with CalPERS only allows for the equal share of normal cost contribution and does not allow for the additional contribution the new members are contractually obligated to pay based on recent agreements with Local 1909.

To implement any changes to the retirement program, it is necessary to amend the City's existing contract with CalPERS. The approved Resolution authorizes staff to work with CalPERS to amend the contract to incorporate the changes. The proposed Ordinance approves the amendments and authorizes staff to execute the contract effective February 24, 2014.

FISCAL IMPACT

The retirement cost sharing agreement with the Fire Units is part of a larger concession package with the Fire Units that resulted in a total savings in employee salaries and benefits of approximately \$12.1 million over a six-year period.

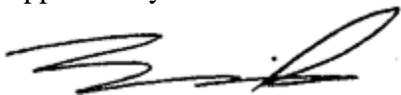
SCHEDULE

In accordance with Section 617 of the City Charter, with at least five (5) affirmative votes, the Ordinance will take effect on February 17, 2014. The contract will be executed and in effect by February 24, 2014.

Prepared by: Nina S. Collins, Senior Human Resources Analyst

Recommended by: Frances M. Robustelli, Human Resources Director

Approved by:



Fran David, City Manager

Attachments:

- | | |
|----------------|---|
| Attachment I: | Ordinance Authorizing an Amendment to the Contract between the City and CalPERS |
| Attachment II: | Exhibit to the Ordinance – Amendment to CalPERS Contract |

ORDINANCE NO. 14-_____

AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE CONTRACT BETWEEN THE CITY OF HAYWARD AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

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

Section 1. Provisions.

1. That an amendment between the City Council of the City of Hayward and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.
2. The City Manager of the City of Hayward is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Hayward.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2014, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ____ day of ____, 2014, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

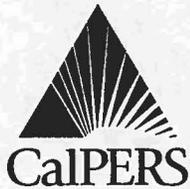
APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



EXHIBIT

California
Public Employees' Retirement System



AMENDMENT TO CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Hayward



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1950, and witnessed August 7, 1950, and as amended effective January 16, 1952, January 1, 1956, April 1, 1959, January 1, 1960, November 1, 1962, April 1, 1965, December 1, 1969, July 1, 1973, July 16, 1973, June 1, 1978, April 23, 1979, January 12, 1981, March 9, 1981, July 11, 1986, October 10, 1988, June 21, 1991, June 19, 1992, March 8, 1996, January 1, 2001, April 1, 2001, July 1, 2001, August 26, 2002, May 23, 2008 and July 4, 2011 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 14 are hereby stricken from said contract as executed effective July 4, 2011, and hereby replaced by the following paragraphs numbered 1 through 14 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for local miscellaneous members and age 50 for local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after October 1, 1950 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorneys fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas
 - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **PERSONS EMPLOYED AFTER JANUARY 16, 1952 AS CROSSING GUARDS; AND**
 - b. **PERSONS EMPLOYED AFTER JANUARY 30, 1959 AS PART-TIME LIFEGUARDS AND PART-TIME LIBRARY AIDES.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment before and not on or after August 26, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for local miscellaneous members in employment on or after August 26, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
9. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.
 - b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
 - c. Section 20042 (One-Year Final Compensation).
 - d. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage) for local safety members only.

PLEASE DO NOT SIGN "EXHIBIT ONLY"

- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 21027 (Military Service Credit for Retired Persons).
- g. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
- h. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
- i. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local miscellaneous members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- l. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
- m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for classic local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%.

Section 21362.2 (3% @ 50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for classic local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

n. Section 20516 (Employees Sharing Additional Cost):

From and after the effective date of this amendment to contract, 3.75% for new local fire members.

10. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on June 1, 1978. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
11. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
12. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21573 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local safety members.
 - b. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members.
 - c. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - d. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

13. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
14. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF HAYWARD

BY _____
KAREN DE FRANK, CHIEF
CUSTOMER ACCOUNT SERVICES DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

DATE: January 14, 2014

TO: Mayor and City Council

FROM: Director of Development Services
City Attorney

SUBJECT: Adoption of Interim Urgency Ordinance Imposing a Temporary Moratorium on the Development, Establishment and Operation of new Small-Format and Large-Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward. The adoption of the Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065 and State CEQA Guidelines Sections 15061(b)(3), 15306 and 15378.

RECOMMENDATION

That the City Council adopts the attached interim urgency ordinance (Attachment I) finding the action categorically exempt from CEQA review and establishing a temporary moratorium on the development, establishment, and operation of new Small-Format and Large Scale Tobacco Retailers and all new E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars within the City of Hayward, which will become effective immediately upon adoption, and be in effect for forty-five days through February 28, 2014.

SUMMARY

Staff is recommending a moratorium to prohibit establishment of new small-format and large-scale tobacco retail establishments. Small-format tobacco retailers are stores that are less than 10,000 square feet in size. Large-scale tobacco retailers are stores that devote more than five (5) percent of their floor areas to the sale, display, sale and storage of tobacco products. Staff is also recommending a moratorium on all new hookah bars and e-cigarette and related establishments, due to the recent proliferation of such establishments in Hayward and because of the unknown long-term health impacts of e-cigarettes on youth. Staff is developing regulations to address and manage these establishments, but is also recommending this moratorium on all tobacco and tobacco-related products, including e-cigarettes, to allow staff sufficient time to complete its research, conduct adequate public outreach, and develop such regulations to present to the Planning Commission and City Council.

BACKGROUND

In response to concerns with the negative health consequences of tobacco use among youth, due partially to availability and the lack of specific local laws regulating tobacco sales in Hayward, staff received direction from City Council to develop regulations pertaining to the sales of tobacco and tobacco-related products. Staff is currently in the process of developing proposed regulations to take forward to the Planning Commission and City Council for adoption in late winter or early spring of 2014. However, in the interim, staff has received and anticipates additional requests for the development and operation of new Tobacco Retailers, E-Cigarette Retailers, Electronic Cigarette Lounges, Vapor Bars, and Hookah Bars.

Currently, in the City of Hayward, staff is aware of eight E-Cigarette or "Vapor" retailers (seven opening up in the last ten months), one hundred and forty-six tobacco retailers and two hookah lounges. In recent months, City staff, including staff of the Hayward Police Department (HPD), has noticed an increase in the number of business license applications submitted for E-Cigarette or Vapor stores.

Given the large number of existing establishments in Hayward that sell tobacco and tobacco-related products, including e-cigarettes, and since the long-term effects of electronic cigarettes are still unknown, a moratorium is needed in order to protect the public health, safety and welfare and provide staff with an opportunity to develop proposed regulations to best address the prevention of sales of said products to youths and potential imminent threats to public safety, health, and welfare resulting from e-cigarette lounges, vapor bars and hookah bars.

DISCUSSION

Currently, the City's Zoning Ordinance does not list the sale of tobacco as a permitted use in any zoning district, nor does it define tobacco and tobacco-related products. As there was no specific restriction of tobacco sales, the Planning Director had made the determination that tobacco sales were a general retail item permitted in any commercial zoning district except in the downtown core area. With the prevalence of the establishment of "smoke shops" and other establishments selling tobacco and tobacco-related products in recent years, and with the introduction of a variety of new tobacco-related products, such as flavored tobacco, electronic cigarettes, hookahs and candy flavored cigars, it became clear that the City needed to develop standards pertaining to the sale of such items in order to prevent sales to youth. At the direction of City Council, staff began research and development of draft regulations pertaining to the sales of tobacco and tobacco-related products in early 2012.

Electronic cigarettes come in many shapes and prices, ranging from the disposable types that can be purchased at convenience stores for a few dollars and resemble real cigarettes to the more complex vaporizers sold at so-called "Vapor" stores or bars, which can sell for hundreds of dollars. In "Vapor" bars or e-cigarette lounges, patrons fill a tank with a solution that may contain nicotine and that comes in various flavors and potencies and press a button that heats

the solution into a vapor that is inhaled by the user. The health effects of inhaled vapor, with or without nicotine, and second-hand vapor are unknown.

A hookah lounge or hookah bar is a central location, typically with a layout similar to a restaurant or coffee shop, where customers share flavored tobacco from a communal hookah. Typically, a hookah with a long flexible tube is placed at various tables throughout the establishment. Customers sit at the table and smoke the flavored tobacco. Additionally, some hookah lounges sell food and other drinks, although hookah lounges do not typically serve alcohol. Hookah bars differ from E-cigarette or “Vapor” stores, because hookah typically involves smoking tobacco. Although not all hookah contains tobacco, a study by the National Institute of Health that compared smoke toxicant content for tobacco and non-tobacco products concluded that smoke from both categories of products contained substantial quantities of toxicants¹. While California law permits local agencies, such as the City, to pass and enforce laws regulating the distribution of electronic cigarettes that are stricter than state law, there are no state-wide rules governing “vapor bars,” e-cigarette lounges, or hookah bars. While several of these businesses have already been permitted in Hayward as “retail” uses, the City does not have any zoning designations or regulations that specifically pertain to such establishments.

Previous Work Sessions - At work sessions conducted with the Planning Commission and City Council at their November 21, 2013² and December 17, 2013³ meetings, respectively, staff presented and sought feedback on draft regulations pertaining to the sale of tobacco and tobacco related products, including e-cigarettes. At both meetings, members of the public, including members of the Hayward Coalition for Healthy Youth (HCHY), the American Lung Association, and the Alameda County Health Department spoke in support of the proposed regulations and provided testimony as to their knowledge and experience with tobacco and tobacco-related products, including e-cigarettes and vapor devices. Furthermore, staff provided an update to both the Commission and Council on the influx of new e-cigarette or “vapor” stores in the City and asked whether or not they would support a moratorium so that staff to research and develop appropriate regulations for review by the Planning Commission and the Council. Both the Commission and Council expressed support of a moratorium. Accordingly, staff prepared an urgency ordinance imposing a moratorium on new E-Cigarette Retailers, as well as Electronic Cigarette Lounges, Vapor Bars, Hookah Bars, and Tobacco Retailers.

Urgency Ordinance - Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt a moratorium on an urgency basis provided that the City finds that there exists a current and immediate threat to

¹ <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3407543/#R3>

² See staff report and attachments at <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2013/PCA13PDF/pea112113full.pdf>.

³ See staff report and attachments at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca121713full.pdf>.

the public health, safety and welfare and that the approval of additional use permits, building permits, license or other land use entitlements would result in that threat to public health, safety or welfare.

Staff has prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would establish a temporary moratorium on business licenses, use permits, building permits and other land use approvals for certain new tobacco and all e-cigarette retailers, e-cigarette lounges, vapor bars, and hookah bars.

If the City continues to approve the above uses prior to the City having an opportunity to further study and adopt appropriate regulations, it could create conflicts among land uses or conflict with the City's long-term planning goals, as well as create an overconcentration of said uses within the City. Furthermore, according to the Food and Drug Administration (FDA), the safety of e-cigarettes is still unknown, and initial studies have found carcinogens and toxic chemicals in the vapor, including ingredients used to make anti-freeze. In particular, the above activities are adults-only uses that may not be appropriate in all zoning districts or near sensitive receptors or other uses where minors are present. With respect to the proposed moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco-related products to youth are typically not occurring at the larger retailers with only ancillary tobacco sales. Accordingly, further establishment of new small-format and large-scale tobacco retailers and new e-cigarette retailers, e-cigarette lounges, vapor bars or hookah bars (of any size) in the City at this time, before the City can adopt regulations, presents a current and immediate threat to the public health, safety, and welfare. The negative health impacts related to tobacco use have been known for some time, and studies show a steady increase in the use of e-cigarettes by youth. Also, the long-term health effects of using e-cigarettes are still unknown. Therefore, staff recommends adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to continue to obtain approval for uses that might defeat the ultimate objective of the adoption of regulations.

Additional time is needed to allow staff to analyze the potential impacts of such new uses in the City and determine if modifications to the Zoning Ordinance regulations or other sections of the City's Municipal Code would be appropriate. California Government Code Section 65858 states the City Council, without prior notice or a public hearing, "in order to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time." The Government Code section further states that the Council shall not adopt an interim ordinance "unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance

would result in that threat to public health, safety, or welfare.” The attached ordinance contains such findings.

Environmental Review- Adoption of the interim urgency Ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Sections 15061(b)(3) – Review for Exemption, because the activity is covered by the general rule that CEQA applies only to projects with the potential for causing a significant effect on the environment, and 15306 – Information Collection, because the ordinance consists of basic data collection and research, which do not result in a serious or major disturbance to an environmental resource.

ECONOMIC AND FISCAL IMPACT

An interim moratorium of limited duration, although potentially negatively impacting some properties in the short-term where such uses are proposed or contemplated, would have potential benefits to the community in the long term. It would ensure that adequate analysis is conducted by staff and presented to the Planning Commission and City Council that would identify the potential negative impacts and positive benefits to the City regarding the establishment of such uses. Such analysis will assist in determining what amendments to the Zoning Ordinance or other Municipal Code sections are appropriate.

NEXT STEPS

Should Council adopt the interim urgency ordinance by the required 4/5 vote (minimum six votes needed), staff will either present an additional ordinance with findings and a written report to the Council within ten days of the expiration of this ordinance (by February 18) to either extend the moratorium for an additional ten months and fifteen days to allow additional time for a more thorough analysis, or will provide the Council with an analysis and proposed revisions to the City’s regulations.

Prepared and recommended by: David Rizk, AICP, Development Services Director and Michael Lawson, City Attorney

Approved by:



Fran David, City Manager

Attachments

Attachment I: Interim Urgency Ordinance

ORDINANCE NO. _____

AN URGENCY MEASURE ADOPTING AN INTERIM
 ORDINANCE PURSUANT TO GOVERNMENT CODE SECTION
 65858 IMPOSING A MORATORIUM ON THE ESTABLISHMENT,
 OPERATION, PERMITTING AND/OR LICENSING OF NEW
 SMALL-FORMAT AND LARGE-SCALE TOBACCO RETAILERS
 AND ALL NEW ELECTRONIC CIGARETTE RETAILERS,
 ELECTRONIC CIGARETTE LOUNGES, VAPOR
 BARS/LOUNGES, AND HOOKAH BARS/LOUNGES WITHIN
 THE CITY OF HAYWARD

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

Section 1. This interim ordinance is adopted pursuant to the provisions set forth in Government Code Section 65858 and imposes a 45-day moratorium on the issuance of any and all City approvals, including but not limited to business licenses, use permits, variances, sign permits and building permits, for the establishment and operation of new, small-format and large-scale tobacco retailers and all new electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, as those terms are hereinafter defined, within the City of Hayward.

Section 2. Findings. The City Council hereby finds as follows:

- A. Pursuant to Article XI, Section 5 of the California Constitution and the City Charter, the City of Hayward may make and enforce all regulations and ordinances in respect to municipal affairs. Furthermore, the stated purpose of the Hayward Zoning Ordinance is to promote the public health, safety, general welfare, and preserve and enhance the aesthetic quality of the City by providing regulations to ensure an appropriate mix of land uses in an orderly manner. The Zoning Ordinance further states that the City desires to achieve a pattern and distribution of land uses that generally retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities; allow for the infill and reuse of areas at their prevailing scale and character; accommodate expansion of development into vacant and under-utilized lands within environmental and infrastructure constraints; maintain and enhance significant environmental resources; provide a diversity of areas characterized by differing land use activity, scale and intensity; and establish Hayward as a unique and distinctive place in the heart of the San Francisco Bay Area, with a high quality of life in an attractive, secure environment for the City's residents and businesses.
- B. Tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges within the City of Hayward present unique challenges for local government, in that the Hayward Municipal Code does not currently define or regulate said uses, and tobacco and electronic cigarette retailers have been permitted as "retail" uses. In the absence of specific standards and zoning regulations pertaining to tobacco retailers, electronic cigarettes retailers, vapor bars/lounges and hookah bars/lounges, it is difficult to regulate these establishments, and, as such, these uses require a commitment of police and code enforcement resources that is typically greater than other regulated retail establishments.
- C. Tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges are typically adults-only uses in a commercial setting and may not be appropriate in all zoning districts or near uses where minors and other sensitive receptors are present.

- D. The establishment and operation of new small-format tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges or hookah bars/lounges in the City before the City can adopt regulations presents a current and immediate threat to the public health, safety and welfare. The negative health impacts related to tobacco use have been known for some time, and studies show an increase in the use of electronic cigarettes by youth. Although the long-term health effects of using electronic cigarettes are still unknown, initial studies have found carcinogens and toxic chemicals in the electronic cigarette vapors, including ingredients used to make anti-freeze. With respect to the moratorium on new small-format and large-scale tobacco retailers, studies have shown that sales of tobacco and tobacco-related products to youth are typically not occurring at the larger retailers with only ancillary tobacco sales.
- E. There are eight electronic cigarette or vapor stores presently operating in the City; seven of the business license applications for these electronic cigarette or vapor stores were received in 2013 alone. According to the Hayward Police Department, other applications are still pending completion of the background checks. City staff anticipates additional requests for similar businesses in the foreseeable future. Such establishments provide the potential for illegal sales of vapor and electronic cigarette products to youth.
- F. Because tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges can create undesirable effects on surrounding commercial establishments, residential areas, and on those who participate in such activities, additional time is needed to allow staff to analyze the potential impacts of such establishments in Hayward and determine what modifications to the Zoning Ordinance regulations would be appropriate.
- G. The City's Zoning Ordinance is silent about tobacco retailers, vapor bars/lounges, electronic cigarette lounges, electronic cigarette retailers and hookah bars/lounges and, as such, does not address the impacts related to the location and manner of development, establishment, and operation of these establishments in relation to public health, safety, and welfare concerns, including, but not limited to, the impacts these businesses may have on surrounding uses and sensitive receptors, such as children, the infirm and the elderly.
- H. Until such time as the City institutes specific land use controls over tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, the community is at risk that said businesses could be established, operated, modified or expanded, prior to the adoption of measures necessary for the protection of public health, safety and welfare.
- I. Because the long-term effects of electronic cigarettes is still unknown, the issuance or approval of any building permit, planning permit, business license, or other permit or license, for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges prior to the City's completion of its review of the need for modifications to the Zoning Ordinance would result in a current and immediate threat to the public health, safety and welfare.
- J. More than one hundred California cities have adopted tobacco retailer licensing ordinances and fifty-nine cities and counties require retailers to obtain a license to sell electronic cigarettes, including Contra Costa County, and the Bay Area cities of Dublin, Concord, Richmond, Albany and Oakland¹. Further, several California cities have placed moratoriums on electronic cigarettes to allow further study to determine if and how to regulate these products. In November 2013, Union City's city council passed an ordinance to prohibit electronic cigarette bars/lounges, vapor bars/lounges, and hookah bars/lounges within its city limits².
- K. The City needs additional time to (1) address the community concerns regarding the establishment and operation of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor

¹ <http://center4tobaccopolicy.org/wp-content/uploads/2013/10/Local-Tobacco-Policies-in-the-Retail-Environment-October-2013.pdf>

² <http://lf2.unioncity.org/WebLink8/DocView.aspx?id=28139&dbid=0>

bars/lounges and hookah bars/lounges; (2) study the potential impacts that tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges may have on the public health, safety and welfare; (3) study and determine what local regulations may be appropriate or necessary for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges; (4) study and determine the appropriate zoning and location for tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges; and (5) determine appropriate controls for protection of public health and welfare.

- L. Pursuant to Government Code Section 65858, the City has the authority to adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal.
- M. For the reasons set forth above, this Ordinance is necessary to preserve the public health, safety and welfare and to avoid a current and immediate threat to the health, safety and welfare of the community.
- N. Adoption of the interim urgency ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065, based on the finding that this ordinance is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. Additionally, adoption of the ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Sections 15061(b)(3) and 15306.

Section 3. Scope. In accordance with the authority granted the City of Hayward under Article XI, Section 5 of the California Constitution, the City Charter and Government Code Section 65858, from and after the effective date of this Ordinance, no permit or any other applicable license or entitlement for use, including but not limited to, the issuance of a business license, business permit, building permit, use permit or zoning text amendment shall be approved or issued for the establishment or operation of new small-format and large-scale tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges in the City of Hayward. New small-format and large-scale tobacco retailers and all electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges, whether as a stand-alone use or as an ancillary use, are hereby prohibited.

Section 4. Definitions.

For purposes of this Ordinance, “tobacco retailer” means any establishment that sells tobacco products, tobacco-related products, electronic smoking devices, tobacco paraphernalia, imitation tobacco products or any combination thereof.

For purposes of this Ordinance, “tobacco products” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

For purposes of this Ordinance, “tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.

For purposes of this Ordinance, “small-format tobacco retailer” means a tobacco retailer that is 10,000 square feet or less in size.

For purposes of this Ordinance, “large-scale tobacco retailer” means a tobacco retailer that devotes more than five (5%) percent its floor space to sales of tobacco products.

For purposes of this Ordinance, “imitation tobacco product” means any edible non-tobacco product designed to resemble a tobacco product or any non-edible, non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic cigarette is not an imitation tobacco product.

For purposes of this Ordinance, “electronic cigarette lounges” and “vapor bars/lounges” mean any facility, building, structure or location, whether fixed or mobile, where customers smoke electronic cigarettes or other device utilizing a heating element that vaporizes a liquid solution that releases nicotine or flavored vapor.

For purposes of this Ordinance, “electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver an inhaled dose of nicotine or other substances. “Electronic cigarette” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vapor cigarette or any other product name or descriptor.

For purposes of this Ordinance, “electronic cigarette retailer” means any establishment that sells electronic cigarettes.

For purposes of this Ordinance, “hookah bar/lounge” means any facility, building, structure or location, whether fixed or mobile, where customers share flavored tobacco from a communal hookah placed at various tables throughout the establishment.

Section 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period up to forty-five (45) days immediately from the date of its adoption by the City Council by at least six (4/5) affirmative votes. This 45-day period may be extended by the City Council in accordance with the provisions of Government Code Section 65858.

Section 6. The Planning Director is hereby authorized to administer and interpret the provisions of this Urgency Ordinance, including but not limited to, review of business license applications, specific use permits applications, variance requests, building permit applications, and other land use approvals, to determine whether the requested business license, use permit, variance, building permit or other land use approval is subject to the terms of this Ordinance.

Section 7. The Planning Director shall review and consider options for the regulation of tobacco retailers, electronic cigarette retailers, electronic cigarette lounges, vapor bars/lounges and hookah bars/lounges in the City and provide the City Council a written report at least ten (10) days prior to expiration of this Ordinance describing the measures that the City has taken to address the conditions which led to the adoption of this interim Ordinance.

Section 8. Constitutionality. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. Publication. This interim, urgency Ordinance or a comprehensive summary thereof shall be published in newspaper of general circulation of the City within fifteen (15) days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____ 2014, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____ 2014, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward