



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
DECEMBER 2, 2014

MAYOR BARBARA HALLIDAY
MAYOR PRO TEMPORE GREG JONES
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER AL MENDALL
COUNCIL MEMBER SARA LAMNIN
COUNCIL MEMBER ELISA MÁRQUEZ

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CITY COUNCIL MEETING FOR DECEMBER 2, 2014
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 4:30 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; Finance Director Vesely; Director of Maintenance Services McGrath; Engineering & Transportation Director Fakhrai; Acting Human Resources Director Collins; Deputy City Attorney Vashi; Senior Human Resources Analyst Monnastes; Community and Media Relations Officer Holland; Jack Hughes, Liebert, Cassidy and Whitmore

Under Negotiation: All Groups

4. Conference with Legal Counsel

Pursuant to Government Code 54956.9

- Anticipated Litigation
One Case

5. Conference with Legal Counsel

Pursuant to Government Code 54956.9

- Pending Litigation
 - Sipple v. City of Alameda, et al., Los Angeles County Superior Court, No. BC462270
 - Net Connection Hayward, LLC v. City of Hayward, U.S. District Court, N.D, CA, No. C-13-1212 SC

6. Conference with Property Negotiators

Pursuant to Government Code 54956.8

- Property Transaction
Under Negotiation: APNs 443-005-0008-05, 443-005-0006-00, and 443-005-0012-00.
Located at 5, 31, and 73 West Jackson Street, Hayward, CA
Property Negotiators: City Manager David, Assistant City Manager McAdoo, Engineering & Transportation Director Fakhrai, City Attorney Lawson

7. Adjourn to City Council meeting

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Mayor Halliday

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 Information Items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

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

WORK SESSION

1. Preliminary Review of Proposed Project Concept: Retail/Residential Mixed Use project on the 11.3-acre former Mervyn's Headquarters Site at 22301 Foothill Boulevard, as presented by Dollinger Properties (Report from Development Services Director Rizk)

[Staff Report](#)

[Attachment I - Conceptual Plans](#)

[Attachment II - General Plan Land Use](#)

2. Update on the First Year of Implementation of the New Alcohol Regulations, and Discussion of Alternatives Going Forward (Report from Development Services Director Rizk)

[Staff Report](#)

[Attachment I Alcohol Regulations](#)

[Attachment II Fees](#)

[Attachment III 9-24-13 Council Mtg Minutes](#)

[Attachment IV 11-12-13 Council Mtg Minutes](#)

[Attachment V Happy Hour Impacts Study](#)

[Attachment VI Overconcentrated Census Tracts](#)

[Attachment VII Map of Alcohol Establishments in Hayward](#)



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

CONSENT CALENDAR

3. Authorization to Negotiate and Execute a Professional Services Agreement with Capitol Advocacy Partners to Assist in Securing Federal Funding, and Tracking and Affecting Federal Legislation of Concern to the City; and Appropriation of Funds

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II CAP Description of Process](#)

4. Authorization to Negotiate and Execute a Professional Services Agreement with Townsend Public Affairs to Assist in Securing State Funding, and Tracking and Affecting State Legislation of Concern to the City; and Appropriation of Funds

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment II TPA Description of Process](#)

5. Authorization to Apply for Emergency Solutions Grants (ESG) Program Funding in Fiscal Year 2014-2015

[Staff Report](#)

[Attachment I Resolution](#)

6. Authorization to Negotiate and Execute an Agreement with Rolling Orange, Inc. for Primary Website Redesign; and Appropriation of Funds

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

7. Authorization to Negotiate and Execute an Agreement with Vigilant Solutions for Automated License Plate Recognition System; and Appropriation of Funds

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)



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

8. Hayward General Plan 2015-2023 Housing Element (Report from Development Services Director Rizk)

[Staff Report](#)

[Attachment I Resolution](#)

[Attachment III BIA Letter](#)

[Attachment IV City Response to BIA](#)

[Attachment V HCD Letter](#)

[Attachment VI RHNA Comparison](#)

[Attachment VII PC Minutes](#)

Information items are presented as general information for Council and the public, and are not presented for discussion. Should Council wish to discuss or take action on any of the “information” items, they will direct the City Manager to bring them back at the next Council agenda as an Action Item.

INFORMATION ITEMS

None

CITY MANAGER’S COMMENTS

An oral report from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

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

ADJOURNMENT

NEXT MEETING – 7:00 PM, Tuesday, December 9, 2014

December 2, 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:



DATE: December 2, 2014

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Preliminary Review of Proposed Project Concept: *Retail/Residential Mixed Use project on the 11.3-acre former Mervyn's Headquarters Site at 22301 Foothill Boulevard, as presented by Dollinger Properties*

PURPOSE OF REVIEW

[Dollinger Properties](#) seeks early feedback from Council on conceptual plans for the development, as shown in Attachment I. Due to its size and location along a major arterial in proximity to the Hayward BART station and 238 freeway, the project site is identified as a catalyst site in the adopted Economic Development Strategic Plan. This is an opportunity for Council, staff, and the developer to have an open discussion about a development project concept.

Since the project is in a preliminary phase, there are no technical studies or complete plans to evaluate and formulate staff recommendations from a land use entitlement perspective. However, based on community visioning as part of the General Plan process and feedback given to prior development proposals, the retail/residential mixed use project would potentially meet desired project attributes, which include ground floor retail with an anchor tenant space, residential market-rate rentals with amenities, re-use of the existing parking garage, and a quality architectural approach for a highly visible location.

POLICY GUIDANCE AND CURRENT ZONING

- *General Plan Land Use Designation:* Central City – Retail and Office Commercial (see Attachment II)
- *Relevant General Plan Guiding Principle and Policies:*

Guiding Principle #5: Hayward should have a safe, walkable, vibrant, and prosperous Downtown that serves as an attractive area for business and a destination for shopping and dining, arts and entertainment, and college-town culture.

Land Use Policy 2.2 - Downtown Activities and Functions: The City shall maintain the Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions.

Land Use Policy 2.3 - Downtown Pedestrian Environment: The City shall strive to create a safe, comfortable, and enjoyable pedestrian environment in the Downtown to encourage walking, sidewalk dining, window shopping, and social interaction.

Land Use Policy 2.5 - Downtown Housing: The City shall encourage the development of a variety of urban housing opportunities, including housing units above ground floor retail and office uses, in the Downtown to:

- Increase market support for businesses,
 - Extend the hours of activity,
 - Encourage workforce housing for a diverse range of families and households,
 - Create housing opportunities for college students and faculty, and
 - Promote lifestyles that are less dependent on automobiles.
- *Zoning District and District Purpose:* Central City-Commercial (CC-C): The purpose of the Central City - Commercial (CC-C) Subdistrict is to “establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.”

- *Development Standards:*

<u>Proposed</u>	<u>Allowed/Required</u>	
Density:	48.2 units/acre	65 units/acre
Building Height:	80-95 feet	104 feet
Parking:	1,143 spaces total	1,028 spaces
	Retail: 245 spaces	210 spaces (1 per every 315 sq. ft.)
	Residential: 898 spaces*	818 spaces (1 covered and 0.5 uncovered per unit)

*includes existing 550-space garage

PROJECT/CONCEPT DESCRIPTION

The project objectives and concept are outlined on page 1 in Attachment I. The conceptual plans show 66,000 square feet of retail space, including a 40,000 sq. ft. retail anchor near the center of the site (see page 2 of Attachment I). Also indicated are 545 one- and two-bedroom apartments in five stories over the ground floor (see page 3 of Attachment I), with retention of the existing 550-space four-level parking garage.

AREAS OF POSSIBLE INTEREST TO COUNCIL :

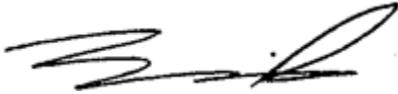
- Architecture –the architectural design will be a key component of the project given the site’s highly visible location.
- Green Building – the project should incorporate and exceed sustainable building requirements, including possible LEED-equivalent standards
- Residential Ambiance – the project should provide high quality housing with on-site amenities that will meet market demand and support upscale rents for the target tenant
- Hazel Street – the project should evaluate design and project features to minimize massing and potential impacts along Hazel Street

- Open Space – the project concept in its current state is unclear about location and amount of public and private open space.

Since this is a preliminary concept review, the purpose of the meeting should be for Council to gain a basic understanding of what is being proposed and to provide high-level feedback to the project proponents as to whether or not the project concept meets Council’s goals for this opportunity site. This is not to be considered by either Council or the proponent as any formal “approval” or “denial” of the project itself, as there is no formal application in the pipeline. Council reserves the right to make an approval or denial determination at a later time as is appropriate during the formal project review process based on project details; and the proponents reserve the right to change the project as it moves through that same project review process.

Prepared by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Conceptual Plans

Attachment II: General Plan Land Use Designation

THE VISION



THE PROJECT TEAM WILL DELIVER A FIRST-CLASS, HIGH PROFILE, RESIDENTIAL OVER RETAIL MIXED-USE PROJECT AT THE GATEWAY TO THE CITY. THE PROJECT WILL BE A STATEMENT AND A PLACE-MAKING DEVELOPMENT. THE PROJECT WILL EFFECTIVELY COMMUNICATE A “WOW” FACTOR AND BE A SHOWPIECE.

THE RETAIL. 66,000 SQUARE FEET OF COMMERCIAL SPACE, ANCHORED BY A 40,000 SQUARE FOOT BOX AND 26,000 SQUARE FEET OF JUNIOR ANCHOR / SHOP / RESTAURANT SPACE. THE RETAIL TENANTS SHOULD PROVIDE A GOOD BALANCE OF EXTENDED-COMMUNITY AND NEIGHBORHOOD SERVING SPECIALTY-GROCERY, FOOD, SERVICES AND SHOPPING. RETAIL TENANTS SHOULD BE A GOOD BALANCE OF NATIONALLY BRANDED CHAINS AND LOCAL ENTREPRENEURS. BUILD-OUTS AND PRESENTATION WILL MAINTAIN A HIGH-LEVEL OF DESIGN AND WORKMANSHIP.

THE APARTMENTS. 545 APARTMENT UNITS ON 5 LEVELS. APARTMENTS WILL BE FIRST CLASS, MODERN WITH HIGHER-END BUILDOUTS AND FINISHES. APARTMENTS WILL BE MARKET-RATE. APARTMENTS WILL MARKETED TO A TARGETED DEMOGRAPHIC INCLUDING MIDDLE TO UPPER INCOME WAGE EARNERS, 18-50 YEARS OLD, WELL EDUCATED, UPWARDLY MOBILE WITH DISCRETIONARY INCOME, AND ACTIVE. THE DESIGN OF THE PROPERTY AND AVAILABLE AMENITIES WILL BE CONSISTENT WITH THE TARGETED RENTERS.

DEVELOPERS NOTE: DOLLINGER PROPERTIES IS COMMITTED TO INVESTING SUBSTANTIAL TIME AND MONEY IN THE CITY OF HAYWARD. THIS WILL BE THE FIRST PROJECT OF ITS KIND IN HAYWARD IN MAYBE 25+ YEARS. DOLLINGER PROPERTIES WILL BE A LONG-TERM PARTNER WITH THE CITY OF HAYWARD AND THE GREATER HAYWARD COMMUNITY. DOLLINGER PROPERTIES IS A LOCAL DEVELOPER ACTIVELY DEVELOPING PROPERTY IN THE BAY AREA, AND WE WOULD BE INTERESTED IN EXPLORING ADDITIONAL PROJECTS WITH THE CITY AND THE COMMUNITY.

THE RETAIL PLAN



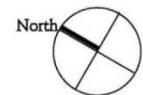
Ground Level
66,000 sf Retail

Total Parking Provided 1,132 cars
Site Area = 11.3 Acres



THE PHOENIX
HAYWARD CALIFORNIA

Site Plan
1" = 40'



A1
11.17.14

THE RESIDENTIAL PLAN



5 Level Residential 545 Units

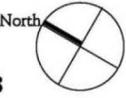
Total Parking Provided 1,132 cars
Site Area = 11.3 Acres



THE PHOENIX

HAYWARD CALIFORNIA

Upper Levels
1" = 40'



A2
11.17.14

THE DESIGN



VIEW FROM FOOTHILL BOULEVARD LOOKING SOUTH

+/-80' Top of Parapet		
6th	64'	Residential
5th	53'	Residential
4th	42'	Residential
3rd	31'	Residential
2nd	20'	Residential
		Retail



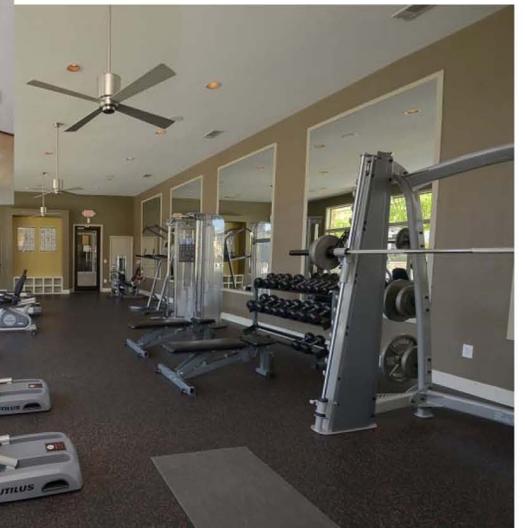
THE PHOENIX HAYWARD CALIFORNIA

Typical Section @ Retail

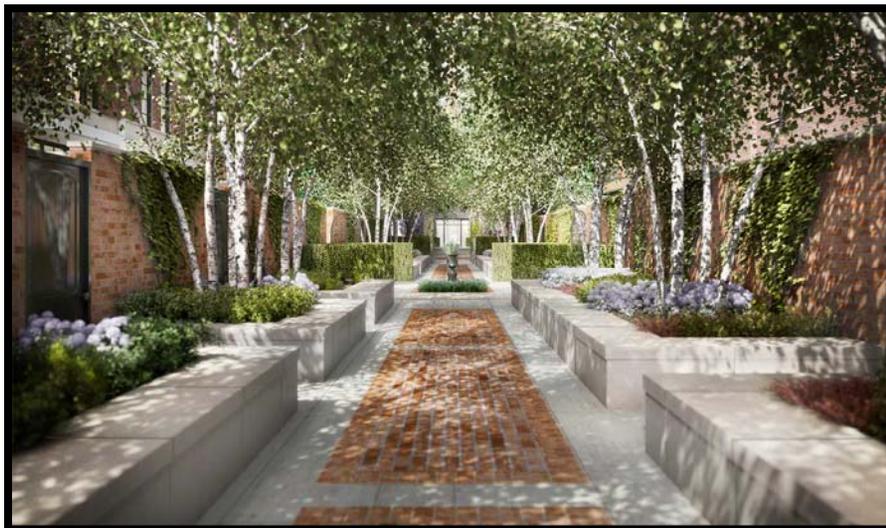
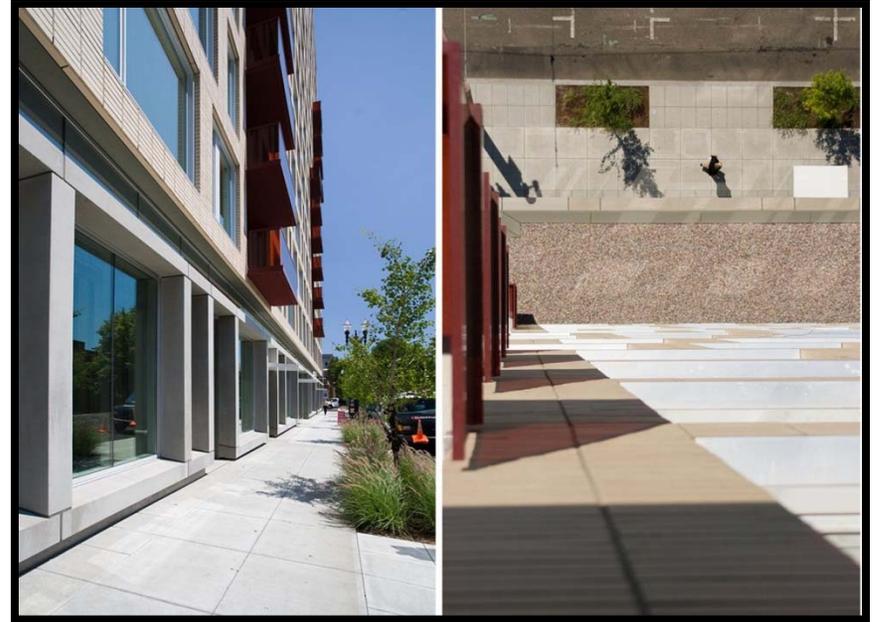
THE AMENITIES



THE PROJECT TEAM WILL DELIVER A MODERN, FIRST-CLASS PROJECT.



THE GOLD STANDARD



THE PROJECT TEAM WILL
DELIVER AN ENVIRONMENTALLY
FRIENDLY, GREEN PROJECT.
THE PROJECT WILL BE
LEED-GOLD EQUIVALENT.

Central City-Retail and Office Commercial

The Central City-Retail and Office Commercial designation generally applies to the core of Downtown Hayward. Typical building types include storefront commercial buildings and mixed-use buildings that contain commercial uses on the ground floor and residential units or office space on upper floors. Other building types that may be appropriate on properties outside of the retail core of the Downtown include townhomes, apartment and condominium buildings, and live-work units. Future changes to Central City-Retail and Office Commercial areas are expected to include the rehabilitation of historic buildings, infill commercial and mixed-use development, building and landscaping improvements, the rehabilitation or redevelopment of underutilized properties, and other district enhancements that help transform the Downtown into a vibrant, transit-oriented, and mixed-use city center.

Allowed Uses

- Retail, dining, and service uses
- Professional office uses
- Entertainment and recreational uses
- Mixed-use with multi-family homes or office on upper floors

Supporting Uses

- Attached single-family homes
- Multi-family homes
- Live-work units
- Lodging
- Compatible public and quasi-public uses
- Parks, recreation facilities, open space, and trails
- Community Gardens

- Religious and cultural facilities
- Satellite college campus uses and student housing

Development Standards

- Maximum FAR: 1.5
- Density (only applies to mixed-use and residential projects): Maximum densities vary greatly based on the property's zoning and proximity to regional transit. Maximum densities range from 40 to 110 dwelling units per net acre. Minimum densities are not required.



DATE: December 2, 2014

TO: Mayor and City Council

FROM: Chief of Police
Director of Development Services

SUBJECT: Update on the First Year of Implementation of the New Alcohol Regulations,
and Discussion of Alternatives Going Forward

RECOMMENDATION

That Council reviews and provides feedback on this report, which will be used to make amendments, if any, to the regulations and enforcement of those regulations.

SUMMARY

This report provides Council and the public with a review of how well the alcohol regulations to allow happy hours at bars and to reduce the separation requirement for off-sale establishments outside the Downtown core have been working. It also provides analysis associated with contemplated changes to these regulations.

Since new regulations concerning alcohol establishments, cabaret/dance permits, and related new fees were adopted in November of last year, the Hayward Police Department (HPD) has conducted inspections/compliance checks for nearly all 190 alcohol establishments in the City of Hayward that are licensed by the California State Department of Alcohol Beverage Control (ABC). Alcohol establishments must comply with both ABC license conditions and City of Hayward regulations.

Approximately 13% of establishments have been issued one administrative citation and 3% have received two citations over the last year. Citations are issued for selling alcohol to underage minors, jeopardizing public health or safety, having repeated nuisance activities, or for violating conditions of ABC licenses or City conditional use permits. There have been no activities requiring a summary suspension of a City license or permit, nor have any critical incidents¹

¹ “Critical Incident” means any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the

occurred since the new regulations were adopted. Over 90% of establishments have paid their annual alcohol establishment license fees that cover the cost of Hayward Police Department inspections (\$280 for restaurants and larger grocery stores that sell alcohol, and \$1,120 for other types of establishments, like bars).

BACKGROUND

In response to concerns expressed by the public and Council Members in the past, the City developed and adopted new regulations and fees related to alcohol establishments and cabaret/dance events in November of last year. The regulations were amended to allow happy hours at bars and to reduce the separation requirement for off-sale establishments outside the Downtown core. The license fees are used to support the cost of HPD staff conducting regular inspections, while fines and penalties are used to gain compliance and provide incentive for operating in compliance with operating standards. The applicable alcohol regulations are included as Attachment I and the current fees are shown in Attachment II. Details on past meetings and discussion can be found in the [September 24, 2013 Council staff report](#) and the [November 12, 2013 Council staff report](#). Minutes from those meetings are included as Attachments III and IV.

DISCUSSION

All establishments are required to operate in compliance with ABC license conditions, as well as City regulations. A handful of alcohol establishments in Hayward operate with a City conditional use permit (CUP) that have conditions specific to that business. Some establishments are exempt from needing a CUP: grocery stores $\geq 10,000$ sq. ft. devoting no more than 5% of floor area for alcohol purposes, and full-service restaurants, while others are considered nonconforming uses; meaning, they did not require a CUP when they first opened, but today would need a CUP to operate. These nonconforming uses were granted “deemed approved” status (see HMC Sections 10-1.2767 to 10-1.2771 in Attachment I), requiring them to operate in compliance with eight basic operating standards as shown below. Also, Section 10-1.2752 of the new regulations require all establishments, including those that operate with a CUP or that are exempt from needing a CUP, to operate in compliance with these standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
- c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud

arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.

- noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
- d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
 - e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
 - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
 - g. The establishment complies with all of ABC's Retail Operating Standards; and
 - h. The establishment does not sell alcoholic beverages to minors.

City staff is authorized to issue administrative citations for violations of any of the above operating standards. Violation of standards (b), (c), (d) and (h) are considered major violations that warrant the issuance of an administrative citation and fines for first time offenses. As shown below, most of the establishments operate without receiving citations.

SUMMARY OF CALENDAR YEAR 2014 HPD INSPECTIONS OF ABC LICENSED ESTABLISHMENTS IN HAYWARD

Fee Type	ABC License Type	ABC License Description	No. of Establishments	No. of Establishments Issued One Citation*	% receiving citations of similar ABC types	No. of Establishments Issued Two or More Citations*	% receiving citations of similar ABC types
I (\$280)	20	Off-Sale Beer and Wine	16				
I (\$280)	21	Off-Sale General	17				
I (\$280)	41	On-Sale Beer and Wine for Bona Fide Public Eating Place	70	7	10.0%		
I (\$280)	42	On-Sale Beer and Wine for Public Premises	1				
I (\$280)	47	On-Sale General for Bona Fide Public Eating Place	22	4	18.2%	2	9.1%
I (\$280)	70	On-Sale General Restrictive Service	1				
Subtotal:			127	11	8.7%	2	1.6%
II (\$1.120)	20	Off-Sale Beer and Wine	13	3	23.1%		
II (\$1.120)	21	Off-Sale General	30	5	16.7%		
II	40	On-Sale Beer	5	1	20.0%	1	20.0%

(\$1.120)							
II (\$1.120)	48	On-Sale General for Public Premises	13	5	38.5%	3	23.1%
Subtotal:			61	14	23.0%	4	6.6%
GRAND TOTAL:			188	25	13.3%	6	3.2%

*Citations issued for major violations of standards (e.g., serving to minors, jeopardizing public health or safety, repeated nuisance activities, violating ABC or City CUP conditions)

Two establishments have each been issued two citations and are operating via conditional use permits. Staff will likely be scheduling hearings before the Planning Commission in the near future to review their use permits. Other remedies available to City staff to gain compliance include assessment of fines, which are collected via special assessment and/or placing a lien on the property (“Clouding of the Title”); and referral to the City Attorney’s Office for legal action. Regarding the four establishments indicated in the table that have received two citations, HPD staff has and will continue to issue citations and work with ABC to have ABC licenses suspended or revoked. ABC has already temporarily suspended ABC licenses for some of those establishments noted above where citations have been issued.

Consideration of Modification to Existing Regulations – The following paragraphs address potential changes to the regulations. No changes to the cabaret/dance permit regulations are recommended at this time.

Allowing Happy Hours at Bars – Council directed staff to conduct research related to possibly allowing happy hours at bars without a conditional use permit (CUP) from the City, as is currently allowed at full-service restaurants. After nearly a year of a trial program, the Council amended the regulations one year ago to allow reduced price alcohol sales from 4 to 9 pm, provided they are offered with reduced price non-alcoholic drinks and appetizers. Currently, the alcohol regulations do not allow happy hours at bars without a CUP. Of course, should such restriction be changed, any conditions on the ABC license for an establishment that prohibits happy hours would also need to be changed. Happy hours as allowed at restaurants, along with live music, help attract customers for dinner, the primary function of such establishments. Allowing happy hours at bars, where the primary purpose is to drink alcohol, could create undesirable activities, including drunk driving. The following discussion provides some information related to happy hours.

Attachment V is a 2005 report by the National Highway Traffic Safety Administration that indicates happy hours contribute to over consumption. The white paper states:

Previous research demonstrates that alcohol consumption, intoxication, and drinking/driving rates are sensitive to the price of alcoholic beverages (Chaloupka, et al., 2002). Underage people and young adults are particularly affected by the cost of alcohol. Studies show that increases in the price of alcohol significantly reduce the number of drinks consumed by this population (Grossman, et al., 1998; Chaloupka, et al., 2002). Happy hours, drinking contests, "all you can drink" specials, and the like encourage over-consumption by reducing

prices, a potent inducement to drinking large amounts of alcohol in short time periods. The research offers strong evidence for the negative health outcomes of happy hour and other drink specials practices, thereby suggesting that policies restricting these practices could have a positive impact on public health.

Given the potential for over-drinking that reduced price alcohol sales encourages, staff does not recommend allowing happy hours at bars.

Modifying the 500-foot separation required for alcohol establishments - Outside the Downtown Entertainment Area (defined as A to D Streets and Grand to 2nd Streets), new alcohol establishments (both on-sale and off-sale) must be located at least 500 feet from any other non-exempted alcohol establishment and from “any school, public park, library, playground, recreation center, day care center, or other similar use” (per HMC Sections 10-1.2758 and 10-1.2759). Attachment VII is a map that shows locations of alcohol establishments and schools, parks, etc. located outside the Downtown Entertainment Area, with 500-foot buffers.

Also, in Census tracts that ABC has determined are over-concentrated with alcohol establishments (see Attachment VI), new establishments are only allowed if the City issues a letter of public convenience or necessity. Furthermore, per HMC Section 10-1.2764, no finding of public convenience or necessity shall be made to ABC for bars or liquor stores in any over-concentrated Census tracts, unless the Planning Commission, or City Council on appeal or call-up, makes findings contained in HMC Section 10-1.2756 with a super-majority (2/3) vote of at least five members.

It is clear from the regulations that there is concern with an over-concentration of alcohol establishments, particularly bars and liquor stores. It is acknowledged that existing standards will prevent development of new alcohol establishments or existing establishments from selling alcohol located outside the Downtown Entertainment Area, which is the case with any standard that seeks to limit the concentration of specific uses. Given the number of establishments shown in the attached map and the number of areas that are over-concentrated, staff does not recommend changes be made to the existing regulations.

However, should the Council wish to modify regulations (a conditional use permit would be required, regardless), staff offers the following options for consideration:

1. Allow additional off-sale alcohol establishments or sales outside the Downtown Entertainment Area using a smaller separation distance to other alcohol establishments, provided the 500-foot separation is maintained from schools, parks, and related uses.
2. As is allowed for new on-sale establishments outside the Downtown Entertainment Area, add the following language: “The Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to sale and use of alcoholic beverages.”

ECONOMIC IMPACT

The City's alcoholic beverage regulations provide more oversight and enforcement authority for problematic establishments and greater flexibility to attract desired alcohol-serving establishments. Those establishments that demonstrate responsible alcohol service and sales contribute to the economic vitality and activity in our city, particularly downtown, as we seek to attract residents and visitors. The success of allowing happy hours and music at full-service restaurants is a good example of how regulations can positively affect economic growth and assist in retaining and attracting desirable businesses.

FISCAL IMPACT

The alcohol establishment license fees are used to support inspection and compliance checks by HPD at all establishments, with at least one inspection to be conducted annually at the lower level fee establishments (\$280) and at least four conducted annually at the higher level fee establishments ($\$280 \times 4 = \$1,120$). One Community Service Officer (CSO) is being employed full time in support of this program at an annual cost of \$100,730.

In practice, the CSO has assumed many administrative duties in the Special Investigations Unit, freeing time for the sworn staff to focus on enforcement related tasks. These include:

- ABC License Reviews,
- Level 1 and 2 Compliance Checks,
- Project/Use Permit reviews,
- Working with the Planning Commission,
- City Staff meetings related to alcohol,
- Community Meetings, and education,
- Leading/facilitating Departmental and special investigations training.

From December of 2013 through September of this year, 425 police sergeant and 934 police officer hours were dedicated to these tasks. This time is available as a direct result of the support of the program CSO. With the calculated value of these resources being \$156,286, the \$100,730 investment in a CSO position is being leveraged by an additional 50%.

In calendar year 2014 to date, \$93,713.62 in licensing fees and administrative citation fines was collected and another \$31,586.38 is pending collection, as follows:

- Licensing Fees - Over this period, 189 qualifying establishments were invoiced for alcohol licensing fees. Of these, \$86,963.62 have been paid and another \$6,836.38 are in the process of being collected.
- Admin Citations – Over the same period, 37 citations have been issued. Of these, 9 have been paid for a total of \$6,750. An additional 28 citations valued at \$24,750 are in the process of being resolved.

Assuming that 22 percent of the unpaid receivables are collected, this program is being operated at no cost to the City.

PUBLIC CONTACT

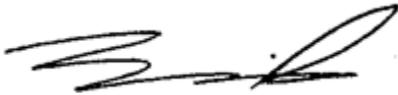
Staff sent information packets via regular mail to each ABC licensed establishment in December of last year, soon after the regulations were adopted. Also, another set of mailings was sent via certified mail to all licensees in October of this year that included similar information, and provided notice of this work session. A notice of this work session was published in *The Daily Review* on November 22, 2014.

NEXT STEPS

City staff will continue to implement the regulations as adopted, unless Council provides different direction. Such direction may require Code amendments, which staff will prepare and present to the Planning Commission and City Council at public hearings during the first quarter of next calendar year, as necessary.

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

Approved by:



Fran David
City Manager

Attachments:

- Attachment I: Alcohol Beverage Outlet Regulations (HMC Sections 10-1.2750 *et seq.*)
- Attachment II: Alcohol Establishment License Fees
- Attachment III: September 24, 2013 City Council Meeting Minutes
- Attachment IV: November 12, 2013 City Council Meeting Minutes
- Attachment V: 2005 Report by the Department of Transportation's National Highway Traffic Safety Administration : Preventing Over-consumption of Alcohol – Sales to the Intoxicated and “Happy Hour” (Drink Special) Laws
- Attachment VI: Map Showing Census Tracts Over-Concentrated with Alcohol Establishments
- Attachment VII: Map Showing Locations of ABC Licensed Establishments in Hayward with 500-foot Separation Buffers

SECTION 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS

Sections:

Section 10-1.2750	Purpose
Section 10-1.2751	Definitions
Section 10-1.2752	Performance Standards for Alcoholic Beverage Sales Establishments
Section 10-1.2753	Security Requirements for New On-Sale Alcohol-Related Establishments with Cabaret Licenses
Section 10-1.2754	Conditional Use Permits for New Alcoholic Beverage Sales Establishments
Section 10-1.2755	Posting of Conditions of Approval
Section 10-1.2756	Findings
Section 10-1.2757	Application for Conditional Use Permit
Section 10-1.2758	Requirements for New On-Sale Alcohol-Related Establishments
Section 10-1.2759	Requirements for New Off-Sale Alcohol-Related Establishments
Section 10-1.2760	Conditions of Approval
Section 10-1.2761	Existing Establishments Selling Alcoholic Beverages
Section 10-1.2762	Modifications Permitted in Alcoholic Beverage Sales Establishments
Section 10-1.2763	Notice
Section 10-1.2764	Letter of Public Convenience or Necessity
Section 10-1.2765	Emergency Action to Abate Imminent Threats to Public Health, Safety or Welfare; Summary Suspension Procedures
Section 10-1.2766	Critical Incident Response Fee for Alcoholic Beverage Sales Establishments
Section 10-1.2767	Legal Nonconforming Alcoholic Beverage Sales Establishments; Deemed Approved Status
Section 10-1.2768	Notification to Owners of Deemed Approved Status
Section 10-1.2769	Deemed Approved Performance Standards
Section 10-1.2770	Procedure for Enforcement of Deemed Approved Performance Standards
Section 10-1.2771	Revocation of Deemed Approved Status
Section 10-1.2772	Liability for Expenses
Section 10-1.2773	Inspection and Right of Entry
Section 10-1.2774	Nuisance
Section 10-1.2775	Cumulative Remedies
Section 10-1.2776	Annual Report

SEC. 10-1.2750 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers in Hayward. At the same time, it is also

SEC. 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS

recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.

- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

SEC. 10-1.2751 DEFINITIONS.

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

- a. "Alcoholic Beverage Sales Establishment" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages. All alcoholic beverage sales establishments are required to obtain the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual alcoholic beverage retail license and a conditional use permit from the City, unless otherwise indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.
 - i. "On-Sale Alcohol-Related Establishment" means any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
 - ii. "Off-Sale Alcohol-Related Establishment" means any business that sells alcoholic

beverages in original, unopened packages for consumption off of the premises where sold.

- b. “Cabaret” is defined in Chapter 6, Article 2 of this Code. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
- c. “Critical Incident” means any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
- d. “Deemed Approved Alcoholic Beverage Establishments” means those establishments identified in Section 10-1.2767.
- e. “Downtown Entertainment Area” means that area generally between A and D Streets and between Second Street and Grand Street.
- f. “Licensee” means the holder of an ABC license, an alcoholic beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
- g. "Liquor store" is defined in Section 10-1.3500 of this Ordinance (“Definitions”). All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
- h. “Night Club” – see definition of “Bar” in Section 10-1.3500 of this Ordinance (“Definitions”). All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article 2 of this code, in addition to a conditional use permit.
- i. Restaurant - Full Service. A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the

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sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.

- (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
 - (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
 - (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
 - (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

-
- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
 - b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
 - c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
 - d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
 - e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
 - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
 - g. The establishment complies with all of ABC's Retail Operating Standards; and
 - h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances."

SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

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

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- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale ABC license for each of the dates the event will be held; and
 - (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year, such as the Russell City Blues Festival and the summer street parties sponsored by the Chamber of Commerce.

SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.

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

SEC. 10-1.2756 FINDINGS.

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.

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

- a. The type of ABC license the applicant is seeking for the establishment; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and

- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED ESTABLISHMENTS.

- a. With the exception of the Downtown Entertainment Area, no new on-sale alcohol-related establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.
- b. Notwithstanding the above:
- (1) Outside the Downtown Entertainment Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to sale and use of alcoholic beverages.
 - (2) Within the Downtown Entertainment Area, no on-sale alcohol-related establishment shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related establishments that front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
 - (3) Within the Downtown Entertainment Area, no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face, with the exception of new or existing establishments that are exempted under Section 10-1.2754. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related establishments on a block between the two immediate cross streets.

SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED ESTABLISHMENTS.

With the exception of the Downtown Entertainment Area, no new off-sale alcohol-related establishment will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

SEC. 10-1.2760 CONDITIONS OF APPROVAL.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and Section 10-1.2750, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise are independent grounds for permit revocation. These conditions may include, but are not limited to:

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

SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

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

- a. The alcoholic beverage sales establishment changes its type of ABC license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" includes, but is not limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

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

- a. The alcoholic beverage sales establishment changes its type of ABC license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales establishment as defined in Section 10-1.2761.

SEC. 10-1.2763 NOTICE.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (500) feet of the perimeter of the subject property for which use permit approval is sought.

SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Director is authorized to issue letters of public convenience or necessity to ABC for alcoholic beverage establishments that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit. No finding of public convenience or necessity shall be made to ABC in connection with the licensing of bars or liquor stores in any Census tract in which ABC indicates

that there is an over-concentration of ABC licenses, unless the Planning Commission, or City Council on appeal or call-up, makes the findings contained in Section 10-1.2756 and approves new bars with a super-majority vote of at least five members (i.e., at least two-thirds of its members).

SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.

Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
 - (1) The attempt to contact the licensee fails; or
 - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
 - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
 - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.

- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:

- (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
 - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or
 - (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment.
- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
 - (2) The grounds and reasons upon which the summary suspension is based; and
 - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the "Summary Suspension Reviewing Officials") to appeal the summary suspension; and
 - (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
- (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
 - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
 - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
- e. Appeal of Summary Suspension.

- (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.
- (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee's request for the hearing, unless the licensee requests an extension of time.
- (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact information provided by the licensee.
- (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
- (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
- (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
- (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.

- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident, including those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment, and determines through investigation such party is responsible for such incident. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police and fire department services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

SEC 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the “deemed approved performance standards” set forth in Section 10-1.2769.

SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment’s deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
- e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
- g. The establishment complies with all of ABC's Retail Operating Standards; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.

- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
- (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
 - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the establishment's deemed approved status should be revoked, the Planning Commission must find that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.
- d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:
- (1) The length of time the establishment has been in violation of the deemed approved performance standards;
 - (2) The nature and impact of the violation of the performance standards on the community;
 - (3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. "Reasonable steps" to remedy a violation include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment's property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such

SEC. 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS

calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.

- e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.
- f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

SEC. 10-1.2772 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2774 NUISANCE.

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

SEC. 10-1.2775 CUMULATIVE REMEDIES.

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.

SECTION 10-1.2776 ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.

Ord. 13-12, adding Sections 10-1.2750 through 10-1.2776, Chapter 10, Article 1 of the Hayward Municipal Code relating to Alcohol Beverage Regulations, adopted November 19, 2013.

10.	<u>Communication Tapes</u>	\$103.00 per tape
11.	<u>Clearance Letters</u>	\$43.00 per letter
12.	<u>Vehicle Abatement</u>	\$263.00 per vehicle
13.	<u>Prisoner Booking Fee</u>	per prisoner
	a. Cite & Release	\$ 89.00
	b. Hold for Court	\$ 180.00
	c. Transfer to Santa Rita	\$ 199.00
14.	<u>Driving Under the Influence</u>	Time & Motion
	Recovery of the cost of the public safety response to a DUI violation using the fully burdened cost allocation rate.	
	The following is authorized by sec 4-11.20 HMC	
	a. First Violation	\$ 750.00
	b. Second Violation	\$ 1,500.00
	c. Third & Subsequent Violations	\$ 2,500.00
	The following is authorized by sec 4-11.25 HMC	
	d. Administrative Citation – recovery of the cost of the public safety response to a violation of this ordinance using the fully burdened cost allocation rate.	Time & Motion
15.	<u>Firearms Range Maintenance Fees</u> – apportions the upkeep of the firearms range among user law enforcement agencies over a <u>fiscal year</u> period	\$1,250.00
16.	<u>Alcoholic Beverage Outlets Fees (HMC sec 10-1.2750)</u>	
	a. Level I – Alcoholic Beverage Establishment Retail License Fee – Full service restaurants, wine shops, breweries, distilleries; and retail stores using no more than 5% of their floor area for alcohol sales, storage and display.	\$ 280.00
	b. Level II – Alcoholic Beverage Establishment Retail License Fee – All alcoholic beverage outlets other than Level I.	\$ 1,120.00
	c. Critical Incident Fee	Time & Motion
	d. Violation of Alcoholic Beverage Outlets Ordinance	
	(1) First Offense	\$ 750.00
	(2) Second Offense	\$ 1,500.00
	(3) Third and subsequent Offenses	\$ 2,500.00
	e. Reinspection Fee	Time & Motion
	f. Alcohol Sales – Special Event Permit	\$ 42.00



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.

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

ROLL CALL

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

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, disagreed that the Fire Department should be involved with the community health center model.

The following individuals spoke in support of the proposed Fire Station Health Center and urged the Council's support because the Center would fulfill the demand for affordable health care; would provide preventative health care; would relieve overcrowded emergency rooms; would compensate the impending loss of Hayward's Kaiser Hospital; would provide primary care services to marginalized residents; and would save St. Rose Hospital funds.

Ms. Maria Gloria, Hayward resident, spoke via interpreter Ronnie Veliz
Ms. Myeshia Jefferson, Hayward resident and volunteer
Ms. Arely Lopez, Tennyson High School student and volunteer
Mr. Timothy Boyles, Senior Minister with the Church of Christ of South Hayward
Mr. Jorge Espinosa, Hayward resident and business owner
Mr. Antonio Solorio, submitted card but did not speak
Ms. Betty Deforest, South Hayward Parish representative
Ms. Sivan Sadeh, Hayward Day Labor Center representative
Ms. Erika Cortez, Hayward resident and President of Student Senate at Chabot College
Mr. Robert Stump, Hayward resident
Ms. Leticia Guzman, Hayward resident
Mr. Daniel Vasquez, Hayward resident
Ms. Abril Lopez, Hayward resident and volunteer
Ms. Nazma Haroon, Hayward resident
Over 1900 petition signatures were submitted by Ms. Maria Gloria and Mr. Jorge Espinosa.

Mr. Pele, Hayward resident, urged the Council to not consider raising the flag of the People's Republic of China in front of City Hall.

Mr. S.J. Samiul, Hayward resident, suggested the City set up a fund for the building of a new library and he recommended bringing new businesses to Hayward.

WORK SESSION

1. Fire Station Health Center

Staff report submitted by Fire Chief Contreras, dated September 24, 2013, was filed.

City Manager David announced the report and turned the presentation to Fire Chief Contreras.

Fire Chief Contreras introduced Ms. Kristel Acacio from the Alameda County Health Care Services Agency (HCSA) who provided an overview of the Fire Station Health Center model which was developed through the collaboration of HCSA, the Fire Department, and the Tiburcio Vasquez Health Center, with a goal to open the first Fire House Clinic and deliver health care services to marginalized residents. Ms. Acacio added that HCSA contracted with Tramutola Advisors to lead the community outreach efforts of The Organizing and Leadership Academy (TOLA) fellows.

Mr. Ronnie Veliz, TOLA fellow, spoke about the community efforts to support the Fire Station Health Center.

Ms. Evelyn Soto, TOLA fellow, provided information and results from the surveys conducted in the South Hayward area regarding health treatment history and health services requested.

Mr. David Vliet, Tiburcio Vasquez Health Center CEO, expressed the Center's Board of Directors support of the partnership between HCSA, Fire Department and the Center in achieving the proposed model as it would expand access to health care in an area that is in dire need and it would complement the services rendered at the Silva Clinic.

Fire Chief Contreras spoke in support of the Fire Station Health Center in South Hayward.

Discussion ensued and Mayor Sweeney and Council Members expressed support for the Fire Station Health Center concept and provided the following recommendations: identify the budget for Fire Station 7 and the health center; identify funding sources for both projects; engage acute hospitals in the area; ensure that medical liability was not assumed by the City; explore having former Hayward Redevelopment funds that went to the County be returned to serve the needs of the community; and incorporate a health prevention education component and partner with the schools.

CONSENT

2. Approval of Minutes of the Special City Council Meeting on September 10, 2013

It was moved by Council Member Peixoto, seconded by Council Members Salinas and Jones, and carried unanimously, to approve the minutes of the Special City Council Meeting on September 10, 2013.



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3. Resignation of Ms. Allison McManus from the Community Services Commission

Staff report submitted by City Clerk Lens, dated September 24, 2013, was filed.

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

Resolution 13-150, "Resolution Accepting the Written Resignation of Allison McManus from the Community Services Commission"

4. Transit Connector (Shuttle) Feasibility Study – Authorization to Accept Federal Transportation Planning Grant, Appropriation of Funds and Authorizing the City Manager to Execute the Agreement

Staff report submitted by Transportation Manager Frascinella, dated September 24, 2013, was filed.

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

Resolution 13-151, "Resolution of the Hayward City Council Authorizing the City Manager to Execute Agreements with the California Department of Transportation (CALTRANS) Pertaining to a Fund Transfer Agreement of Federal Transportation Grant Monies to be Utilized for a Transit Connector (Shuttle) Feasibility Study, Project 05269"

Resolution 13-152, "Resolution Amending Resolution 13-105, As Amended, The Budget Resolution for Capital Improvement Projects for Fiscal Year 2014, Relating to an Appropriation of Funds from the Street System Improvements Fund (Fund 450) to the Transit Connector (Shuttle) Feasibility Study, Project 05269"

5. Transportation for Clean Air (TFCA) Funds - A Street Corridor Controller Replacement and Signal Timing Project

Staff report submitted by Transportation Manager Frascinella, dated September 24, 2013, was filed.

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

Resolution 13-153, "Resolution Authorizing the City Manager to Execute a Transportation Fund for Clean Air Fund Transfer Agreement, Approving an Amendment to the Previously Approved Professional Services Agreement with Stantec Consulting Services, Inc., for Traffic Signal Timing Design Services, and Approving Purchase Orders for Traffic Signal Controllers and Wireless Radios for the "A" Street Corridor Controller Replacement and Signal Timing Project, Project No. 05706"

Resolution 13-154, "Resolution Amending Resolution 13-105, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2014, Relating to an Appropriation of Funds from the Transportation System Improvement Fund (Fund 460) to the "A" Street Corridor Controller Replacement and Signal Timing Project, Project No. 05706"

6. Park In-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Sorensdale Kitchen Renovation Project

Staff report submitted by Landscape Architect Koo, dated September 24, 2013, was filed.

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

Resolution 13-155, "Resolution Approving Request of Hayward Area Recreation and Park District for Reimbursement Using Park Dedication In-Lieu Fees Associated with the Sorensdale Recreation Center Kitchen Project for the Purpose of Complying with Americans with Disabilities Act (ADA)"

7. Approval of Participation in the Abandoned Vehicle Abatement Authority

Staff report submitted by Traffic Sergeant Olthoff, dated September 24, 2013, was filed.

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

Resolution 13-156, "Resolution Authorizing the Extension of the Abandoned Vehicle Abatement Program Until May 2023"



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PUBLIC HEARING

8. Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

Staff report submitted by Traffic Sergeant Olthoff, dated September 24, 2013, was filed.

Development Services Director Rizk provided a synopsis of the report.

Discussion ensued among Mayor Sweeney, Council Members, and City staff.

Mayor Sweeney opened the public hearing at 9:30 p.m.

The following speakers expressed opposition to the revisions of the alcohol-related ordinances noting the following concerns: the alcoholic beverage establishment retail license fees discriminate against small businesses; the critical incident responsibility places a burden on businesses; recovery costs should come from law violators; the language in the ordinances should be simpler to understand; and the ordinances, as proposed, would hinder business growth.

Ms. Joeann Pepperell, owner of The Funky Monkey
Mr. Allen Chang, representing Curley's Place
Mr. Kim Huggett, Hayward Chamber of Commerce President
Mr. Darren Guillaume, owner of Doc's Wine Shop
Mr. Aric Yeverino, Hayward resident and owner of the Dirty Bird Lounge
Mr. Paul Schaffer, Hayward business and property owner
Mr. Javier González, California Restaurant Association representative
Mr. Larry Gray, Turf Club owner
Mr. Jim Sommer, Dark Horse Lounge General Manager
Ms. Aya Tang, Dirty Bird Lounge employee
Ms. Jennifer Sommer, Dark Horse Lounge owner

The following speakers expressed support for the proposed revisions to the alcohol-related ordinances noting that: the annual cost-recovery fee would serve to enforce laws; the deemed approved ordinance would protect public safety; the proposed fines would hold establishments accountable and would serve as a deterrent for future violations; and the standards outlined would create a safer environment for the youth and conducive for quality businesses to come to Hayward.

Mr. Pratt asked the Council to request an annual report on the implementation of the ordinance as the data collected could help assess the fee structure.

Mr. Richard Ersted, Hayward property owner

Mr. Robert Goodwill

Ms. Deisy Bates, Hayward resident and Hayward Coalition for Healthy Youth (HCHY) Chair

Ms. Tiffany Neira, Hayward resident and HCHY representative

Ms. Stephanie Aldridge, HCHY representative

Ms. Linda Pratt, Community Prevention of Alcohol-Related Problems (CommPre) Program Director and HCHY representative

Ms. Minane Jameson, Hayward resident and HCHY representative

Mayor Sweeney closed the public hearing at 10:19 p.m.

Discussion among City Council and City staff ensued.

Council Member Salinas offered a motion to: introduce the ordinance related to revisions to Hayward's Alcoholic Beverage Outlet regulations; introduce the ordinance associated with revisions to Zoning Ordinance definitions; introduce the ordinance associated with revisions to General Commercial, Central City-Commercial, and Zoning District regulations; introduce the ordinance related to new regulations for Cabarets and Dances; adopt the resolution approving a Negative Declaration/Initial Study; and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted.

Council Member Mendall seconded the motion and offered amendments to the ordinances directing staff to bring them back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments included: adding a provision that would allow the City to revoke a restaurant's right to happy hours and/or live and amplified music for bad behavior; setting up a mechanism by which the Council could approve a bar in an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

Council Member Salinas accepted Council Member Mendall's amendments.

Council Member Zermeño noted he agreed with having healthy youth, promoting healthy establishments, closing noncompliant establishments, and preventing more liquor stores that only sell liquor. Mr. Zermeño suggested the City could meet with restaurant and bar owners and assist businesses that are noncompliant. He expressed he would not support the motion because he did not believe it was conducive to a vibrant economy and would discourage new establishments from coming to Hayward.

Council Member Jones expressed that while he agreed with the majority of the ordinances' content, he would not support the recommendation as written. Mr. Jones recommended that the revisions to the Master Fee Schedule associated with revisions to alcohol beverage outlet fees consider the fine



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structure as a mechanism to impose additional inspection on establishments that violate the ordinance; expressed concern on how the critical incident fee was structured and how it would get applied; suggested adding language to the ordinance about a rating report card that alcohol establishments would be required to post in public places to indicate compliance with the City's regulations; and favored liberalizing the approval process in the downtown entertainment area to allow uses based on administrative use permit basis.

Council Member Halliday expressed she would support the motion. Ms. Halliday noted the proposed annual fees would provide an enforcement mechanism for problematic bars, but agreed the fees needed adjusting; recommended establishing a benchmark for establishments; favored having a nexus to critical incident fees; agreed with deemed approved provisions; and supported having an annual report on the implementation of the recommended provisions.

Council Member Peixoto noted he was in support of the proposed ordinances with reservations about the fee structure and he requested that the suggestions offered by Mr. Richard Ersted be considered. Mr. Peixoto expressed he was concerned about the critical incident fee and was concerned that some establishments would be reluctant to call the police. He recommended that budget information be provided to indicate whether or not the fee structure would produce the site visits.

Mayor Sweeney offered an amendment to the main motion, seconded by Council Member Zermeño, and defeated by the following roll call vote to remove the happy hour provisions from the staff recommendation:

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

Mayor Sweeney expressed he would be supporting the main motion on the floor noting the proposal was a step forward to address problems with bars that drain Police Department resources and impact the operations of surrounding businesses.

It was moved by Council Member Salinas, seconded by Council Member Mendall, and carried by the following roll call vote to introduce the following ordinances, adopt the resolution, and direct staff to bring back recommendations for amending the Fiscal Year 2014 Master Fee Schedule associated with revisions to the Alcohol Beverage Outlet Fees, which could reflect a sliding scale of cost recovery fees based on the number of incidents and consideration to the suggestions offered by Mr. Richard Ersted. There were amendments to the ordinances that would come back as part of the revisions to the Master Fee Schedule resolution at a future date. The amendments to the ordinances consisted of: adding a provision that would allow the City to revoke a restaurant's right

to happy hours and/or live and amplified music for bad behavior; setting-up a mechanism by which the Council could approve a bar in an oversaturated census tract with a supermajority vote; and directing staff to provide the Council with an annual report on the implementation of the new provisions.

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

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City’s Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Sections 10-1.1520 Et Seq. and 10-1.1000 Et Seq., Regulating the City’s Central City Commercial (CC-C) Subdistrict and General Commercial (CG) District, to Implement the Alcoholic Beverage Outlets Ordinance”

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 6, Article 2 of the Hayward Municipal Code Relating to Cabarets and Dances”

Resolution 13-157, “Resolution Approving Negative Declaration and Adopted Findings Supporting Text Amendments Related to Proposed, New Alcoholic Beverage Outlets Ordinance and Cabarets and Dances Ordinance”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force Litter Clean-Up and Graffiti Removal event on September 28, 2013, at the Burbank neighborhood. Mr. Zermeño recommended that the Council send a letter to Measure A Blue Ribbon Task Force to reauthorize Measure A funds to support St. Rose Hospital. There was consensus to add the item to a future Council meeting. Mr. Zermeño also announced that at the League of California Cities the Healthy Eating Active Living Cities Campaign recognized the City of Hayward as an Active HEAL City.

Council Member Salinas announced that Tony Solorio, owner of Tacos Uruapan, and he would be representing the City at the Contra Costa County Mayors’ Healthy Cook-off on October 24, 2013.



**MINUTES OF THE CITY COUNCIL MEETING
OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 24, 2013, 7:00 p.m.

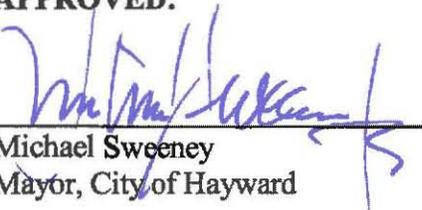
Council Member Peixoto announced the National Public Lands Day event along the Juan Bautista de Anza National Historic Trail on September 28, 2013.

Council Member Halliday shared information from the Alameda County Mosquito Abatement newsletter with the Council.

ADJOURNMENT

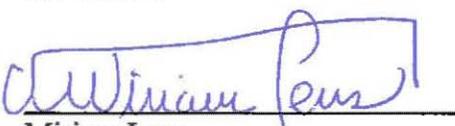
Mayor Sweeney adjourned the meeting at 11:09 p.m.

APPROVED:



Michael Sweeney
Mayor, City of Hayward

ATTEST:



Miriam Lens
City Clerk, City of Hayward



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD**
Conference Room 2A
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2013, 5:45 p.m.

The Special Work Session meeting was called to order by Mayor Sweeney at 5:45 p.m., followed by the Pledge of Allegiance led by Council Member Jones.

ROLL CALL

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

PUBLIC COMMENTS

There were none.

SPECIAL WORK SESSION

1. Continued Discussion of Council Priorities for FY 2015 & FY 2016

Staff report submitted by City Manager David, dated November 12, 2013, was filed.

City Manager David provided a synopsis of the report noting there was a supplemental report which was distributed after the packet was published.

Discussion ensued among Council and City staff related to the Council's priority of SAFE. Council members offered the following suggestions: compile data that compares Hayward to other comparative cities or regions in the nation in order to have a context for measurement; consider metrics for crime prevention; embrace how the City measures performance; the "Safe Priorities At A Glance" should be short and focused document; remove Item No. 4 under the FY2014 Metrics for SAFE; continue community forums led by the police; and focus on outcomes. It was noted that the Council's priorities were the overriding priorities that would be discussed during upcoming meetings and operational goals would be discussed at a later time during the City's budget process.

Mayor Sweeney recommended placing the Council Priorities on the agenda under action items. Discussion ensued and there was the consensus of four Council members to place the Council Priorities for FY 2015 & FY 2016 on a future Council agenda under action items.

The Council adjourned to a Special City Council meeting at 6:48 p.m.

The Special City Council meeting was reconvened by Mayor Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Jones.

ROLL CALL

Present: COUNCIL MEMBERS Zermefio, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney

Absent: None

CLOSED SESSION

Mayor Sweeney reported that the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; and met with property negotiators pursuant to Government Code 54956.8 regarding property transaction related to 22632 Main Street (APN 428-0066-024-00), 22654 Main Street (APN 428-0066-039-00), 22696 Main Street (APN 428-0066-038-02), 1026 C Street (APN 428-0066-037-00), and 1026 C Street (APN 428-0066-038-01); and there was no reportable action.

PUBLIC COMMENTS

Mr. Kim Huggett, Hayward Chamber of Commerce President, announced the Hayward Chamber of Commerce monthly mixer on November 13, 2013, at Heald Business College, and noted that the Business Person, Hayward Police Officer, Firefighter and Educator of the Year would be named at the mixer.

Ms. Traci Cross, Project Director for the Hayward Coalition for Healthy Youth, alerted Council about vapor lounges in Hayward and requested a moratorium for them.

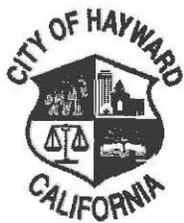
Mr. Jim Drake, Hayward resident, noted that Hayward ranked among the top ten Bay Area cities for car thefts per capita in the nation, according to a Contra Costa Times article dated June 26, 2013.

REGULAR WORK SESSION**2. Summary of Community-Wide and Municipal Energy Use and Efforts to Improve Efficiency**

Staff report submitted by Environmental Services Manager Pearson, dated November 12, 2013, was filed.

Environmental Services Manager Pearson provided a synopsis of the report.

The Council acknowledged City staff and the Council Sustainability Committee for their efforts in encouraging energy efficiency throughout the community. Discussion ensued among Council and City staff, and Council offered the following suggestions: continue to offer energy efficiency incentives to increase resident participation and compliance; consider waiving permit fees for energy retrofit projects; encourage buying electric cars by offering rebates; continue to consider Community Choice Aggregation to reduce greenhouse gas emission; and continue to consider solar panel installations on City buildings' roofs.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
Conference Room 2A
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2013, 5:45 p.m.**

3. Report Regarding the Impact of the Patient Protection and Affordable Care Act to the City of Hayward

Staff report submitted by Acting Senior Human Resources Analyst Monnastes, dated November 12, 2013, was filed.

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

Discussion ensued among the Council and City staff.

CONSENT

Consent Item No. 5 was removed for further discussion.

4. Approval of Minutes of the Special City Council Meeting on October 29, 2013

It was moved by Council Member Zermefio, seconded by Council Members Halliday and Mendall, and carried unanimously, to approve the minutes of the City Special Council Meeting on October 29, 2013.

5. Resolution Authorizing the City Manager to Negotiate and Execute a New Ground Lease Agreement with Meridian Aviation, Inc. for Lease of a Parcel of Land at Hayward Executive Airport

Staff report submitted by Airport Manager McNeeley, dated November 12, 2013, was filed.

Council Member Halliday, who is the Council Airport Committee Chair, noted that Meridian Aviation, Inc. was a privately-held aviation company that chose the Hayward Executive Airport among several airports to develop hangars; and she added that it would provide jobs for Hayward residents and it would bring more business to the airport.

It was moved by Council Member Halliday, seconded by Council Member Zermefio, and carried unanimously, to adopt the following, with an amendment to page 65 of the staff report, the last sentence under the bullet point for Phase 2, to read as follows: "This phase will be completed within nine years of the exercise of lease option."

Resolution 13-167, "Resolution Authorizing the City Manager to Negotiate and Execute a Ground Lease with Meridian Aviation, Inc. for a Parcel of Land at Hayward Executive Airport"

PUBLIC HEARING

6. Related to City Council Action Taken on September 24, 2013, Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

Staff report submitted by Development Services Director Rizk and Chief of Police Urban, dated November 12, 2013, was filed.

Development Services Director Rizk acknowledged the assistance of Lieutenant Martinez and Assistant City Attorney Conneely with the report and provided a synopsis of the report. Mr. Rizk disclosed that the Council was in receipt of letters in support of the proposed staff recommendation and one letter from the California Restaurant Association which opposed the \$280 annual fee for full-service restaurants and requested a warning system prior to the issuance of administrative citations and fines.

Discussion ensued among Council and City staff and Council offered the following suggestions as incentives for businesses: consider making reports of violations and citations associated with non-compliant establishments available to the public; establish a report card that can be posted at establishments; or develop a certificate that indicates that the business passed all its inspections.

Mayor Sweeney opened the public hearing at 8:29 p.m.

Mr. Richard Ersted, Hayward property owner, expressed support for the proposed regulations and urged Council to approve them.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, noted the Chamber concurred with the California Restaurant Association in opposing the annual alcohol beverage outlet fee of \$280 for full-service restaurant operators and recommending that establishments be provided with a warning for the first offense.

Mr. James Marrable, Hayward resident, expressed support for the proposed alcoholic beverage outlets regulations.

Mr. Darren Guillaume, Hayward business owner, noted the proposed fees represented a hardship for business owners and concurred with a grading system in lieu of fines.

Ms. Kiana Capelli submitted a card but did not speak.

Mr. Aric Yevevino, owner of the Dirty Bird Lounge, shared a report card that the police department had prepared for the Lounge, which showed that his establishment was in compliance.



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
Conference Room 2A
777 B Street, Hayward, CA 94541
Tuesday, November 12, 2013, 5:45 p.m.**

Ms. Tiffany Neira, Hayward resident and member of the Hayward Coalition for Healthy Youth, urged Council's support for the proposed alcohol outlet regulations.

Ms. Linda Pratt, Program Director at CommPre, urged the Council to support critical incident fees noting that CommPre had documented the high cost of incidents that occurred at certain establishments, and added that the proposed regulations would help non-compliant establishments improve their business practice.

Mayor Sweeney closed the public hearing at 8:45 p.m.

Council Member Mendall offered a motion per staff recommendation noting the proposed ordinance would enable the City to go after non-compliant establishments that were over utilizing City resources and would help turn around problem establishments into conforming businesses.

Council Member Halliday seconded the motion noting that non-compliant establishments negatively affected the city and the new regulations would help deter problems. Ms. Halliday added that the Council would be able to assess the effectiveness of the regulations on an annual basis.

Council Member Salinas offered a friendly amendment directing staff to develop a grading system for alcoholic beverage outlets as part of the ordinance's annual review. Mr. Salinas hoped that the proposed regulations would help improve non-compliant establishments.

Council Members Mendall and Halliday were amenable to the friendly amendment.

Council Member Jones favored the proposed ordinance because it met Council's policy goals, but was concerned about the fees. Mr. Jones requested that, as part of the annual review, staff recommend a creative approach to pay for the services. He added that he would be willing to support a General Fund subsidy.

Council Member Zermeño noted he supported the preventive aspect of the proposed ordinance, but did not agree to charge small businesses during a difficult economic time. Mr. Zermeño indicated he would be supportive of funding the services through the General Fund and added that the City had regulations in place to successfully shutdown problem-establishments.

Council Member Peixoto expressed support for the motion noting that the ordinance addressed problematic bars that created a detriment for businesses and noted that the Council's action was consistent with the Council's priorities. Mr. Peixoto was amenable to entertain having the services subsidized through the General Fund.

Mayor Sweeney noted he would support the motion and indicated that overall there were good mechanisms in place to help with non-compliant establishments.

It was moved by Council Member Mendall, seconded by Council Member Halliday, and carried by the following roll call vote to adopt the following with direction to staff to develop a grading system for alcoholic beverage outlets and present it to Council as part of the annual report regarding the implementation of the new provisions.

AYES: Council Members Jones, Halliday, Peixoto, Salinas, Mendall
MAYOR Sweeney
NOES: Council Member Zermeño
ABSENT: None
ABSTAINED: None

Introduction of Ordinance 13-_, “Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets”

Introduction of Ordinance 13-_, “Ordinance Amending Hayward Municipal Code Section 10-1.3500, Zoning Ordinance Definitions, to Conform to the City’s Alcoholic Beverage Outlets Ordinance”

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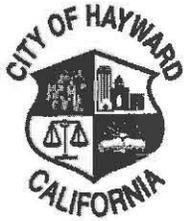
Resolution 13-168, “Resolution Approving Negative Declaration and Adopting Findings Supporting Text Amendments Related to Proposed, New Alcoholic Beverage Outlets Ordinance and Cabarets and Dances Ordinance”

Resolution 13-169, “Resolution Amending the City of Hayward Fiscal Year 2014 Master Fee Schedule Associated with Revisions to Alcoholic Beverage Outlets Ordinance and Cabarets and Dances”

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Peixoto announced there was a new Italian restaurant in downtown Hayward called Acqua e’ Farina and urged everyone to patronize it.

Council Member Halliday reported that she attended a League Leaders Conference hosted by the League of California Cities in which the League Board of Directors adopted the goals for the year



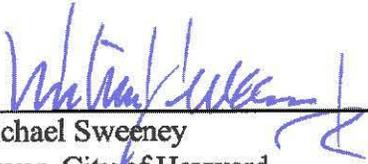
**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
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which involved: developing new tools for economic development; continuing pension and other post-employment benefits reform; and strengthening partnerships with policy-makers.

ADJOURNMENT

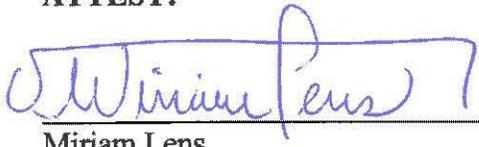
Mayor Sweeney adjourned the meeting at 9:06 p.m.

APPROVED:



Michael Sweeney
Mayor, City of Hayward

ATTEST:



Miriam Lens
City Clerk, City of Hayward



U.S. Department
of Transportation
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Traffic Safety
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Revised February 2005

Research Report

Preventing Over-consumption of Alcohol – Sales to the Intoxicated and “Happy Hour” (Drink Special) Laws

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Research Report: Preventing Over-consumption of Alcohol— Sales to the Intoxicated and “Happy Hour” (Drinks Specials) Laws

Introduction: Statement of the Problem

The cost of alcohol-related harm to society is enormous, both in human and economic terms:

- At least 85,000 Americans die each year from alcohol-related causes, making alcohol-related problems the third-leading cause of death in the United States (Mokdad, et al., 2004).
- Drinking and driving is a significant cause of injuries and fatalities in the United States. Alcohol was involved in 40 percent of traffic crash fatalities and in 7 percent of all crashes in 2003, resulting in 17,013 fatalities and injuring an estimated 275,000 people (NHTSA, 2004).
- Almost one in four victims of violent crime report that the perpetrator had been drinking prior to committing the violence. Alcohol was involved in 32 to 50 percent of homicides (Spunt, et al., 1995; Goldstein, et al., 1992; Greenfeld, 1998).
- Thirty-nine percent of accidental deaths (including drowning, poisonings, falls, and fires) and 29 percent of suicides in the United States are linked to the consumption of alcohol (Smith, et al., 1999).
- The total monetary cost of alcohol-attributable consequences (including health care costs, productivity losses, and alcohol-related crime costs) in 1998 was estimated to be \$185 billion (USDHHS, 2000).

The problems listed above are often associated with the over-consumption of alcohol in episodes of heavy drinking. Studies that show that up to 50 percent of people driving under the influence had their last drinks at licensed establishments are a strong indication the enforcement and prosecution of laws governing the consumption and distribution of alcohol should have a significant impact on the reduction of injuries and fatalities resulting from the consumption of alcohol (O’Donnell, 1985; Anglin, 1997; Gallup, 2000). This report examines the following problem: There are existing laws regulating the service of alcohol that are designed to prevent the over-consumption of alcohol by either:

(1) Prohibiting the sale and service of alcohol to intoxicated people, or (2) prohibiting sales practices (including happy hours, drink specials, and other drink promotions) that effectively reduce the price of drinks and encourage excessive consumption of alcohol. Yet the research conducted in preparation for this report indicates that enforcement of these laws is often given a low priority relative to the magnitude of the problems resulting from over-consumption of alcohol. At least three factors contribute to the lack of adequate enforcement:

- alcohol enforcement agencies face diminishing budgets and resources;
- there is an absence of public and government support for the enforcement of such laws; and
- in the case of laws governing sales to intoxicated people, the statutes are difficult to enforce and adjudicate.

This report begins with a review of previous research documenting the association between over-consumption and serving practices. This research suggests that interventions and enforcement of

laws regulating serving practices can increase compliance and reduce alcohol-related problems. The report then presents findings from original research conducted pursuant to a contract with the National Highway Traffic Safety Administration.¹ The findings include:

- an analysis of State laws addressing service to intoxicated people and restrictions on happy hours and related serving practices;
- a review of the current status of enforcement and adjudication of these laws; and
- a presentation of promising enforcement strategies being implemented by State and local enforcement agencies.

The report concludes with a summary of the problem and proposed intervention strategies designed to improve compliance rates with laws restricting sales to intoxicated people and happy hour and other reduced-price promotions.

Review of Previous Research

The public health research literature has largely ignored the role of alcohol service laws in reducing problems related to alcohol intoxication. What little research is available strongly suggests that: (a) there is an association between serving practices and the over-consumption of alcohol, and (b) intervention in support of improved serving practices and the enforcement of laws governing these practices is associated with a decrease in alcohol-related harm.

Research of Happy Hour and Other Drink Specials Practices:

Previous research demonstrates that alcohol consumption, intoxication, and drinking/driving rates are sensitive to the price of alcoholic beverages (Chaloupka, et al., 2002). Underage people and young adults are particularly affected by the cost of alcohol. Studies show that increases in the price of alcohol significantly reduce the number of drinks consumed by this population (Grossman, et al., 1998; Chaloupka, et al., 2002). Happy hours, drinking contests, "all you can drink" specials, and the like encourage over-consumption by reducing prices, a potent inducement to drinking large amounts of alcohol in short time periods. The research offers strong evidence for the negative health outcomes of happy hour and other drink specials practices, thereby suggesting that policies restricting these practices could have a positive impact on public health.

In the 1970s, an experimental study was conducted in which a small group of subjects was tested in a clinical setting (Babor, et al., 1978). The subjects were divided into experimental and control groups. The experimental group was given a 50 percent price reduction for alcoholic beverages during a daily three-hour period in the afternoon, and the control group was offered drinks at full price. A significant increase in consumption was observed among both casual and heavy drinkers in the experimental group, with consumption returning to normal when happy hour price reductions were discontinued. Casual and heavy drinkers in the happy hour group drank about twice as much as those in the non-happy hour group.

Using data collected in 2001 by the Harvard School of Public Health College Alcohol Study, researchers examined the relationship between binge-drinking rates on college campuses and the availability of large volumes of alcohol, low sales prices, and frequent promotions and advertisements in the vicinity of campus (Kuo, et al., 2003). Binge-drinking rates for 119 colleges were determined using college students' self-reports on alcohol consumption. An assessment study of the alcohol environment surrounding each campus was conducted, which included the monitoring of on-site premises for serving sizes, prices, promotions, and so forth.

¹ NHTSA contract IQC DTNH22-98-D-35079.

The results demonstrated a significant correlation between lower drink prices and higher binge-drinking rates. The presence of weekend beer specials and alcohol promotions was also highly correlated with a higher binge-drinking rate. This same study demonstrated a reduction in self-reported drinking-and-driving rates when laws limited underage access to alcohol and high volume sales of alcohol (Wechsler, et al., 2003). The presence of these laws was associated with lower rates of drinking-and-driving among college students, a group at risk for both binge drinking and alcohol-related traffic fatalities (Wechsler, et al., 2003; NHTSA, 2002; NHTSA, 2004). This effect was enhanced when there was active enforcement of laws limiting underage access to alcohol and high-volume sales of alcohol.

Only one study has attempted to directly evaluate the efficacy of happy hour laws in lowering alcohol consumption. The banning of happy hour practices in Ontario, Canada, was studied by observation of drinking habits before and after the ban, supplemented with analyses of total per capita consumption in the city (Smart and Adlaf, 1986; Smart, 1996). No significant decline in alcohol consumption was observed following the ban. Given that there was little time (two days) allotted to observing pre-ban drinking habits, and given that aggregate consumption figures may not be that sensitive to changes in happy hour practices, the results were inconclusive as far as the overall effect on alcohol consumption of the presence or absence of happy hour practices.

Research on the Prohibition of Sales and Service of Alcohol to Intoxicated People:

Nearly every State prohibits sales and service of alcohol to obviously intoxicated people. Little research is available to determine how these laws are enforced, the extent with which they are complied with, and the impact enforcement and compliance might have on public health outcomes. One study that examined compliance rates found that 79 percent of alcohol establishments will serve alcohol to patrons who appear obviously intoxicated (Toomey, et al., 1999; Toomey, et al., 2004). Actors simulating intoxication attempted to make alcohol purchases at both on- and off-premise establishments in 11 communities in a large Midwestern metropolitan area. Seventy-six percent of the on-premise sites sold alcohol to the pseudo-intoxicated patrons, as did 83 percent of the off-premise establishments. The high non-compliance rates highlight the importance of further research into the effectiveness of enforcement of laws prohibiting sales to intoxicated people or other interventions designed to reduce over-consumption and subsequent driving.

A study that directly examined enforcement of these laws was conducted in Washtenaw County, Michigan. Compliance was observed before and after the implementation of a publicized campaign to enforce laws directed at sales to intoxicated individuals (Edwards, et al., 1994). Enforcement included the issuing of warnings to businesses that violated the law, followed by enforcement visits and citations. These actions were conducted in conjunction with education and training of bar and restaurant staff. Compliance with the law was measured before and during the enforcement program by the rate at which patrons simulating intoxication were refused service. Refusals of service rose from 17.5 percent before the enforcement program to a peak of 54.3 percent after the first three months of the enforcement intervention. Significantly, the percentage of impaired drivers arrested after leaving bars and restaurants declined from 31.7 percent to 23.3 percent during the same period. While refusals of service to pseudo-intoxicated people declined from the initial peak of 54.3 percent to 47.4 percent after six months, and 41.0 percent after one year of the program, these later refusal rates remained significantly higher than the baseline, indicating that the intervention had an enduring effect on server compliance with no-sale-to-intoxicated laws (McKnight and Streff, 1994).

A few studies have examined dram shop liability laws, which hold alcohol servers responsible for harm caused by intoxicated or underage patrons, another avenue toward curbing over-

intoxication.² Studies indicate that enforcement and prosecution of dram shop laws (and resulting case decisions) are associated with a substantial reduction in alcohol-related harm. The initiation of a dram shop liability lawsuit in Texas in 1983 resulted in 6.5 percent fewer single-vehicle nighttime injury crashes (which are associated with high percentages of alcohol involvement). After a second suit was filed the following year, an additional 5.3 percent decrease in such crashes resulted (Wagenaar and Holder, 1991). One study found that in States where servers have a relatively high level of exposure to liability, there are fewer low-price drink promotions and more servers check identifications for underage purchases. Both of these changes in serving practices can prevent alcohol-related traffic crashes (Holder, et al., 1993).

A study evaluating the effects of the Alcohol Risk Management (ARM) program highlights the benefits of promoting voluntary compliance with over-service laws. The ARM program is a five-session one-on-one consultation program for owners and managers of on-site alcohol outlets. The purpose of the program is to help owners and managers develop policies and practices that increase compliance with State alcohol laws and reduce the risk of alcohol-related problems (Toomey, et al., 2001). Pseudo-intoxicated and underage patrons were sent to test sites and control sites before and after the training sessions to determine the efficacy of the educational efforts at the intervention outlets. Underage sales declined by 11.5 percent after the intervention at the test sites, while sales to the pseudo-intoxicated patrons declined by 46 percent.

Another recent finding of a strong relationship between enforcement efforts and reduced alcohol-related harm comes from New South Wales, Australia (Wiggers, et al., 2001). The Linking Project was a collaborative effort between researchers and law enforcement officers. Law enforcement officers in selected districts of New South Wales identified licensed establishments that were listed as “last place of drink” by people apprehended for alcohol-related incidents (including drinking and driving, assault, domestic violence, and other criminal activities). A random sample of these establishments was chosen for intervention, which included giving the licensees feedback on incidents associated with their establishments, conducting audits of responsible alcohol service practices, and the offer of resources and assistance to the licensees for improvement in their service practices. Following these interventions, a follow-up workshop on responsible alcohol service was conducted. The number of alcohol-related incidents associated with the intervention sites decreased by 36 percent following the intervention actions, compared to a 21 percent decline for a control group of establishments. The results were a clear demonstration that enforcement efforts focused on alcohol serving practices could have a much larger impact on reducing crime, and therefore benefit the public and reduce the burden on law enforcement. These impressive findings have convinced political leaders and law enforcement agencies to expand the Linking Project to the entire enforcement system of New South Wales.

Enforcement and Adjudication of State Laws Restricting Over-consumption of Alcohol Methodology:

As the research reviewed in the previous section suggests, improving the rates of compliance with alcohol service laws is a promising strategy for reducing alcohol-related harm, including drinking and driving. However, there is little information regarding the nature of these laws or current enforcement practices. To address this gap in the research literature and to promote additional studies of the topic, NHTSA funded this project to collect detailed information about the statutes governing sales to intoxicated people and happy hour practices, and their enforcement and adjudication in the United States. The following methods were employed to collect this data.

² A "dram" refers to a unit of liquid measure used during colonial times in the United States. "Dram shops" refer to the establishments that served alcohol by the dram (Holder, et al., 1993).

- Legal research: Attorneys and staff working on the project reviewed State alcohol beverage control statutes and regulations to determine those statutes and regulations governing sales to intoxicated people and happy hour practices in 51 jurisdictions, including all 50 States and the District of Columbia. This legal research, current as of January 1, 2003, was completed using national legal databases and a variety of secondary sources. The research focused exclusively on existing State statutes and did not include local regulations.
- Interviews with alcohol enforcement representatives:³ To confirm the data collected in the legal research phase, Alcohol Beverage Control representatives from 45 States and the District of Columbia were interviewed about 12 key alcohol policies, including sales to intoxicated and happy hour regulations.⁴ Each interview also included questions about penalties, licensing systems, enforcement resources and strategies, data collection processes, and the adjudication of alcohol violations.
- Additional interviews and research about enforcement strategies: In 2003, additional research was conducted about promising State and local strategies employed for the enforcement of sales to intoxicated and happy hour laws. Representatives from the appropriate agencies (identified during the initial interview process) were interviewed and any available reports or documentation of the programs were collected.

Current Statutes and Regulations:

Nearly every State and the District of Columbia has a provision prohibiting sales to intoxicated people, and over one-half (27) of the States have laws that specifically prohibit happy hours, drink specials and other practices that encourage drinking to intoxication.

Sales to Intoxicated Statutes: A review of the statutes prohibiting sales and service of alcohol to intoxicated people revealed that 47 States and the District of Columbia have such laws as of January 1, 2003 (PIRE, 2003). Florida, Nevada, and Wyoming do not have comprehensive laws prohibiting sales to intoxicated people. (See Appendix A.) State provisions vary in terms of language used to describe the state of intoxication (*e.g.*, obviously intoxicated; visibly intoxicated; appears to be intoxicated; noticeably intoxicated; reason to believe is intoxicated; apparently under the influence of liquor), as well as that used to describe the provision of alcohol (*e.g.*, serving, selling, furnishing, giving, bartering, exchanging, providing, delivering, and procuring).

Interpretation of these statutes in court may vary, most notably regarding the level of proof required for a finding that the law has been violated. Most statutes state or imply that a violation occurs if the server acted negligently—the server failed to act in a manner expected of a reasonable person in like circumstances. Some statutes use language that could be interpreted to require proof that the server knew the person being served was intoxicated or was reckless rather than merely negligent in his or her actions. These are higher standards of proof, making findings of violation much more difficult. Requiring proof that the server knew that the patron was intoxicated is particularly difficult to establish since it requires evidence of the server’s state of mind. This requirement is rare in cases determining whether a violation has occurred. Courts have tended to interpret statutes as requiring only the negligent standard even when the language of the statute suggests a higher level of proof. The reckless standard in particular is more

³ These interviews were conducted between September 2001 and December 2002.

⁴ In the remaining five States, the researchers were either not able to locate a State agency that held the primary responsibility for enforcing alcohol laws, or the agency identified declined to participate in the interview. In addition, the enforcement of alcohol laws in Hawaii and Maryland is primarily conducted at the county level. In those States, interviews were conducted with representatives from one county, and therefore, the results are not applicable to the entire State.

common in dram shop liability lawsuits, which involve monetary compensation to those injured by the intoxicated patron. In the case of some older alcohol statutes, strict liability for the sale or service of alcohol to an intoxicated person is imposed; that is, no defense is allowed that encompasses knowledge or recognition of the signs of intoxication. If the person served is intoxicated, the establishment selling the alcohol to that person is liable, regardless of whether or not they were aware of the person's intoxication (Moore, 2003). Case law must be carefully reviewed to determine the level of proof issue and even a detailed analysis may result in inconclusive findings. Because of the ambiguities in the law and the difficulty of conducting comprehensive case law research, we have not attempted to report level of proof requirements in our State law review.

Statutes may also vary in terms of who can be held in violation. Most State statutes apply to both commercial and noncommercial servers, although in some cases the statutory language is vague and may be subject to an interpretation that it only applies to service in commercial establishments. Finally, statutes will vary in terms of the types of penalties that may be imposed on violators. For commercial servers, violations may be either civil or criminal. Civil offenses are handled administratively by the agency responsible for adjudicating violations of the Alcoholic Beverage Control (ABC) laws. As discussed below, penalties can include suspensions or revocations of licenses and/or fines. Civil offenses are more easily prosecuted because they are administrative in nature, requiring only that the preponderance of the evidence supports the finding of violation. Both commercial and noncommercial servers can be found criminally liable. Criminal liability suggests moral approbation, is adjudicated in courts of law, and can involve both fines and imprisonment. Because of the more serious consequences, a conviction must be proven by the prosecutor beyond a reasonable doubt, the highest legal standard of proof, and defendants are given the right to a jury trial.

Happy Hour and Drink Specials Statutes: As of January 1, 2003, 27 States had provisions expressly prohibiting excessive drinking practices, or “happy hour” types of promotions. (See Appendix B.) In addition, many communities have passed local ordinances prohibiting these practices. The following information refers to State legislation only.

Drinking practices referred to in these statutes include:

- Free beverages—10 States have happy hour provisions that contain specific prohibitions against the distribution of free alcoholic beverages.
- Additional servings—16 States prohibit an establishment from providing additional servings of alcoholic beverages until previous servings have been consumed.
- Reduced price – specified day or time—18 States prohibit the sale of alcoholic beverages at reduced prices during specified days or times.
- Unlimited beverages – fixed price, fixed time—23 States prohibit the sale of alcoholic beverages during a fixed period of time for a fixed price.
- Increased volume—12 States prohibit increasing the volume of alcoholic beverages in a drink without increasing the price.
- Prizes—15 States have happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes.

Most of the States prohibiting happy hour practices specifically proscribe two or more of the practices listed above. For example, the Texas State statute specifies 11 outlawed practices:

- “Two for one” or other discounted multiple alcoholic beverage sales;
- Increasing the volume of alcohol in a drink without increasing the price;
- Serving more than one free alcoholic beverage to any identifiable segment of the population;

- Fixed-price or “all you can drink” sales;
- Selling alcoholic beverages at a reduced price for a fixed “buy in” price;
- Selling alcoholic beverages at a price contingent on the amount consumed by an individual;
- Reduced drink prices after 11:00 p.m.;
- Selling more than two drinks to a single consumer at one time;
- Imposing an entry fee for the purpose of recovering financial losses incurred because of reduced drink prices;
- Drinking contests or awarding of alcoholic beverages as prizes;
- Any practice that is reasonably calculated to induce consumers to drink to excess, or that would impair the ability of the licensee to monitor or control the consumption of alcohol by their customers.⁵

Enforcement and Adjudication of Sales to Intoxicated and Happy Hour Statutes:

Limited information about the enforcement and adjudication of laws restricting the over-consumption of alcohol was collected during interviews with State alcohol enforcement officials. Reductions in budgets, decreasing available personnel, the absence of public and governmental support, and difficulties coordinating efforts with local law enforcement are some of the problems that affect enforcement of over-consumption policies. The representatives also reported that enforcement is hampered by the difficulties of proving that the patron being served was obviously intoxicated. Gathering such evidence usually involves undercover operations, which are both costly and time intensive.

The most commonly reported enforcement strategy (reported by 12 States) was the use of surveillance and undercover agents to identify violations of sales to intoxicated and drink specials laws. In many States, investigations are primarily complaint-driven. A few State agencies identified walk-through inspections as their primary method of identifying violations and enforcing these laws.

A promising strategy that is being implemented by some States (*e.g.*, Massachusetts, Oregon, Utah, and Washington) involves identifying the place of last drink for those arrested on driving under the influence/driving while intoxicated (DUI/DWI) charges. The collection of this data allows States to identify and target problem outlets that may be in violation of laws prohibiting sales to intoxicated people or drink specials that encourage over-consumption of alcohol.

The imposition of penalties for violations of the law is an integral part of the enforcement process and can play an important role in deterring future violations. As discussed above, laws addressing sales to intoxicated people and happy hour and drink specials can be adjudicated through administrative proceedings and can lead to fines and license suspensions and revocations.

Researchers examined the penalties specific to sales to intoxicated laws. The States vary widely in the range and severity of administrative penalties imposed for violations of sales to intoxicated laws. Most States increase the severity of the punishment as the number of offenses committed increase. There may be an increase in number of days of suspension, revocation may become more likely, and fines may increase. The suspension of a license is included as a potential maximum penalty for a first-time offense in most States. At least 36 States and the District of Columbia allow for the revocation of a liquor license as a potential maximum penalty for a first-time offense. However, interviews with enforcement officials reveal that revocations rarely

⁵ Texas statute §45.103. On-Premises Promotions.

occur, and are highly unlikely after a first offense. In a smaller number of States (seven, plus the District of Columbia), license revocation is the only allowable penalty for a licensee convicted of a fourth violation of sales to intoxicated laws. In at least 10 States, fines can be paid in lieu of license suspension, primarily for first offenses only. For an expanded chart of penalties imposed for sales to intoxicated violations by State, please see Appendix C.

Promising Enforcement Strategies:

Interviews were conducted with representatives from State and local law enforcement agencies regarding innovative programs to enforce sales to intoxicated people and happy hour statutes. The following examples illustrate some of the enforcement strategies being employed by these agencies in their efforts to reduce alcohol-related harm.

Enforcing Sales to Intoxicated Laws by Identifying “Place of Last Drink”: As indicated above, both Washington and Utah are using the “place of last drink” strategy, sometimes in conjunction with other enforcement efforts, to reduce sales to intoxicated people.

Washington: In 2002, the Washington State Liquor Control Board (WSLCB) launched an enforcement program with the goals of reducing the number of DUI arrests, and reducing the average blood alcohol concentration (BAC) level of those arrested. Despite the fact that Washington lowered the maximum allowable BAC level to 0.08 in 1999, high BAC levels continued to be involved in fatal traffic crashes. In 79 percent of fatal crashes, the BAC level of the driver at fault was over 0.15; 52 percent of these exceeded 0.20 (WSLCB, 2003).

In response, the WSLCB is conducting a monthly analysis of DUI arrest reports supplied by the Washington State Patrol, which include “last drink” locations as well as the BAC levels of arrested drivers. The Washington State Patrol administers the BAC Datamaster database, which contains every breath test administered statewide by every law enforcement agency. Law enforcement officers are required by Washington law⁶ to administer a breath test to individuals arrested for driving or being in physical control of a vehicle while under the influence. The location of the individual’s last drink is entered into a BAC Datamaster machine while the breath test is administered. All BAC test data and accompanying information (such as place of last drink) are uploaded to the State Patrol’s database.⁷

This comprehensive database provides the necessary information for the WSLCB to create a “worst offenders” list of establishments. These establishments are associated with the highest number of DUIs or highest BAC readings recorded among DUI arrestees. The board then executes a plan that begins with notifying the establishments that they have a high number of DUI arrestees who identified their establishment as the place where they had their last drink. The corrective plan includes educating the licensee and their employees in training sessions about responsible beverage service, signs of intoxication, and laws governing sales to intoxicated patrons. Routine premise checks and undercover operations are increased to monitor the establishment’s progress and to maintain an enforcement presence. If necessary, corrective actions, ranging from notification of infraction to administrative or criminal actions, are taken. The progress of each targeted location is monitored and evaluated. If their DUI count increases

⁶ Revised Code of Washington (RCW) 46.20.308. Note that arrested people have the right to refuse the breath test, but they face revocation of their driver’s licenses if they do so.

⁷ Data is stored in each BAC Datamaster machine until the machine is polled or automatically sends its stored information to the central database. Note that place of last drink data is recorded and stored even if the individual refuses the breath test.

or remains the same, the enforcement plan is continued. If the count has decreased, the enforcement focus shifts to the next worst offender, but routine premise checks continue.

Data collected to date has not only identified problem establishments, but has also provided valuable information about the relationships between type of licensee, DUI arrests, and average BAC levels. In addition to identifying specific problem licensees, the data provides enforcement agencies with an overview from which to plan the allocation of their resources and develop enforcement strategies. Analysis of the data is now in progress.

Utah: The Liquor Enforcement Section of the Utah Department of Public Safety conducts a statewide program called SIP (Serving Intoxicated Patrons) to enforce laws prohibiting sales to intoxicated people. SIP has targeted those establishments either identified by local law enforcement as problem locations, or those listed as place of last drink for individuals involved in traffic fatalities. Employing covert agents who observe the establishment's serving practices, SIP operations result in referrals to the State Alcohol Beverage Control agency when violations are observed. Licensees referred for disciplinary action are offered the opportunity to attend training sessions that review relevant laws and teach attendees how to identify signs of intoxication.

SIP operations will soon be enhanced by a statewide program to identify "place of last drink" for all DUI cases, not just those involving fatalities. Funded by a grant from the Utah Office of Highway Safety, DUI data gathered from drivers' license data will be used to identify problem outlets throughout the State. A pilot study recently completed in Salt Lake County collected and analyzed place of last drink data from DUI arrestees, demonstrating the viability of this strategy for identifying problem outlets. The SIP program will use the statewide data to target establishments for SIP interventions, and will track DUI data before and after SIP interventions to evaluate the program's effectiveness (Michaud, 2003).

Enforcing Happy Hour and Drink Specials Laws Through Observation, Surveillance, and Undercover Operations: A number of strategies may be employed to reduce the over-consumption of alcohol by enforcing happy hour and drink specials laws. In the following examples, emphasis was placed on identifying violations through observation, surveillance, and other undercover operations, in coordination with other concentrated enforcement efforts.

Champaign, Illinois: The Champaign, Illinois, Alcohol Enforcement Unit has conducted a successful campaign against over-service and happy hour practices as part of a larger effort to reduce underage drinking and alcohol-related harm (CPD, 2002; Friedlein, 2003). Champaign and its twin city, Urbana, share a large student population from the University of Illinois (attended by some 38,000 students) and a community college (UIUC, 2003). In conjunction with its focus on underage drinking, the unit has given special emphasis to those bars engaging in such practices as drinking contests, reducing the price of drinks at certain times of the day, and other promotions that encourage excessive drinking, particularly among younger patrons. Bar advertisements are reviewed on a daily basis and the unit conducts follow-up, observational visits to identify possible violations. If a violation is observed, the unit may notify the owners of the bar of a need to correct the problem or proceed to other actions, depending on the severity of the violation and past history of the establishment. If the problem is not corrected after notification, the unit initiates an undercover investigation that can conclude with enforcement actions if violations are observed. The enforcement program is part of a broader, community policing strategy that includes making regular visits to drinking establishments and building a cooperative relationship between law enforcement and the licensed alcohol establishment community.

To enhance its current program, the Unit is considering the implementation of a new local policy to reduce the allowable alcoholic beverage serving size. Some establishments serve mixed drinks in 48-ounce personal containers, allowing individuals to purchase a large volume of alcohol in one serving. This reduces the server's ability to gauge a patron's intoxication level and regulate the number of drinks served. Should this policy be put into practice, training for licensees and their employees would be integrated into the existing beverage service training offered by the Unit. This represents one more method in Champaign's multiple strategy approach, which combines observation, undercover work, direct enforcement, community policing, training, and altering serving practices.

Texas: The Texas Alcoholic Beverage Commission (TABC) Enforcement Division collaborated with researchers from the Pacific Institute for Research and Evaluation to field-test a model enforcement program, funded by a contract from NHTSA.⁸ The project was designed to assess the impact of proactive enforcement of laws restricting serving practices that encourage intoxication on compliance rates among commercial alcohol servers. As noted above, Texas has a comprehensive set of regulations restricting such serving practices, including prohibitions against serving pitchers to individuals and discounting the cost of drinks when served in double portions (prohibited by the statute against increasing the volume of alcohol in a drink without proportionately increasing the price).

The TABC identified 50 high-volume sales-on-premises establishments in two counties (a total of 100 establishments). TABC enforcement officers conducted a sales test (purchase survey) at all 100 sites to collect information on current serving practices. Officers entered the establishments and attempted to purchase a pitcher of beer, or a single and a double shot of spirits to determine if the server was complying with the relevant regulations regarding these serving practices. Focused and concentrated serving practice enforcement (including sending letters to all on-premise establishments in that county to notify them of increased enforcement actions) was implemented in both counties during separate time intervals. A final sales test was conducted at all 100 outlets to determine whether any changes in serving practices continued over time.

Preliminary analysis of the data indicates that this relatively modest intervention resulted in significant reductions in violation rates in both counties. In one county the number of violations fell by 100 percent at the end of four months of enforcement intervention. Even after a two-month interval of no intervention, the final sales test revealed that violations were still reduced by 100 percent. In the second county, the number of serving practice violations dropped 68 percent between the first and final sales tests. Since some on-premise alcohol outlets received multiple violations during one visit, the reduction in the number of outlets found in violation was also examined. Not surprisingly, the number of outlets found in violation dropped significantly in both counties—by 100 percent and 63 percent, respectively.

Discussion

Summary of the Problem and the Feasibility of Intervention:

Over-consumption of alcohol is linked to serious alcohol-related problems, including traffic crashes and fatalities, violence, injury, and alcohol-related disease. Existing research strongly suggests that laws that restrict sales to intoxicated patrons and happy hour and similar

⁸ NHTSA contract DTNH22-03-H-05134.

promotions can reduce alcohol-related harm if they are adequately enforced. Our research documents three major findings:

- (1) Relevant laws exist in most States. Statutes prohibiting the sale of alcoholic beverages to intoxicated people are already present in nearly every State, and over one-half prohibit happy hour practices. Some States, notably Texas, have comprehensive regulations restricting serving practices likely to lead to intoxication that can serve as models for other States. Nearly every State has established penalties for violations of sales to intoxicated laws.
- (2) Although the laws exist, compliance with them is low, caused at least in part by the lack of adequate enforcement and adjudication. Several factors contribute to the low priority given to these laws by State ABC agencies, including: inadequate funding and decreasing budgets, lack of public support, problems in coordinating efforts with local law enforcement agencies, and difficulties in establishing adequate evidence of violations. When agencies have implemented new enforcement programs, resources have not been available to conduct evaluations of their efficacy.
- (3) Increasing the enforcement of, and compliance with, these laws (and therefore reducing alcohol-related harm) is feasible. There are innovative enforcement programs being implemented by States and localities that should be evaluated and built upon as models.

In short, the legal and adjudicative systems for enforcing limits on over-consumption and deterring violations of these limits are already in existence. Furthermore, there are a number of programs being tested that could serve as models for enhancing enforcement.

Proposed Intervention Strategies:

Our analysis has identified the following strategies for encouraging the adoption of enforcement strategies designed to increase compliance with service to intoxicated patrons and happy hour laws, and addressing the barriers to implementation:

- Generate public and government support for making the enforcement of these laws a priority (as the enforcement of underage drinking laws is now a national priority) by publicizing its potential for reducing alcohol-related harm.
- Conduct studies that not only document the public health benefits but also the potential cost savings to enforcement agencies. The Linking Project in New South Wales, Australia, provides a model for such research, which resulted in widespread adoption of the program as a routine part of law enforcement activities.
- Design interventions in support of the enforcement of sales to intoxicated laws that build upon programs already in existence that use “place of last drink” data. The Linking Project serves as a model for such interventions, introducing the use of systematic data collection and analysis, randomized selection of test and control sites, and periodic evaluation of the program’s efficacy as methods for demonstrating scientifically to the public and policy makers that targeting problem outlets is a successful strategy for reducing alcohol-related harm.
- Combine well-publicized, targeted-enforcement campaigns targeting violations of sales to intoxicated patrons laws with education and training of licensees and their employees, and systematic testing of compliance using undercover or sting operations. The Washtenaw County, Michigan, program provides a model design for such a program.

- Encourage the implementation of regular inspections for compliance with happy hour laws as well as the use of undercover surveillance to support these laws. This requires increased funding of these enforcement efforts, media campaigns to increase the perception of enforcement of these laws, and educational and training programs to instruct licensees about the laws.
- Encourage private and public funding agencies and research organizations to support research to evaluate these enforcement and compliance programs. Assist States and localities with evaluation and analysis of their enforcement programs, so that the efficacy of these programs can be determined.
- Encourage collaboration between law enforcement agencies, policy makers, and research organizations. Such partnerships will foster innovative programs that can be evaluated and replicated, developing a more detailed understanding of the relevant laws, enforcement strategies, and compliance process.

Conclusion

Service to intoxicated people and happy hour laws provide important vehicles for reducing the devastation caused by impaired driving traffic crashes and other alcohol-related problems. As reported here, the laws and the framework for enforcing the laws exist in most States, but inadequate resources and the lack of attention from policy makers, researchers, and funders have undermined the effective enforcement of these laws. Any cost savings resulting from the reduction of enforcement resources are minimal by comparison to the human suffering and increased law enforcement costs associated with alcohol-related harm. If even a small portion of the over 17,000 lost lives and quarter of a million injuries attributable to alcohol-related traffic crashes in 2003 was prevented by increased attention to reducing the over-consumption of alcohol, the benefit to society would be priceless.

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**Appendix A:
State Statutes or Regulations Prohibiting the
Furnishing of Alcohol to Intoxicated Individuals**

**State Statutes or Regulations Prohibiting the
Furnishing of Alcohol to Intoxicated Individuals⁹**

State	Prohibit Furnishing Alcohol to Intoxicated Individuals
Alabama	√
Alaska	√
Arizona	√
Arkansas	√
California	√
Colorado	√
Connecticut	√
Delaware	√
District of Columbia	√
Florida	
Georgia	√
Hawaii	√
Idaho	√
Illinois	√
Indiana	√
Iowa	√
Kansas	√
Kentucky	√
Louisiana	√
Maine	√
Maryland	√
Massachusetts	√
Michigan	√
Minnesota	√
Mississippi	√
Missouri	√
Montana	√
Nebraska	√
Nevada	
New Hampshire	√
New Jersey	√
New Mexico	√
New York	√
North Carolina	√
North Dakota	√
Ohio	√
Oklahoma	√
Oregon	√
Pennsylvania	√
Rhode Island	√
South Carolina	√
South Dakota	√
Tennessee	√
Texas	√

⁹ Source: PIRE, 2003. This chart contains data on State statutes or regulations that prohibit the furnishing of alcohol to intoxicated people. Checkmarks indicate the presence of a policy. The legal research is current as of January 1, 2003.

State	Prohibit Furnishing Alcohol to Intoxicated Individuals
Utah	√
Vermont	√
Virginia	√
Washington	√
West Virginia	√
Wisconsin	√
Wyoming ¹⁰	
State Totals	48

¹⁰ In Wyoming, §12-5-301 states that, “No order shall be received from nor delivery made to a person under twenty-one (21) years of age or an intoxicated person in the area.” Since this provision applies only to “Drive-In Areas,” we did not include this State as having a provision that prohibits furnishing alcohol to intoxicated individuals.

**Appendix B:
State Statutes or Regulations Prohibiting
Happy Hours and Other Drink Specials Promotions**

**State Statutes or Regulations Prohibiting
Happy Hours and Other Drink Specials Promotions¹¹**

	Prohibit Happy Hours and/or Drink Specials	Prohibit Free Beverages	Prohibit Additional Servings	Prohibit Reduced Price - Specified Day or Time	Prohibit Unlimited Beverages – Fixed Price, Fixed Time	Prohibit Increased Volume	Prohibit Prizes
Alabama	√			√	√		
Alaska	√	√	√	√	√		√
Arizona	√		√		√		
Arkansas							
California							
Colorado							
Connecticut	√		√		√		√
Delaware	√			√	√		√
District of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois	√		√	√	√	√	√
Indiana	√		√	√			
Iowa							
Kansas	√	√		√	√	√	√
Kentucky							
Louisiana ¹²	√				√		
Maine	√	√	√		√		√
Maryland							
Massachusetts	√	√	√	√	√	√	√
Michigan	√				√		√
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska	√				√		
Nevada							
New Hampshire							
New Jersey	√				√	√	√
New Mexico	√	√	√	√	√		√
New York	√	√			√		

¹¹ Source: PIRE, 2003. This chart contains data on State statutes and regulations that specifically target happy hour types of promotions. Although some States may have provisions that prohibit awarding alcohol as a prize or providing free beverages in other parts of statutory or regulatory codes as a stand-alone statute or regulation, the information in this chart focuses on States with provisions expressly prohibiting excessive-drinking practices. The categories in the chart are defined as follows: *Free beverages*—happy hour provisions that specifically prohibit the distribution of free alcoholic beverages; *Additional servings*—prohibitions against an establishment providing additional servings of alcoholic beverages before previous servings have been consumed; *Reduced price – specified day or time*—prohibitions against the sale of alcoholic beverages at reduced prices during a specified day or time; *Unlimited beverages – fixed price, fixed time*—prohibitions against the sale of alcoholic beverages during a fixed period of time for a fixed price; *Increased volume*—prohibitions against increasing the volume of alcoholic beverages in a drink without increasing the price; *Prizes*—happy hour provisions that contain specific prohibitions against giving alcoholic beverages as prizes. Checkmarks indicate the presence of a policy. The legal research is current as of January 1, 2003

¹² In Louisiana, selling or serving alcoholic beverages at a fixed price after 10 p.m. is prohibited.

	Prohibit Happy Hours and/or Drink Specials	Prohibit Free Beverages	Prohibit Additional Servings	Prohibit Reduced Price - Specified Day or Time	Prohibit Unlimited Beverages – Fixed Price, Fixed Time	Prohibit Increased Volume	Prohibit Prizes
North Carolina	√			√	√		
North Dakota							
Ohio	√		√	√	√	√	√
Oklahoma	√		√	√	√	√	√
Oregon ¹³							
Pennsylvania	√		√	√	√	√	
Rhode Island	√	√	√	√	√	√	√
South Carolina	√	√		√			
South Dakota							
Tennessee	√	√	√	√	√	√	√
Texas	√		√	√	√	√	
Utah							
Vermont	√		√			√	
Virginia	√	√	√	√	√	√	√
Washington	√			√			
West Virginia							
Wisconsin							
Wyoming							
State Totals	27	10	16	18	23	12	15

¹³ Although Oregon has no happy hour statute per se, it does have a provision that prohibits providing alcohol as prizes.

**Appendix C:
Penalties for Violations of Sales to Intoxicated Laws**

Administrative Penalties for Sales and Service to Obviously Intoxicated People

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Alabama ¹⁶	\$1000 fine or up to 1 year suspension/revocation	No Guidelines			
Alaska	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000, and/or 45-day suspension	Suspension up to 45 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$10,000. No revocation permitted.	Suspension up to 90 days, and/or fine not greater than 3 times monetary gain of sale resulting from the violation or \$30,000. No revocation permitted.	Fine not greater than 3 times monetary gain of sale resulting from the violation or \$50,000, and/or suspension/revocation	Not Specified
Arizona ¹⁷	Fine not greater than \$3,000 and/or suspension/revocation.	Fine of \$1,500 and/or up to 30-day suspension	Fine of \$2,000 - \$3,000 and/or up to 30-day suspension	Fine of \$3,000 or more and/or 30-day suspension up to revocation	Not Specified
Arkansas	Fine or suspension/revocation.	No Guidelines			
California	Suspension/revocation or \$3,000 fine in lieu of	Suspension/revocation or 50% estimated gross sales between \$750 - \$3,000	Same, but mandatory suspension	Revocation	N/A

¹⁴ This describes the maximum penalty allowed by statute for a given violation. It may include maximums set forth by a State's general administrative penalty statute or by specific statute. "No provision identified" indicates that legal researchers could not identify a law regarding the particular violation. "No max identified" indicates that a statute or a general administrative penalty that explicitly specifies a maximum penalty could not be identified.

¹⁵ The 1st-4th Offense Guideline categories describe the range of penalties recommended as per informal penalty guidelines, specific statutes, or general administrative penalties. Where "Same" is listed, please refer to the column at immediate left of "Same". "Not specified" indicates that the legal researchers could not identify if the State specifically lists a penalty guideline for the particular offense. "N/A" denotes not applicable, and "No Guidelines" indicates that the legal researchers were unable to identify any guidelines for the offense listed.

¹⁶ In Alabama, State law specifies that a license shall be revoked on a second or a subsequent offense. However, ABC Rules and Regulations state that a fine schedule will be established for use when a licensee wishes to plead guilty to a first or second offense charge. Researchers were unable to obtain a copy of this fine schedule.

¹⁷ In Arizona, suspension days and fines may be substituted for one another, at the discretion of the Compliance Officer, at the rate of one day of suspension equal to \$250.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Colorado	15-day suspension or fine 20% estimated gross revenue up to \$5,000 in lieu of	15-day suspension. 5 days served and 10-day abeyance, or fine 20% estimated gross revenue between \$200 - \$5,000	Not Specified	Not Specified	Not Specified
Connecticut	Suspension/ revocation and/or fine in lieu of	1-4-day suspension, and/or \$750-\$1,500 fine	1-7-day suspension, and/or \$750-\$2,000 fine	1-11-day suspension, and/or \$750-\$2,500 fine	Not Specified
Delaware	Suspension/ revocation and/or fine	No Guidelines			
District of Columbia	Suspension/ revocation and/or fine	Suspension/ revocation and/or at least a \$1,000 fine	Suspension/ revocation and/or at least \$2,000 fine, within 2 years	Suspension/ revocation and/or at least \$4,000 fine, within 3 years	Revocation
Florida ¹⁸	No provision identified	N/A			
Georgia	Suspension/ revocation	No Guidelines			
Hawaii (Maui)	No Max identified.	Fine \$1,000 - \$2,000	Fine of at least \$2,000 or up to 30-day suspension	Up to 30-day suspension or revocation	Revocation
Idaho	\$5,000 fine or suspension not greater than 6 months	10-day suspension or fine in lieu of	30-day suspension or fine in lieu of	60-day suspension or fine in lieu of	Not Specified
Iowa	Suspension/ revocation and/or \$1,000 fine	(21-day suspension) or (\$750 fine and 10-day suspension) or (\$1,000 fine and 7-day suspension)	Not Specified	Not Specified	Not Specified

¹⁸ In Florida, all administrative fines may be substituted with license suspensions using the ratio of 1 day of suspension for each \$50.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Illinois	\$1,000 fine and/or suspension/ revocation	Same	Fine up to \$1,500 and/or suspension/ revocation	Fine up to \$2,500 and/or suspension/ revocation	Same
Indiana	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Kansas	\$1,000 fine and/or suspension/ revocation	\$100 fine and/or 1-weekday suspension	\$200 fine and/or 1-weekend day suspension	\$300 fine per minor and/or suspension of one weekend day (Fri or Sat)	\$500 fine per minor and/or two weekend days suspension
Kentucky	Suspension/ revocation or \$50/ day suspension in lieu of	No Guidelines			
Louisiana	\$500 fine and/or suspension/ revocation	Same	\$250-\$1,000 fine, and/or suspension/ revocation	\$500-\$2,500 fine, and/or suspension/ revocation	Not Specified
Maine	\$1,500 fine and/or suspension/ revocation	No Guidelines			
Maryland	County specific	N/A			
Massachusetts	\$500 fine and/or 1 yr in jail and/or suspension/ revocation	No Guidelines			
Michigan ¹⁹	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Minnesota	\$2,000 fine and/or up to 60-day suspension/ revocation	No Guidelines			
Mississippi	\$1,000 fine and/or suspension/ revocation	\$500 fine and/or suspension/ revocation	\$900 fine and/or suspension/ revocation	\$1,000 fine and/or suspension/ revocation	Not Specified
Missouri	No Max Identified	No Guidelines			
Montana	\$250 fine and/or suspension/ revocation	Same	\$1,000 fine	\$1,500 fine and/or 20-day suspension	Revocation

¹⁹ In Michigan, a third or subsequent offense will result in a mandatory suspension/ revocation of license.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Nebraska	Suspension/ revocation or \$50 fine per day issued suspension in lieu of	\$500 - \$1,000 Fine and/or 10-20-day suspension	\$2,000 - \$4,000 Fine and/or 20-50-day suspension	\$4,000 - \$6,000 and/or 25-60-day suspension	Revocation
Nevada	No provision identified.	N/A			
New Hampshire ²⁰	\$500 fine and/or 1-7 days suspension	Fine \$100 - \$500 and/or 10-17-day suspension	Fine \$250 - \$1,000 and/or 10-24-day suspension	Fine \$500 - \$1,500 and/or 10-30-day suspension	(Fine \$750 - \$3,000 and/or 10-40-day suspension) or (40-day suspension)
New Jersey	15-day suspension or ½ gross estimated profit per day suspension in lieu of	Same	30-day suspension or ½ gross estimated profit per day suspension	45-day suspension or ½ gross estimated profit per day suspension	Revocation.
New Mexico	\$10,000 fine and/or suspension/ revocation	No Guidelines			
New York	\$10,000 fine and/or suspension/ revocation	No Guidelines			
North Carolina ²¹	\$500 fine and/or up to 3-year suspension/ revocation	Up to \$500 fine and/or up to 3-year suspension/ revocation	Up to \$750 fine, and/or up to 3-year suspension/ revocation	Up to \$1,000 fine, and/or up to 3-year suspension/ revocation	Not Specified
North Dakota	Suspension/ revocation	No Guidelines			
Ohio	Suspension/ revocation or \$200 fine per day issued suspension in lieu of	No Guidelines			
Oklahoma	Revocation	N/A			
Oregon	30-day suspension/ revocation and/or \$5,000 fine	Up to 10 days suspension or \$1,650 fine	Up to 30 days suspension or \$4,950 fine	Up to 30-day suspension	Revocation

²⁰ New Hampshire allows for reduction of suspension length for “good behavior.” “Good behavior” is defined as compliance with all commission administrative fine payment deadlines and/or orders issued under Liq. 206.03.

²¹ In North Carolina, the commission may accept an offer in compromise of an issued suspension, up to \$5,000.

State	1 st Offense Maximum ¹⁴	1 st Offense Guideline	2 nd Offense Guideline	3 rd Offense Guideline	4 th Offense Guideline ¹⁵
Pennsylvania ²²	\$5,000 fine and/or suspension/ revocation	No Guidelines			
Rhode Island	\$500 fine and/or suspension/ revocation	Up to \$500 fine and/or suspension/ revocation	Up to \$1,000 fine and/or suspension/ revocation	Same	Same
South Carolina	\$1,500 fine and/or suspension/ revocation	\$400 fine and/or suspension/ revocation	\$800 fine and/or suspension/ revocation	45 days suspension and/or revocation	Revocation.
South Dakota	Suspension up to 60 days or revocation or up to \$75,000 offer in compromise	No Guidelines			
Tennessee	Suspension/ revocation or \$1,500 fine	Suspension/ revocation or \$200 - \$1,000 fine	Same	Same	Same
Texas ²³	60-day suspension, or fine in lieu of	7-day suspension or fine in lieu of	10-15-day suspension or fine in lieu of	25-day suspension – revocation or fine in lieu of	Not Specified
Utah	\$25,000 fine and/or suspension/ revocation	Fine \$1,000 - \$25,000 and/or 10 day suspension or revocation	15-day suspension or revocation	Same	Same
Vermont	Suspension/ revocation	No Guidelines			
Virginia ²⁴	No Max Identified	\$2,000 fine or 25-day suspension	Not Specified	Not Specified	Not Specified
Washington	No Max Identified	5-day suspension or \$100 fine in lieu of	10-day suspension or \$200 fine in lieu of	30-day suspension or \$400 fine in lieu of	Revocation
West Virginia	\$1,000 fine and/or suspension/ revocation	No Guidelines			
Wisconsin	Suspension/ revocation	No Guidelines			
Wyoming	No provision identified	N/A			

²² In Pennsylvania, third and subsequent offenses will result in a mandatory suspension/revocation.

²³ In Texas, a fine may be issued in lieu of issued suspension in the amount of \$150-\$25,000 per day of issued suspension or fine of \$75-\$500.

²⁴ In Virginia, a second or subsequent offense will result in a mandatory suspension.

DOT HS 809 878
Revised February 2005



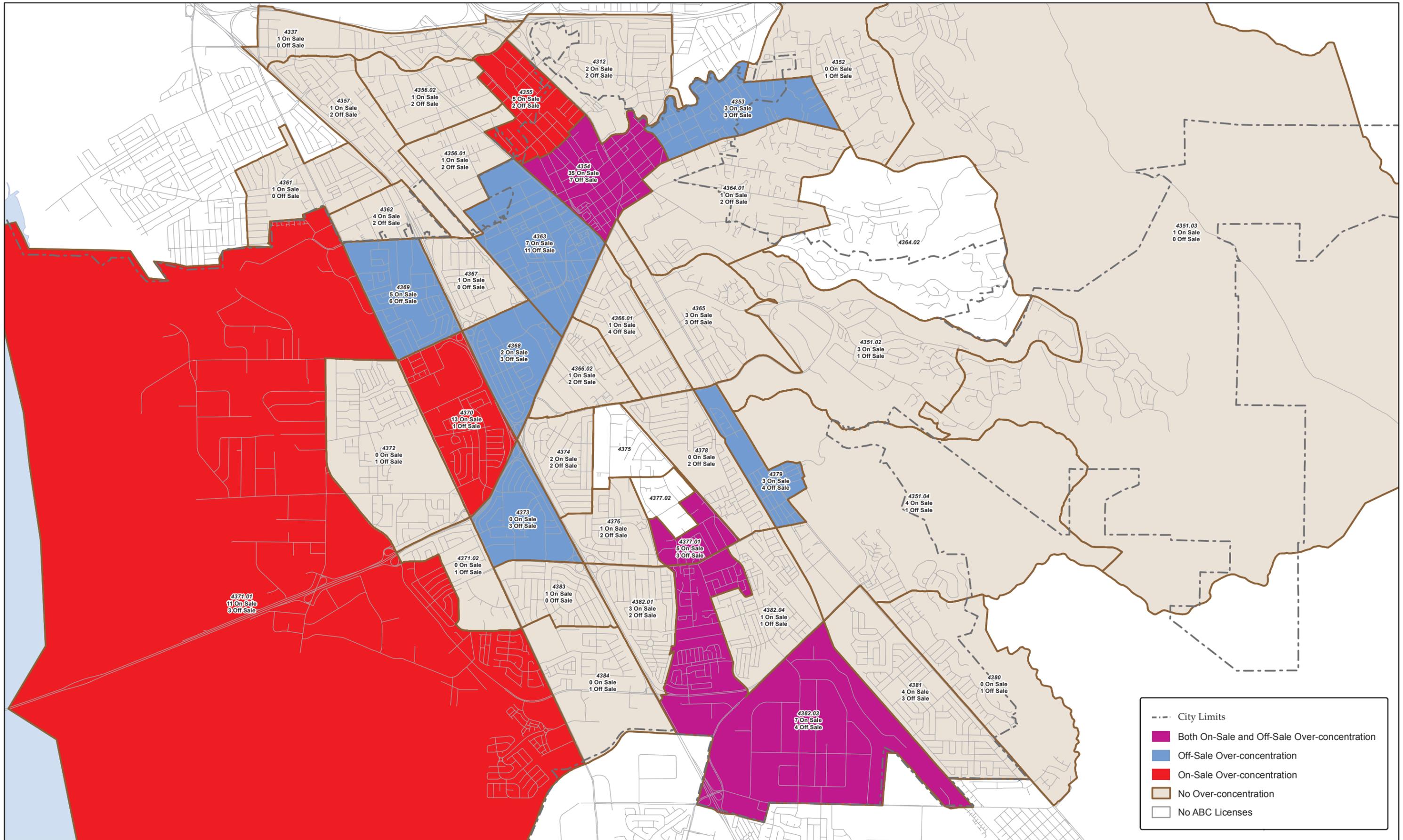
U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

www.nhtsa.dot.gov
nhtsa 
people saving people



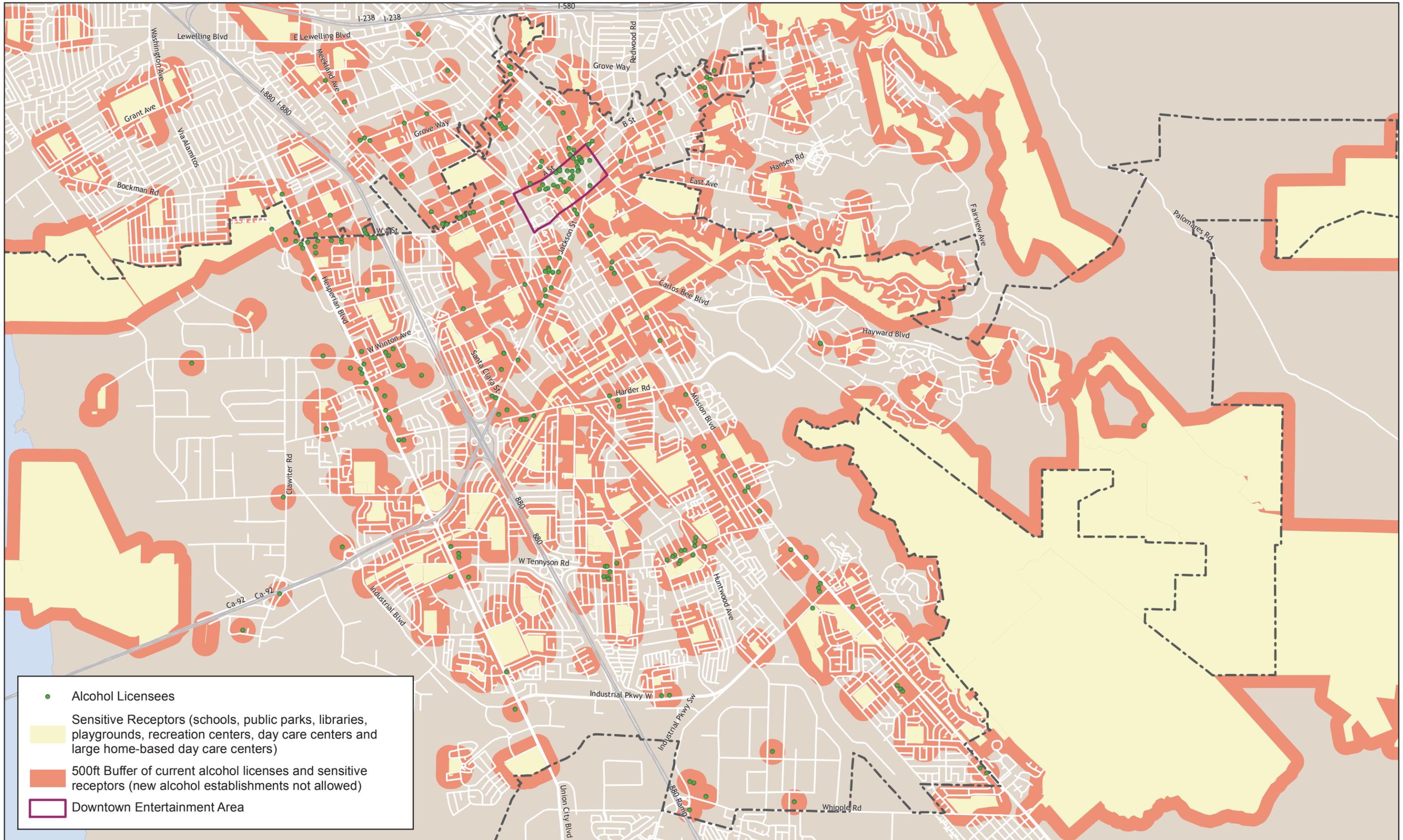
Areas of Over-Concentration of Alcohol Establishments in Hayward

0 0.25 0.5 1 Miles





500-foot Buffer Areas



DATE: December 2, 2014

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Authorization to Negotiate and Execute a Professional Services Agreement with Capitol Advocacy Partners to Assist in Securing Federal Funding, and Tracking and Affecting Federal Legislation of Concern to the City, and Appropriation of Funds

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment D): Authorizing the City Manager to negotiate and execute a professional services agreement with Capitol Advocacy Partners for a period of one year, renewable annually for a three period, in order to provide assistance in preparing applications and securing federal funding for a variety of public programs and services; and appropriating necessary funding.

BACKGROUND

Dana DeBeaumont and Capitol Advocacy Partners have been performing Hayward's Federal legislative advocacy since February 2014. Ms. DeBeaumont has represented Hayward's federal interests for four years. In that time, she has secured nearly \$5 million in federal grant money. Specifically, she has secured two consecutive COPS Awards totaling over \$3,850,000 and two Assistance to Firefighters Grants totaling \$1,032,113.

DISCUSSION

Staff completed a Request for Proposals (RFP) in the summer/fall of 2014 to identify potential firms to provide federal legislative advocacy services. The City received a total of four responses for federal legislative advocacy services. Three firms were invited to interview in person, in front of a panel consisting of the Assistant City Manager, Police Chief, Fire Chief, Finance Director, and Transportation Manager.

The panel was unanimous in their selection of Capitol Advocacy Partners largely due to Ms. DeBeaumont's past successes in securing federal grant funding for the City. Capitol Advocacy Partners works with federal legislators, public agencies, and non-profit entities through an "ongoing approach", which is described as the following:

- Obtain Funding for City Projects: Develop and Execute a Funding Agenda
- Legislative Bill Tracking and Advocacy: Develop/Execute a Legislative Agenda
- Provide Appropriate Materials for Meetings and Maintain Records
- Plan, Schedule, and Execute Federal Advocacy Trips

Under this new agreement, Capitol Advocacy Partners’ services will continue to assist the City in securing federal funding, especially for the Police and Fire Departments and potentially the Library & Community Services, Engineering and Transportation, and Utilities and Environmental Services Departments.

FISCAL IMPACT

Capitol Advocacy Partner’s base fee is \$5,590 per month, for a total of \$67,080 annually. Additionally the City will set aside \$10,000 as a contingency fund to cover any grant writing that exceeds the three-grant maximum included in the base fee.

The attached resolution authorizes the City Manager to renew this contract annually with no more than three one-year extensions. .

It is proposed that funding for these services will come from the following sources:

Table 1: Proposed Funding Schedule

Department	Annual Funding Responsibility
General Fund	\$35,990
CIP Funds – Rt 238 Administration/Pre-design	\$16,350
Enterprise Funds – Water, Recycling and Wastewater	\$24,740
TOTAL	\$77,080

NEXT STEPS

Following Council approval at this meeting, staff will finalize and execute the contract with Capitol Advocacy Partners.

Prepared by: John Stefanski, Management Fellow

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution Authorizing Execution of Consulting Agreements for Professional Services with Capitol Advocacy Partners
Attachment II	Capitol Advocacy Partners Description of Process

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

AUTHORIZATION TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH CAPITOL ADVOCACY PARTNERS TO ASSIST IN SECURING FEDERAL FUNDING , AND TRACKING AND AFFECTING FEDERAL LEGISLATION OF CONCERN TO THE CITY; AND APPROPRIATION OF FUNDS

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute a professional services agreement with Capitol Advocacy Partners, to assist in securing federal funding for Affordable Housing, Economic Development, Utility and Recycling Activities, Public Safety, Library, Infrastructure, and Transportation related activities, and public facilities in an amount not to exceed \$77,080 annually, which is the total amount of contract funds from the City, renewable at the City Manager’s discretion annually for a period not to exceed three (3) years, 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

Description of Process

Capitol Advocacy Partners understands that Hayward seeks to become the Bay Area's most desirable business destination and that the City is proactively pursuing a variety of civic improvement projects as it seeks to increase commercial activity and reinvigorate downtown. Hayward officials desire to preserve and enhance the community with safe and efficient transportation systems and reliable infrastructure while concurrently enhancing public safety and youth services. Capitol Advocacy Partners would work closely with the City to develop a multi-pronged federal advocacy approach to achieve results that help Hayward to:

- Preserve the City's existing assets
- Improve civic identity and engagement
- Increase commercial activity
- Reinvigorate downtown
- Address legal mandates
- Respect its limited resources for capital costs
- Leverage federal funding
- Minimize impact to annual operating costs

Dana utilizes a proven strategy and protocol for managing advocacy that will be tailored to reflect the unique priorities of Hayward. The long-term goal of this comprehensive approach to integrated governmental advocacy is to establish meaningful, knowledgeable, and lasting relationships on behalf of Hayward between its Congressional delegation, legislative leaders, the executive branch, agencies, and all of their respective staffs. These relationships in turn will enable Hayward on an ongoing basis to successfully pursue its funding and legislative agenda.

Hayward will experience success in achieving its federal advocacy priorities. Dana will remain in contact with the City staff, constantly updating and tweaking our advocacy plan that would be developed at the onset of agreement. Our advocacy outline will be based on City priorities but may change based on Congressional and Administration priorities.

Although our advocacy plan will remain fluid, Capitol Advocacy Partners recommends focusing on a handful of funding and legislative goals. Such goals often take time to lay the groundwork, build relationships and refine requests to meet the needs of decision-makers. Dana will regularly and assertively coordinate and consult with Agency staff in DC and California to update them on developments and discuss your needs. She is on Capitol Hill several times each week, engaging professional staff of key members of Congress and on legislative committees to suggest, strategize and influence hearings and legislation. Dana will propose and help coordinate hearings, write in-person and for-the-record testimony for City officials and draft questions and comments for elected officials in addition to attending hearings and meetings as requested.

Dana DeBeaumont's success in federal advocacy is not only rooted in her proactive approach and expertise, but is also due to relationships with Senators, Members and key staff. Important to the City of Hayward, Dana enjoys strong relationships with senior staff for virtually every Member from the California Congressional delegation and is active in the California State Society.

With 53 Members, California has the country's largest and most powerful Congressional delegation, providing opportunities and access to influence legislation. Every Committee in the House of

Representatives has at least one Member from California, many of whom are in senior leadership positions such as Chairman or Ranking Member. Dana enjoys professional and social relationships on every Committee and leadership positions, including House Transportation and Infrastructure/Senate Environment and Public Works (Issues: transportation, water, environment), House Energy and Commerce/Senate Energy and Natural Resources (Issues: energy, environment), House Financial Services/Senate Banking, Housing and Urban Affairs (Issue: housing) and Appropriations (Issue: federal spending), House Small Business (business programs) and the House Education and the Workforce/Senate Health, Education, Labor and Pensions (Issue: education). These relationships are imperative for Hayward's position to be considered and legislation impacted.

The following outlines the ongoing approach that Capitol Advocacy Partners will follow while working with Hayward to implement a winning and robust advocacy agenda:

Obtain Funding for City Projects: Develop and Execute a Funding Agenda

- Discuss City priorities, including transportation, public infrastructure, public safety, and economic development.
- Alert City officials of grant opportunities and write up to three (3) federal grants on behalf of the Hayward.
- Identify targeted programs for FY15 and FY16 budget years and consistent monitoring of legislation and federal agencies for additional funding opportunities. Possible advocacy vehicles include:
 - The creation of new funding through budget Report Language. Dana has been successful in getting new grant programs created, program guidelines amended, and existing programs expanded.
 - Transportation projects through the pending Transportation Reauthorization legislation and DOT competitive funding opportunities.
 - Public Safety efforts focused on police, school safety and fire funding needs as well as emergency preparedness, with special emphasis on Juvenile Justice programs to help the City expand its Explorers program.
 - Workforce investment activities, such as new labor training programs for jobs and facilities through the Department of Labor and local Workforce Investment Board. Additional opportunities could also include special tax benefit designations for small businesses.
 - Public health clinic or specialty service programs (such as Firehouse clinics).
 - Community development activities through targeted Brownfield and Housing and Economic Development programs, including CDBG, Home and planning grants.
 - Development of water infrastructure, such as storm drains, flood control systems, or waterway restoration.
 - Energy conservation initiatives, such as energy retrofits, tax credits, and incentive programs through the Department of Energy and the Department of Housing and Urban Development.
 - Support for the City's cultural and educational programs and facilities, such as libraries, parks, and historic sites, through agencies such as the Institution for Museum and Library Services, National Endowment for the Arts, National Endowment for the Humanities, National Park Service, National Science Foundation, and Department of Education.

- If applicable based on census tract designations, targeted economic development and job creation activities such as the Economic Development Administration, New Market Tax Credits, or the EB-5 Visa program.
- Meet and discuss proposed/pending funding opportunities with appropriate parties, such as elected officials, their staffs, committee staff and Agency officials.
- Coordinate with City staff to provide feedback at every step of the funding process. Dana works closely with Agencies, Congressional staff and committees on an ongoing basis to gain insight into grant programs or reauthorization when the legislation is being drafted, when funding is authorized by Congress, while the guidelines are being written, and before the solicitation is released.
- Assist City staff on the creation of advocacy materials and documents.
- Engage Congressional and departmental stakeholders to promote the City's projects and grant applications. Letters of support and targeted calls will be utilized.

Legislative Bill Tracking and Advocacy: Develop/Execute a Legislative Agenda

- Identify key issue areas from Hayward's priorities, including those specific to the City as well as its regional priorities.
- Follow and research federal legislation to alert City about legislation that it should support or oppose as well as work with officials to amend legislation, as necessary.
- Prepare and regularly update a legislative matrix for monitoring issues.
- Develop strategy for proactive involvement in identified policy topics such transportation, local taxing authority, local revenue distribution, job training, federal regulations governing municipal governments and facility and parks development.
- Work aggressively to execute the strategy on several fronts simultaneously, including hearings and positioning the City and its officials as resources.
- Meet and discuss proposed/pending legislation with appropriate parties, such as elected officials, their staff, committee staff and agency officials.
- Pursue stand-alone legislation in addition to other legislative vehicles.
- Alert city staff regarding possible/pending legislation, including appropriation bills, reauthorizations, and other legislation with a significant financial or policy impact.
- Draft position letters.
- Work with legislators and agencies to resolve issues affecting the City.

Provide Appropriate Materials for Meetings and Maintain Records

- Prepare agendas, memos, and talking points for calls, meetings, and correspondence.
- Provide regular advocacy and public policy updates.
- Provide a written monthly report.
- Prepare additional reports, as requested.
- Be available for in-person briefings up to four times per year.

Plan, Schedule and Execute Federal Advocacy Trips

- Identify issues and projects that would benefit from in-person meetings.
- Schedule meetings regarding City issues.
- Develop briefing materials, as necessary, on City issues.
- Attend meetings with Hayward representatives.
- Provide follow-up on all matters of interest to the City.

Project Schedule

The Federal Fiscal Year runs from October 1 through September 30. Unfortunately, the work of Congress rarely aligns with the Fiscal Year. For example, the federal government will likely operate under a Continuing Resolution (CR) for the upcoming Fiscal Year (2015) until at least December 15, but possibly into next year. Additionally, President Obama will deliver the annual State of the Union in January, giving us more detail of what the Administration's priorities will be. The President's budget is supposed to be delivered the first Monday in February and could impact the feasibility of City priorities. The upcoming federal blueprints, once shared, should equip us with details of where funding opportunities may be. Below please find a Sample Work Timetable for the City's federal advocacy efforts

DATE: December 2, 2014

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Authorization to Negotiate and Execute a Professional Services Agreement with Townsend Public Affairs to Assist in Securing State Funding and Tracking and Affecting State Legislation of Concern to the City; and Appropriation of Funds

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment D): Authorizing the City Manager to negotiate and execute a professional services agreement with Townsend Public Affairs for a period of one year, renewable annually for a three year period, in an amount not to exceed \$60,000 per year.

BACKGROUND

Townsend Public Affairs, Inc. (Townsend) has been performing Hayward's federal and state legislative advocacy since 2009 and has assisted Hayward in identifying and securing state and federal funding for a variety of public improvements and programs, ranging from transportation and infrastructure improvements to public safety, libraries, and affordable housing. As the City's primary lobbyist in Sacramento, Townsend has been able to secure \$47 million in Proposition 1C (round 2) funding from the California Department of Housing and Community Development and also secured over \$700,000 from a variety of CalTrans grants.

DISCUSSION

Staff completed a Request for Proposal (RFP) process in the summer/fall of 2014 to identify potential state legislative advocacy services. The City received a total of four responses for state legislative advocacy services. Three firms were invited to interview in person, in front of a panel consisting of the Assistant City Manager, Police Chief, Fire Chief, Finance Director, and Transportation Manager. A reference check was then completed by the Assistant City Manager for two finalist firms.

After panel deliberation and reference checks, Townsend Public Affairs was unanimously selected to provide state legislative advocacy services. Townsend works with public agencies and non-profit entities in the following ways:

- Provides legislative notification, tracking, and advocacy.
- Assists with identifying capital and operating funding needs.
- Identifies existing State funding sources that meet local agency needs, and as necessary to help shape and develop funding programs to meet local needs.
- Assists local agencies in securing favored eligibility or priority status for their funding needs.
- Assists with preparing and reviewing applications for funding, securing legislative sponsors, and funding recommendations, and to advocate for the funding throughout the process.
- Works to ensure rapid disbursement of funds, once the funding awards have been made.

Townsend’s services will assist the City in grant writing activities and in securing state funding; especially the Public Works Departments and potentially the Library & Community Services, Police, and Fire Departments. Their past success in securing state grant funding provides ample reasoning to continue their services for the City.

FISCAL IMPACT

Townsend Public Affairs base fee would be \$5,000 per month, for a total of \$60,000 annually. The attached resolution grants the City Manager the authority to renew this contract annually for no more than three years.

It is proposed that funding for these services will come from the following sources:

Table 1: Proposed Funding Schedule

Department	Annual Funding Responsibility
General Fund	\$28,000
CIP Funds – Rt. 238 Administration/Pre-Design	\$13,000
Enterprise Funds- Water, Recycling, and Wastewater	\$19,000
TOTAL	\$60,000

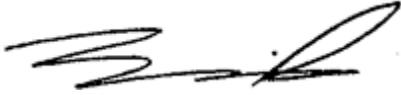
NEXT STEPS

Following Council approval at this meeting, staff will finalize and execute the contract with Townsend Public Affairs.

Prepared by: John Stefanski, Management Fellow

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

- | | |
|---------------|------------------------------------------------------------------------------------------------------------------------|
| Attachment I | Resolution Authorizing Execution of Consulting Agreements for Professional Services with Townsend Public Affairs, Inc. |
| Attachment II | Townsend Public Affairs Description of Process |

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH TOWNSEND PUBLIC AFFAIRS, INC., TO ASSIST IN SECURING STATE FUNDING , AND TRACKING AND AFFECTING STATE LEGISLATION OF CONCERN TO THE CITY; APPROPRIATION OF FUNDS

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute a professional services agreement with Townsend Public Affairs, Inc., to assist in tracking and affecting state legislation of concern to the City, and securing state funding for Affordable Housing, Economic Development, Utility and Recycling Activities, Public Safety, Library, Infrastructure, and Transportation related activities, and public facilities in an amount not to exceed \$60,000 annually, which is the total amount of contract funds from the City, renewable at the City Manager’s discretion annually for a period not to exceed three (3) years, 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

DESCRIPTION OF PROCESS

Provide a narrative describing the approach the firm will take to provide federal and/or state advocacy services. This should include a description of how the firm intends to identify and execute advocacy opportunities to pursue on behalf of the City, who would staff the projects, how the projects will be completed, and if there will be any post-project follow-up or compliance. The firm should also provide a timeline for the preparation and implementation of the various activities described in the scope and requirements.

APPROACH

The problem solving mentality of TPA provides a platform that will effectively accomplish the City's desired Scope of Services as described in the RFP. The team utilizes a proven strategy and protocol including strategies for managing federal and state advocacy, which will be tailored and incorporated into the City's agenda:

STRATEGY DEVELOPMENT

- **Conduct Detailed Orientation:** TPA utilizes an on-boarding protocol to develop strategic plans for its clients that are both carefully tailored to satisfy the needs of the clients as well as designed for maximum success in the legislative and regulatory process.
 - A. Immediately after the execution of the contract, a day will be scheduled (or two, if necessary) for TPA team members to visit the City to receive a detailed orientation of the City's issues and needs. (If appropriate, a tour of specific facilities and projects would be recommended.) Meetings can be conducted in larger groups or a series of individual sessions, and would include, but not be limited to, the following city officials as approved by the City Manager:
 - City Manager and executive staff, including the manager of the TPA contract
 - Department heads and their leadership
 - Mayor & Members of the City Council
 - Other key stakeholders as identified from the meetings
 - B. The goal of the initial day(s) of on-boarding are to identify and educate TPA regarding the issues of the City, including but not limited to:
 - Urgent matters of legislation/regulation that require immediate attention
 - Specific priority projects
 - Comprehensive long-term plans (e.g. Capital Improvement Projects list)
 - Visionary concepts and ideas
 - C. Upon conclusion of these initial orientation meetings, TPA will meet internally to conduct further research and analysis to generate opportunities for the City's strategic advocacy plan, including but not limited to:
 - Specific matters and solutions as identified by the City
 - Additional solutions to specific matters as identified by TPA
 - Additional opportunities that were not previously identified but relate to the City's agenda for consideration
 - Any other major funding opportunities that TPA wants to ensure the City is aware



PROCESS

- D. TPA and the City will then reconvene to review the preliminary menu of ideas, options, and opportunities recommended by TPA for consideration by the City, and conduct the following actions:
- Select items for pursuit
 - Prioritize items for pursuit
 - Identify additional items for research and exploration for future consideration
- E. TPA will then meet internally to develop a specific advocacy plan for each of the items selected and prioritized by the City that will then be submitted to the City for final review, modification, and ratification.

AREA OF FOCUS: GRANT APPLICATIONS*Secure Funding for City Projects*

- **Develop a Funding Strategy:** TPA will aggressively act to obtain funding for the City's projects. TPA will develop a project funding agenda including, but not limited to, identifying priority projects and programs for City, outlining multiple funding options for each project and program, and developing a comprehensive timeline for individual projects.
- **Manage Grant Applications:** TPA will guide the City regarding submissions of grant requests, assist in preparing submissions, letters of support, and other supporting materials.
- **Advocate on the City's Behalf:** TPA will serve as a liaison between City and agencies by utilizing strong relationships with officials among the various funding agencies and departments to ensure that City's application(s) are aligned with the goals of the specific grant and that the applications are well-crafted and well-positioned for funding.
- **Monitor and Track Funding Opportunities:** TPA will communicate with relevant designated staff to keep the City apprised of the status of these submissions. The City will receive funding opportunity matrix updates and activity reports to the City staff as needed.

AREA OF FOCUS: LEGISLATIVE ASSISTANCE*Engage in the Legislative Process to Advance and Protect the City's Interests*

- **Develop Legislative Platform and Strategy:** TPA will work with City staff to develop and advocate on behalf of the City's state and federal legislative priorities. TPA will identify potential issues and areas of concern to create a Legislative Platform and Strategy.
- **Identify and Review Legislation:** TPA will review all proposed, introduced and amended legislation, as well as proposed and adopted administrative rules and regulations, to determine any potential impacts on the City.
- **Analyze Legislation:** TPA will analyze legislation and proposed regulatory changes that may impact the City and recommend positions to be taken on the legislation. TPA will work with staff to advocate the City's positions, as necessary. TPA will provide updates and written reports as requested by the City.
- **Track Legislation:** TPA will monitor legislative and regulatory issues identified to be of interest to the City and provide a matrix of all such items. The matrix will include the summary and status of the bill as well as the City's position and action to date.



PROCESS

- **Advocate the City's Position:** TPA will lobby for the City's position on legislative, regulatory, and programmatic matters of interest through direct contact with Congressional Members and State Legislators. TPA will assist the City in drafting external communications relating to legislative and administrative issues including position letters, briefing packets, and talking points.
- **Provide Professional Representation:** TPA will represent the City in interacting with the Governor and elected representatives and staff persons, federal and state agencies, boards, commissions and legislative and regulatory bodies. Additionally, TPA will coordinate testimony on behalf of the City and assist the City regarding appearances before legislative committees and administrative agencies.
- **Draft Legislation and Amendments:** TPA will draft and assist in the drafting of proposed legislation and amendments, as necessary.

AREA OF FOCUS: STAKEHOLDER MEETINGS

Build Relationships with Stakeholders and Other Interested Parties

- **Maintain Relationships with Other Organizations:** TPA will continuously coordinate and cooperate with other organizations and firms having similar legislative objectives as the City. When appropriate, stakeholder coalitions and regional partnerships may be helpful to meet the City's goals.
- **Build Coalitions:** TPA coordinate and cooperate with other organizations and firms having similar legislative objectives as the City. TPA will work with interest groups, associations, agencies and others to develop a coalition of interest in support of the City's positions as directed and when appropriate.

AREA OF FOCUS: GENERAL ADVOCACY

Implement a coordinated federal and state advocacy agenda

- **Strengthen Relationships with the Legislature, Congress, and Administration:** TPA maintains strong working relationships with the Governor, Legislature and Congress, as well as federal and state Agencies. TPA will work to establish and maintain effective working relationships among legislative leadership and committees, individual legislators and their staff, public officials, and business organizations directly affecting the City.
- **Coordinate Advocacy Trips:** TPA will organize trips to Washington, D.C., and Sacramento for the City to meet with local legislators, as well as legislators that serve on committees with purview over City related issues. TPA will set up a strategy call, schedule meetings, prepare briefing materials, brief Members and Staff in advance, attending meetings, and handle all follow up.
- **Elevate the City's Presence in Washington, D.C., and Sacramento:** TPA will expand on the City's outreach efforts to members of the Legislature and Congress. TPA will invite key leaders of the Legislature, Congress, and other agency and department heads to visit the City to better inform them of City's interests.
- **Synchronize Communication Protocol:** TPA will confer with legislative staff on a regular basis and at times, places, and mediums (calls, emails, etc.) mutually agreed to by the City and TPA.
- **Meet with the City Council and Staff:** TPA will meet with the Mayor, City Council, City Manager and designated staff in their entirety either in person or teleconference as

PROCESS

requested by the City. TPA will participate in regular planning and coordination meetings with City Staff.

- **Provide Status Reports:** TPA will provide electronic reports on the status of legislation and related matters such as bill language and committee analyses, an annual report giving an overview of the work completed and a forecast of important issues in the upcoming legislative year.
- **Prepare and File All Required Reports:** TPA will prepare and file all applicable Fair Political Practices Commission, lobbying documents and reports, as well as House and Senate Lobbying Disclosures within all applicable deadlines.



DATE: December 2, 2014
TO: Mayor and City Council
FROM: Director of Library and Community Services
SUBJECT: Authorization to Apply for Emergency Solutions Grants (ESG) Program Funding in Fiscal Year 2014-2015

RECOMMENDATION

That City Council adopts the attached resolution authorizing the City Manager to apply for, and if granted, to accept and execute, an Emergency Solutions Grants agreement in FY 2015.

BACKGROUND

The Emergency Solutions Grant (ESG) is a program of the U.S. Department of Housing and Urban Development (HUD). The ESG program is administered in California by the Department of Housing and Community Development (HCD), and provides funding to states and local governments for emergency services and housing support for homeless and at-risk households.

In 2009, the Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act was enacted. The HEARTH Act significantly revised the *Federal Emergency Shelter Grants* (FESG) program and changed its name to *Emergency Solutions Grants* (ESG). Among the significant revisions to the ESG program was the expansion of eligible activities to include rapid re-housing and targeted homelessness prevention services, in addition to shelter and outreach services.

In 2010, the U.S. Interagency Council on Homelessness published its landmark report [Opening Doors](http://usich.gov/opening_doors) (http://usich.gov/opening_doors), a comprehensive national strategic plan to prevent and end homelessness. The strategic plan identified rapid re-housing as a best practice and recommended strategy to end homelessness.

In the FY 2014 ESG funding process, the City of Hayward successfully applied for rapid re-housing funds in partnership with Abode Services, and received the maximum grant amount of \$168,385. The grant award provides rapid re-housing services to twenty unduplicated Hayward families, who are homeless or at-risk of homelessness, by providing short-term rental assistance and housing placement services.

During the FY 2015 funding cycle, HUD and HCD continue to align with the federal strategic plan. To that end, HCD has set aside thirty-five percent of available ESG funds specifically for rapid re-housing programs.

DISCUSSION

HUD has allocated \$9,989,444 to HCD to administer and execute ESG grants statewide in FY 2015. The amount of available funding per applicant, per category, is \$200,000. Organizations that are eligible to apply for ESG 2015 funds include units of general purpose local government in select HUD eligible counties, local jurisdictions, and private non-profit organizations located within those jurisdictions. The City of Hayward and all local homeless services providers in its jurisdiction are eligible applicants.

City staff continues to work in close coordination with local emergency shelter providers to maximize the amount of ESG funding and resources available to Hayward and its residents. To this end, local emergency shelter providers are preparing to submit separate applications for FY 2015 ESG funds to support their emergency shelter operations and services in Hayward.

Because emergency shelter applications and rapid re-housing applications are considered as separate categories by HCD, the City of Hayward will not be in competition with local emergency shelter providers that also apply for ESG funds.

In the FY2013 ESG funding process, two emergency shelters successfully applied for emergency shelter funds and were awarded with maximum grant amounts. Also in the FY2014 ESG funding process, the City of Hayward successfully applied for rapid re-housing funds in partnership with Abode Services, and received the maximum grant amount of \$168,385.

Abode Services is an experienced local housing service provider with strong connections to permanent supportive housing units. A strong and effective partner in regionally coordinated efforts to end homelessness in Hayward and Alameda County, the Abode Services organization has a proven track record for transitioning chronically homeless individuals into permanent supportive housing, effectively and permanently ending their homeless condition.

If authorized by Council, the City of Hayward will continue to partner with Abode Services and submit an application for FY2015 ESG funds, requesting the maximum grant amount of \$200,000. These funds will be used to continue and expand upon successful rapid re-housing activities in Hayward.

If awarded ESG funds by HCD, the City of Hayward would be able to provide additional resources to support regionally coordinated efforts to end homelessness in Hayward and Alameda County, in alignment with the federal strategic plan set forth in the *Opening Doors* report.

To apply for ESG funds, City Council must adopt a resolution authorizing the City Manager to submit an application and execute an agreement should the City be awarded an allocation.

FISCAL IMPACT

The ESG program has a neutral impact on the City's General Fund. The program allows a sufficient portion of grant funds to be used for grant administration by City staff, including contracting, Labor Standards monitoring, financial management, and federal reporting.

PUBLIC CONTACT

City staff met with eligible emergency shelter and rapid re-housing service providers to discuss long-term strategies and opportunities to end homelessness in Alameda County, including the ESG Notice of Funding Availability (NOFA).

The ESG NOFA and application process were discussed at the November 19, 2014 Community Services Commission (CSC) regular public meeting, at which time the CSC indicated its support for the recommendation to apply for ESG funds.

NEXT STEPS

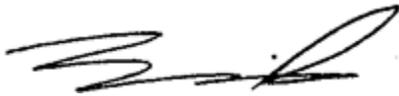
The resolution is provided in the format requested by HCD (Attachment I). If adopted, it would authorize the City Manager to apply for and receive ESG funding from HCD.

If authorized by Council, the City of Hayward will again partner with Abode Services to submit an application for FY2015 ESG funds in the maximum amount of \$200,000 to continue and expand rapid re-housing services in Hayward.

Prepared by: Rachael McNamara, Acting Administrative Analyst I

Recommended by: Sean Reinhart, Director of Library and Community Services

Approved by:



Fran David, City Manager

Attachment I: Resolution to Authorize the City Manager to Apply for Emergency Solutions Grant (ESG) Program Funds in FY 2014-2015

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY OF HAYWARD TO APPLY FOR AND ACCEPT EMERGENCY SOLUTIONS GRANT (ESG) PROGRAM FUNDING IN FY 2014-15

WHEREAS, the State of California, Department of Housing and Community Development (HCD), Division of Financial Assistance, issued a Notice of Funding Availability under the Federal Emergency Solutions Grants (ESG) Program; and

WHEREAS, the City of Hayward is Private Non-Profit Corporation or a Unit of General Purpose Local Government that is eligible and wishes to apply for and receive an ESG grant; and

WHEREAS, if the City of Hayward received a grant from HCD, it certifies that all uses of the funds will be in compliance with the ESG Regulations and Contract.

NOW THEREFORE BE IT RESOLVED that City Council of the City of Hayward hereby authorizes Fran David, City Manager to execute all required certifications, apply for and accept the Federal Emergency Solutions Grant in partnership with Abode Services, in an amount not to exceed \$200,000, and to execute the Standard Agreement, any subsequent amendments thereto, and, where applicable, any needed ESG agreements with HCD not to exceed \$200,000, as well as perform any and all responsibilities for the grant award.

IN COUNCIL, HAYWARD, CALIFORNIA, December 2, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

MAYOR: Halliday

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 2, 2014

TO: Mayor and City Council

FROM: Information Technology Director

SUBJECT: Authorization to Negotiate and Execute an Agreement with Rolling Orange, Inc. for Primary Website Redesign

RECOMMENDATION

That Council adopts the attached resolutions authorizing the City Manager to execute an agreement with Rolling Orange Inc. to redesign the City's primary website, and appropriating the requested and necessary funds.

BACKGROUND

The City has embarked on a complete redevelopment of the organization's primary web presence. As part of this effort, on April 18, 2014, the City released a Request for Proposals (RFP) for primary website design and development. The detailed RFP set forth a number of criteria for information architecture, third-party application integration, accessibility, and user interface issues. The RFP closed on May 16, 2014, with thirteen companies submitting proposals.

DISCUSSION

An initial review of the proposals revealed a wide range of approaches, price points, and experience levels. A series of finalists were chosen for interviews based on their capacity to produce a reasonable end product and their proposed budget. Following interviews, reference checks, and discussion with the Council Technology Application Committee (CTAC) at its June 11, 2014 meeting, staff was strongly encouraged to explore other options that could offer an open source platform, better customer service, and a more innovative, flexible approach to site construction, maintenance, and ongoing development. Staff identified three contractors of interest and invited these parties to present their solutions in an interview conducted by a panel of four staff members.

Interviews narrowed the field to two. Unable to identify a clear choice, staff proceeded to check a number of references for each of the companies. Unfortunately, an overwhelming majority of the current users of each platform expressed varying degrees of frustration, disappointment, and exasperation with the customer service, skill, and pricing structure of each firm. With this information in hand and with encouragement from the Council Technology Committee, staff decided to reconsider other options before recommending a development partner.

Outside of the original finalists, the field of applicants was exceptionally thin, with most firms underqualified, under-experienced, or unable to offer the desired open source package. After extensive research into other potential development partners and further refinement of the project's scope, staff identified two firms that offered compelling, competitive solutions. The first was part of the original pool of respondents. The second, which staff ultimately selected, had originally expressed interest in submitting a proposal, but declined to do so due to scheduling conflicts. After reaching back out to this firm and securing a preliminary proposal, staff interviewed each of the finalists in depth. Following the interviews, staff identified a strong consensus choice that fulfilled all of the City's key requirements while offering an inherently flexible open-source platform, a highly accomplished creative team, a track record of success, and a clearly defined development process underpinned by the support of a tightly focused local firm.

Rolling Orange is a leading interactive service agency based in San Mateo, CA. Established in 2000, the Rolling Orange team has developed sophisticated web and interactive solutions to a top-tier list of clients for close to fourteen years. The firm's core philosophy is based on a simple premise: to build exceptional websites for high-level clients. Rolling Orange has developed a strong reputation in the public sector and higher education markets, building innovative sites for San Francisco MTA, the San Francisco Assessor/Recorder's Office, Stanford University, the University of California system, and Bay Area Rapid Transit (BART). This expertise is complemented with experience with health care, performing arts, and corporate clients.

Rolling Orange offers end-to-end services, everything from strategy, site architecture, visual design, engineering, and interactive media development. The firm's development model is valuable because it eliminates the need for multiple vendors to handle various aspects of the process. Design and development work hand-in-hand so there is no division between the aesthetic and the technical elements of the site production. Moreover, Rolling Orange is well-versed in building high-visibility sites with extreme user loads (BART/SFMTA, among others) using staff's preferred open source solution (Drupal).

FISCAL IMPACT

The estimated cost for the project is \$247,500, which includes multiple work phases, including discovery and strategy, design and content strategy, site build/development, launch and post launch services, as well as 180 hours of support and maintenance on all code delivered to the City of Hayward. The FY2015 budget included \$125,000 in the Information Technology Internal Services operating fund for the website redesign project. Staff requests that Council appropriate the additional \$122,500 from the Information Technology Internal Service Fund available fund balance for this purpose.

PUBLIC CONTACT

Staff presented this recommendation to the Council Technology Application Committee at its November 19, 2014 meeting, where it received general support from the committee.

NEXT STEPS

If Council authorizes this agreement, project kickoff would be scheduled for January 5, 2015 with a tentative go-live date in January 2016.

Prepared by: Frank Holland, Community & Media Relations Officer

Recommended by: Mark Guenther, Information Technology Director

Approved by:



Fran David, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member

RESOLUTION AUTHORIZING THE CITY MANAGER TO
NEGOTIATE AND EXECUTE AN AGREEMENT WITH ROLLING
ORANGE INC. FOR PRIMARY WEBSITE REDESIGN.

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with Rolling Orange Inc. for primary website redesign, in an amount not to exceed \$247,500, 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

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING APPROPRIATION OF FUNDS
FOR THE PURPOSE OF REDESIGNING THE CITY'S
PRIMARY WEBSITE.

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the appropriation of \$122,500 from reserves to the Information Technology Internal Service Fund for redesigning the city's primary website, which supplements the original budget appropriation of \$125,000 for this purpose.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 2, 2014

TO: Mayor and City Council

FROM: Information Technology Director
Chief of Police

SUBJECT: Authorization to Negotiate and Execute an Agreement with Vigilant Solutions for Automated License Plate Recognition System; and Appropriation of Funds

RECOMMENDATION

That Council adopts the attached resolutions authorizing the City Manager to execute an agreement with Vigilant Solutions for an Automated License Plate Recognition System and appropriating funds.

BACKGROUND

Camera recognition technology has evolved to the point where it can be trained to read license plates as the human eye would. This market segment of growth is called Automated License Plate Recognition (ALPR). Unlike the human eye, ALPR is capable of reading thousands of plates per hour. Using ALPR, highly sophisticated and ruggedized cameras capture a picture of a license plate along with the date, time, and location of the scan. This scan can then be compared in real time to a stolen vehicle or criminal investigation “hot list.” If a match occurs, a police officer can instantly be alerted of the hit and take appropriate action.

DISCUSSION

In addition to searching for wanted or stolen plates, a car mounted ALPR system allows for strategic and flexible deployment options. A good example of this is using a patrol vehicle equipped with ALPR to quickly capture the license plates of all vehicles parked on a street where a homicide has just occurred. Capturing this data could be of critical importance in solving the crime because the data could be used to gather leads and utilized for future investigation purposes.

If a ‘hit’ of a stolen or wanted plate occurs, systems can be configured to alert the officer in the car, dispatchers working at the police station, or individual officer smartphones. The key is to design the alerts and alerting system so that officer security is maintained as well as to prevent the interruption of public safety workflows. Officers and dispatchers must be properly trained on the procedure to follow once they receive a ‘hit’ of a stolen or wanted plate. While every effort is made to make sure

that the latest hotlist has been applied to the system, a double-check of the data against the most up to date state and national records must always be done before initiating a car stop.

After analysis of the ALPR marketplace and research of ALPR vendors currently deployed in Bay Area law enforcement agencies, it was determined that Vigilant Solutions and 3M (formally PIPS) offered the best solutions for ALPR. To determine the preferred vendor, a sixty-day trial period was conducted by outfitting two patrol cars with ALPR. An officer from each team tested each vendor solution, ensuring that a variety of shifts with various lighting conditions were covered. At the conclusion of the sixty-day trial, the officers filled out a brief survey outlining their experience with the ALPR vehicle. Officers rated the user interface, clarity of plates during the day and night, system accuracy, durability, ability to review plates in the field, versatility, and the overall performance of the ALPR systems: Vigilant Solutions outperformed 3M in each measured category. The results of the survey were tabulated and shared with the Public Safety Technology Committee (PSTC) on June 4, 2014, which elected Vigilant Solutions as the preferred ALPR solution.

Critical features

There are three key features that set this technology apart from other vendors.

Intuitive user interface – Vigilant Solutions user interface provides a clean, easy-to-use, and intuitive design that allows simple navigation. The well-placed and labeled status indicator lights inform the user that all of the system components are running properly. Additionally, the automatic download of the law enforcement hotlists is an added bonus.

Mobile Hit Hunter – Vigilant employs a private fleet of civilian vehicles across the United States equipped with ALPR to capture license plate data in major metropolitan areas. Over one million plates are scanned each day, and approximately thirty-five million records are deposited into this private data source each month. The plates captured during this process can be accessed in patrol cars by law enforcement agencies using a feature called “Mobile Hit Hunter.” Agency hotlists are compared against this private data warehouse, and if there are any ‘hits’ within three miles of the ALPR equipped vehicle, then it will show the location of the ‘hit’ on a map. This feature is only offered by Vigilant and received high praise as a law enforcement tool for in-field use.

This feature benefits officers in two ways. First, it is equivalent to having multiple ALPR cars deployed in our city without the added full cost of adding more ALPR vehicles. The private fleet of cars scans vehicles at times and areas when our ALPR cars are not in service which is an added benefit. Second, it provides accurate, timely scans on which officers can proactively solve crime. For example, with the feature enabled, the officer can pull up a map within a three mile radius of his or her current location that will show recent scans of stolen vehicles. Using this data, the officer can drive to the location of the scan and potentially recover the stolen vehicle.

LEARN analytics and data sharing – Vigilant Solutions uses a cloud-based solution called LEARN to store the ALPR data captured in the field. LEARN offers the flexibility to mutually share ALPR data with other law enforcement agencies using the Vigilant Solutions, allowing users to pick and choose with whom they prefer to share their data. California users can also share data with the Northern California Regional Intelligence Center (NCRIC) if desired. NCRIC coordinates the

exchange of criminal intelligence, threats, and hazards and facilitates regional communication among Northern California law enforcement agencies. LEARN also offers an analytics engine that allows for searching of full or partial license plates complete with the locations of where the scans occurred.

Another metric which was analyzed during the trial period, was the number of plates captured during the trial, and the hotlist ‘hits.’ These two components of the study allowed staff to gauge what to expect when using an ALPR solution in the field. Based on volume, the results clearly indicate that Vigilant Solutions outperformed 3M, providing further evidence as to why Vigilant Solutions was the preferred vendor.

ALPR reads and hits

Vendor	Reads	Stolen Plate Hits	Stolen Vehicle Hits	Total
Vigilant	310,000	224	77	301
3M	113,720	n/a	n/a	69*

**3M reports stolen plate and stolen vehicle hits grouped together*

Vigilant Solutions offers the best user-interface and provides the critical features that the officers prefer. The greater volume of plates captured during the evaluation period , as well as the greater number of hotlist ‘hits’, shows that Vigilant Solutions outperformed 3M. Officer feedback and discussion at the PSTC session on June 4, 2014, further confirmed Vigilant Solutions as the preferred vendor. Additionally, the evaluating officers were able to quickly get up to speed and start using the Vigilant Solutions system. Installation of the system took less than a day and end-user setup was completed remotely using the LEARN cloud-based solution, further speeding up deployment.

Community outreach plan

It should be noted that staff is recommending the installation and use of ALPR systems for the main purpose of identifying stolen cars and license plates and/or wanted vehicles. As stated earlier in this report, this technology will be placed in police vehicles, not in stationary geographic locations; and is not intended in any way to “police” the borders of Hayward or identify the comings and goings of law-abiding residents, as it is being proposed in other surrounding communities.

To properly inform the community about the deployment of this technology, staff recommends the following approach, which covers multiple communication channels:

- Announcement on Police Department website
- Social media announcement utilizing Nixle, Twitter, and Facebook
- Flyer distribution at community meetings
- Press release a few days before technology release

Using these methods provides a wide range of communication to properly message the arrival of this technology. All outreach will be done in accordance with recommended best practices of the Police Executive Research Forum.

Data retention

The data captured in an ALPR scan and stored in a database contains a picture of the license plate, the date and time of the scan, and the GPS location of the scan. No personally identifiable information (PII) is captured with the ALPR scan or stored in the database. Data retention rules (how long these pictures of the scanned license plate, date/time of the scan, and GPS location of the scan are kept before deletion) is an area that is continuously evolving. Agencies across the United States utilize a wide range of data retention policies with some choosing to keep records indefinitely. The Hayward Police Department must achieve a balance between ensuring that the data captured from the system is relevant for investigation, yet not so old that the data is no longer relevant. Therefore, Police Department staff recommends a 366 day ALPR data retention policy for scans and hits to achieve that balance. Staff will continue to monitor this evolving area and if laws or best practices change or dictate that data retention rules change, staff will adjust these accordingly.

Policy update

As with any new technology, operating staff has developed and is implementing data security and handling practices prior to going live to govern the capture, review, and retention of license plates identified by the ALPR system. Access to ALPR data will follow the same “need to know” and “right to know” protocols outlined for access to existing law enforcement records. The departmental policy was established for the trial period and governs ALPR data access and use by Police personnel. It will be amended or expanded by the Police Department as may be determined by direct operational experience. Staff will continue to monitor best practices and any case law that may affect this policy and update it accordingly. Key aspects of the Departmental policy include:

- Operation and data access - The operation of the ALPR system is restricted to official and legitimate law enforcement use and users of the system must have completed approved California Law Enforcement Telecommunication System (CLETS) training prior to accessing the ALPR system or accessing ALPR data.
- Data review and retention - All data and images gathered by the ALPR system are for official use of the Hayward Police Department and are not available for public review or Freedom of Information Act requests. All ALPR data is stored for a maximum of one year and thereafter is purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action, or is subject to a lawful action to produce records.
- Data safeguards - All requests for access and review to the stored ALPR data will be logged and a stated purpose for access must be provided. All ALPR data will be

accessible only through a login/password protected system capable of documenting who accesses the information by name, date, and time.

- Data sharing with Law Enforcement agencies - ALPR may be shared only with other law enforcement agencies for legitimate law enforcement purposes or as otherwise permitted by law and in accordance with policy provided that (a) The law enforcement agency makes an official request for the ALPR data, (b) The identity of the agency and person requesting the data and the intended purpose is documented and retained on file, and (c) the request is approved by a Records Manager or his/her designee.

FISCAL IMPACT

Preliminary quotes were obtained from Vigilant Solutions and 3M in order to compare costs. The proposed solution is two patrol cars to be outfitted with a three-camera solution. The initial warranty would last for one year, but can be expanded for an additional cost. These quotes are based on a five-year projection, which includes purchasing the cameras in year-one and paying annual maintenance fees in years two thru five. The costs for the physical cameras and accompanying software are roughly the same between the vendors.

Staff recommends that Council authorize funding for the Year-1 start-up costs from the Information Technology Internal Service fund balance. Funding for ongoing annual maintenance in subsequent years will need to be provided from the Information Technology Internal Service Fund operating budget.

Estimated Total Five Year Cost

Vendor	Year 1 start-up cost	Year 2-5 annual maintenance	Total
Vigilant	\$ 40,748	\$4,350 per year	\$58,148
3M	\$ 38,290	\$2,800 per year	\$49,490

In addition to these costs, this technology will require City staff time for initial training as well as ongoing maintenance of the system.

PUBLIC CONTACT

Staff provided an overview of ALPR technology used by law enforcement to the Council Technology Application Committee (CTAC) at its November 20, 2013 meeting. At the November 19, 2014 Committee meeting, staff presented this recommendation and it received general support.

In addition to the community outreach plan described previously, on Tuesday, November 18th and Thursday, November 20th from 6:30-7:30 pm, District Commander Lieutenant Bryan Matthews held public community meetings on the subject of ALPR technology at the Northern District Office, located at 22701 Main Street in downtown Hayward. During these meetings, a presentation

regarding the proposal to implement ALPR technology was shared. The presentation addressed frequently asked questions and provided information on the proposed technology. Community feedback on the technology was positive. Staff responded to questions from the community regarding the software and technology utilized in ALPR, where the data was physically stored, and how long that data would reside on the system before deletion. Community members in attendance concurred that ALPR would be a great tool to assist the Hayward Police Department in solving and preventing crime.

NEXT STEPS

Staff has conducted their analysis and recommends Vigilant Solutions as the vendor to provide an Automated License Plate Reader System. If approved, implementing this technology could be accomplished within a few months of contract execution.

Prepared by: Nathaniel Roush, Technology Solutions Analyst

Recommended by: Mark Guenther, Information Technology Director
Diane Urban, Chief of Police

Approved by:



Fran David, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-

Introduced by Council Member

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH VIGILANT SOLUTIONS FOR PURCHASE OF AN AUTOMATED LICENSE PLATE READER SYSTEM.

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute an agreement with Vigilant Solutions for the purchase of an Automated License Plate Reader System, in an amount not to exceed \$59,000, 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

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING APPROPRIATION OF FUNDS FOR THE PURPOSE OF PURCHASING AN AUTOMATED LICENSE PLATE READER SYSTEM FROM VIGILANT SOLUTIONS.

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the appropriation of \$40,748 from reserves to the Information Technology Internal Service Fund for costs incurred in fiscal year 2015 to purchase an Automated License Plate Reader System from Vigilant Solutions.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: December 2, 2014

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Hayward General Plan 2015-2023 Housing Element

RECOMMENDATION

That the City Council adopts the attached resolution approving the City of Hayward Addendum to the General Plan Environmental Impact Report for the 2015-2023 Housing Element Update and adopting the Hayward General Plan [2015-2023 Housing Element](#).

SUMMARY

In compliance with State housing element law, the City has prepared an update to the General Plan Housing Element. The purpose of the 2015-2023 Housing Element is to achieve an adequate supply of decent, safe, and affordable housing for Hayward's existing and future workforce, residents, and special needs populations. The Housing Element strives to conserve the city's existing housing stock, while providing opportunities for new housing for all economic segments of the community.

The 2015-2023 Housing Element was prepared with input from Hayward residents, housing advocacy groups, building industry representatives, the General Plan Update Task Force, and the Hayward Planning Commission and City Council. In addition, the California Department of Housing and Community Development conducted a streamlined review of the Draft Housing Element in August 2014, and concluded that the Element complies with the statutory requirements of State housing element law.

This public hearing and the hearing before the Planning Commission on November 6 (no comments received at that hearing) provide the public and the City Council an opportunity to provide final comments on the 2015-2023 Housing Element before the City Council approves the document. Environmental impacts associated with implementation of the 2015-2023 Housing Element have been assessed by an Addendum to the General Plan Final Environmental Impact Report.

BACKGROUND

The current Housing Element of the General Plan was adopted by the City Council on June 22, 2010 and certified by the State on July 9, 2010. State law requires the Housing Element to be updated every eight years.

Work on the current update began in September of 2012 with the Council's approval to hire Mintier-Harnish to assist with the General Plan update, including the update to the Housing Element. State Government Code Section 65583 (c) (7) requires cities and counties to "make a diligent effort to achieve participation of all economic segments of the community in the development of the housing element." On August 15, 2013, the City of Hayward satisfied this requirement by conducting a workshop with housing developers, service providers, and other community stakeholders that represent the housing needs of residents of all economic segments of the community. In addition, the City utilized the Hayward2040.org town hall forum to solicit input on housing issues and potential solutions. The City also discussed housing issues with the General Plan Update Task Force in October of 2013, and shared the draft goals, policies, and implementation programs with the General Plan Update Task Force on January 23, 2014. Members of the public were invited to attend these Task Force meetings.

On January 28, 2014, the City Council approved zoning text amendments related to transitional and supportive housing and reasonable accommodations for disabled households. These zoning text amendments were required to allow the City to take advantage of a streamlined review process for the Housing Element update. A Draft Housing Element was then prepared and published for public review between March 6, 2014 and April 30, 2014. The City of Hayward received one comment letter from the Building Industry Association of the Bay Area during the public comment period. That letter, and the City's response to that letter, are provided as Attachments III and IV to this report.

The Planning Commission reviewed and provided comments on the Draft Housing Element at a work session on [April 10, 2014](#). A similar work session by the City Council occurred on [May 6, 2014](#). As a result of comments received from the Planning Commission and City Council work sessions, the Draft Housing Element was revised to include additional information about the community outreach and public review process, and to add a new outreach program for the developmentally disabled (Program 21).

The revised Draft Housing Element was submitted to the California Department of Housing and Community Development (HCD) on June 12, 2014. HCD conducted a streamlined review of the document. During this review process, a few changes were made to the draft document to address HCD concerns. These changes include:

- The addition of a discussion of how the City incorporated public input into the document (pages 4-4 to 4-5);
- The addition of a statement that the City complies with the Employee Housing Act, which requires local governments to treat employee housing providing accommodations for six or fewer employees the same way as a single-family unit with a residential land use designation. (page 4-82);

- The addition of a description of the City’s five Priority Development Areas (PDAs) to further support redevelopment of the underutilized sites included in the Housing Element (pages 4-106 to 4-107); and
- The addition of an annual time-frame for Program 8, which is a program that indicates the City shall review available funding programs annually and shall provide technical support in the application for State, Federal, and other public affordable funding sources, and, as funding permits, shall provide gap financing for affordable housing (page 2-11).

HCD accepted the above changes and concluded that the revised Draft Housing Element meets the statutory requirements of State Housing Element Law, and the Element will comply with State Housing Element Law if it is adopted by the City and submitted to HCD for certification. HCD’s comment letter is provided as Attachment V to this report.

November 6 Planning Commission Public Hearing – The Planning Commission reviewed the most recent Housing Element at their regular meeting on November 6. The Planning Commission supported the changes to the Housing Element and recommended the City Council adopt the revised element and submit to the Department of Housing and Community Development for final certification of the Housing Element. Minutes for that meeting are included as Attachment VII to this report.

DISCUSSION

The proposed Housing Element establishes housing policies and programs for the planning period of 2015 through 2023. It serves as a guide to City officials in decision-making and provides an action plan to implement the City’s housing goals. It is intended to direct residential development and the preservation of housing in a manner consistent with the General Plan and the overall requirements of State Housing Element law. The Housing Element identifies local housing issues within the broader regional context, determines associated housing needs, and sets forth a housing strategy to address those needs.

Housing Element – Goals, Policies, and Programs - For the most part, the integrity of the prior Housing Element has been retained with the 2015-2023 Housing Element. Goals, policies and applicable implementation programs have been carried forward into the update. There have been a few modifications to language and organization in keeping with the style of the Hayward 2040 General Plan update. A new goal, Goal 6 - Housing for Persons with Special Needs, adds new policies to address senior housing needs, family housing needs, and student/faculty housing needs. These additions were made based on feedback received during the General Plan update process, including comments received from the housing workshop on August 15, 2013.

Regional Housing Needs Allocation (RHNA) – The Housing Element is required to demonstrate that the City has identified and zoned land to sufficiently and appropriately accommodate the development of the housing units identified in Hayward’s allocation, which is considered the City’s fair share of regional housing needs. The RHNA is not a production quota, but the City must show that the housing units could be accommodated. There is no mechanism at the State, regional or City levels to require that the units identified in the RHNA be constructed. However, it should be noted that the One Bay Area Plan and subsequently adopted regional funding policies favor new

transportation projects that are located within Priority Development Areas, which tend to be mixed-use areas with new housing, including affordable housing.

The RHNA is distributed by income category and covers the time-frame from January 2014 to October 2022. Hayward’s RHNA is 3,920 units, a 13% increase over the last reporting period; however, Attachment VI – Alameda County RHNA Comparison, shows that while the total RHNA has increased, the percentage of total RHNA allocated in the very low and low categories has decreased since the last reporting period. Hayward’s overall RHNA of 3,920 units is divided into the following household income categories:

- Extremely Low-Income (up to 30 percent of area median income (AMI)): 425 units
- Very Low-Income (up to 50 percent of AMI): 426 units
- Low-Income (51-80 percent of AMI): 480 units
- Moderate Income (81-120 percent of AMI): 608 units
- Above Moderate-Income (more than 120 percent of AMI): 1,981 Units

Since the RHNA planning period began on January 1, 2014, the City may count any new units planned or approved and not yet constructed as of January 1, 2014 toward the RHNA. The below table outlines the progress to date on meeting the RHNA. As shown in the table below, the planned and approved units are sufficient to meet the RHNA for above-moderate-income units and the City has no remaining need in this category.

	Number of Housing Units					
	Extremely Low	Very Low	Low	Moderate	Above Moderate	Total
RHNA	425	426	480	608	1,981	3,920
Total Planned/Approved Units	0	173	10	0	2,257	2,440
Units Needed to Meet Remaining RHNA	425	253	470	608	0	1,756
Potential Units (Sites Inventory)	2,118			768	190	3,076
Units in Excess of RHNA (with Potential and Planned Units)	+970			+160	+466	+1,320

As part of the analysis to demonstrate that the City can meet its RHNA during the balance of the planning period, the City conducted a sites inventory primarily focused on areas with vacant or underutilized sites. Utilizing the “default density standards” deemed appropriate by State law to accommodate housing for lower-income households, the City of Hayward can assume that sites with a minimum density of 30 units per acre are appropriate for accommodating housing for lower-income households. Based on the assessment of vacant and underutilized residential sites in the

Cannery Area, Mt. Eden Neighborhood, South Hayward BART Station Area, Mission Boulevard Specific Plan Area, and Route 238 Study Area, Hayward can accommodate 3,076 units, including 2,118 units at higher densities that can facilitate the development of housing affordable to lower-income households. When including both planned and approved projects to this potential, the City's sites inventory exceeds the remaining RHNA in all income/affordability levels, with a surplus capacity of 1,320 units.

Environmental Review - The City of Hayward is the lead agency for the environmental review impact analysis associated with the 2015-2023 Housing Element. Section 15164(a) of the State CEQA Guidelines states that "the lead agency or a responsible agency may prepare an addendum to a previously certified EIR if some changes or additions are necessary, but there are no new significant impacts resulting from these changes, nor are there any substantial increases in the severity of any previously identified environmental impacts." The potential impacts associated with the proposed update to the Housing Element would either be the same or less than the anticipated impacts described in the previously adopted Housing Element. Pursuant to CEQA Guidelines Section 15164(b), the City of Hayward, as lead agency, has determined that an addendum to the adopted General Plan EIR be prepared for this General Plan Amendment (the Housing Element is part of the General Plan). The Housing Element is a policy document and adds new policies and implementation programs to the City's General Plan that are consistent with all other General Plan policies, plans, and programs; none of the conditions described in CEQA Guidelines Section 15162 that might require the preparation of a subsequent EIR have occurred.

The 2015-2023 Housing Element will not result in new additional impacts on the environment, and the environmental impacts addressed in the General Plan EIR are not increased in severity or significance due to the adoption of the 2015-2023 Housing Element. The proposed update to the City's Housing Element is consistent with development under the General Plan.

Also, according to Section 15164 (c) of the California Code of Regulations, "An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration."

PUBLIC CONTACT

The public has been informed of opportunities to participate in the Housing Element update throughout the process. The major outreach efforts that occurred are described in the Background section of this report.

The notice for this public hearing was published in *The Daily Review* newspaper on November 22, 2014. An email notification was also sent to the organizations and individuals that have been involved in the housing element update process. No comments were received at the time this staff report was completed.

FISCAL AND ECONOMIC IMPACT

Below is a table showing the approved General Plan Update budget and the portion that has been spent and portion remaining as of November 1, 2014.

Budget for General Plan Update 2012-2014 (as adopted on 9/25/2012)			
	Approved Budget	Spent	Remaining
City Staff Time	\$475,000	\$144,456	\$330,544
Jason Jones	\$266,800	\$203,900	\$62,900
Public Engagement Activities/Tools	\$13,000	\$12,500	\$500
Mintier Harnish/MIG	\$1,157,840	\$1,094,941	\$62,899
Miscellaneous Costs (outreach materials)	\$7,000	\$6,296	\$704
Subtotal	\$1,919,640	\$1,462,093	\$457,547
10% Contingency	\$191,964		\$191,964
Grand Total	\$2,111,604	\$1,462,093	\$649,511

SCHEDULE/NEXT STEPS

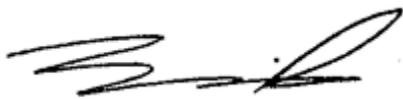
Following this public hearing, and assuming the City Council adopts the attached resolution, the adopted Housing Element will be forwarded to the State Department of Housing and Community Development for formal certification.

Staff is also moving forward with the creation of the web-based General Plan of which the Housing Element will be a part. It is anticipated that the web-based General Plan will be complete by early 2015.

Prepared by: Sara Buizer, AICP, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Draft Resolution
- Attachment II: [2015-2023 Housing Element](#) (available on the City's web page)
- Attachment III: Comment Letter from the Building Industry Association of the Bay Area
- Attachment IV: Staff's Response to the Comment Letter from the Building Industry Association of the Bay Area
- Attachment V: HCD's Comment Letter on the City of Hayward's 5th Cycle (2015-2023) Draft Housing Element
- Attachment VI: RHNA Comparison
- Attachment VII: November 6, 2014 Planning Commission Meeting Minutes

HAYWARD CITY COUNCIL

RESOLUTION NO. 14-_____

Introduced by Council Member _____

RESOLUTION ADOPTING AN EIR ADDENDUM TO THE
PREVIOUSLY CERTIFIED ENVIRONMENTAL IMPACT
REPORT FOR THE HAYWARD 2040 GENERAL PLAN, AND
ADOPTING THE HOUSING ELEMENT OF THE CITY OF
HAYWARD GENERAL PLAN

WHEREAS, the current Housing Element of the General Plan was adopted by the City Council on June 22, 2010; and

WHEREAS, state law requires local jurisdictions to update the housing elements of their general plans every eight years; and

WHEREAS, on September 25, 2012, the City Council authorized the 2015-2023 Housing Element update (the “Project”) as part of the Comprehensive General Plan Update; and

WHEREAS, over the course of the past 24 months, community meetings and work sessions have been held to collect input for and review drafts of the Housing Element and disseminate information associated with the proposed Project; and

WHEREAS, a draft Housing Element including all the required components was prepared and forwarded to the State Department of Housing and Community Development in compliance with state law; and

WHEREAS, the State Department of Housing and Community Development staff has indicated that the draft Housing Element is in substantial compliance with state law and will be certified; and

WHEREAS, the project has been reviewed according to the standards and requirements of the California Environmental Quality Act (“CEQA”) and an Environmental Impact Report (EIR) Addendum has been prepared for the Project. The EIR Addendum, has determined that the Project, will not result in significant effects on the environment; and

WHEREAS, the Planning Commission held a public hearing on November 6, 2014, during which it considered the EIR Addendum and the proposed Project and has recommended that the City Council approve the EIR Addendum, and adopt the 2015-2023 Housing Element; and

WHEREAS, the City Council held a public hearing on December 2, 2014, during which it considered the reports and documents presented by City staff relative to the proposed Project and the EIR Addendum; the Planning Commission's recommendation; and to receive comments from the public.

NOW, THEREFORE BE IT RESOLVED, based on the findings set forth above, that the City Council of the City of Hayward hereby approves the EIR Addendum, and adopts the 2015-2023 Housing Element of the General Plan.

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



November 26, 2013

Housing/Planning Director
Jurisdiction
Via email

Re: Housing Element Update



The undersigned members of the Bay Area Business Coalition advocate for a vibrant regional economy and outstanding quality of life for existing and future residents of the San Francisco Bay Area. A necessary—though by no means sufficient—condition to achieve these goals is for the region to provide an adequate supply of housing within the region. State housing element law generally—and the governmental constraints component in particular—can be important tools to advance these goals. With Bay Area cities and counties currently updating their housing elements, our organizations respectfully request that your jurisdiction consider and address the following comments as part of the public review process.



We recognize that the housing element process can be resource intensive and sometimes difficult. We hope that by identifying certain priority issues and questions, this letter will assist in focusing resources on policies and practices that are of significant and recurring interest to the regulated community. We also would support incorporating these standardized issues into the framework for local jurisdictions to be able to take advantage of the housing element certification streamlining developed by the California Department of Housing and Community Development (HCD).



Jobs and Housing Coalition

I. Overview of the statutory provisions.

The California Department of Housing and Community Development (HCD) has prepared formal guidance interpreting the constraints analysis portion of housing element law (http://www.hcd.ca.gov/hpd/housing_element2/CON_home.php).



HCD's overview of the requirements and their purpose provides: *The element must identify and analyze potential and actual governmental constraints to the maintenance, improvement, or development of housing for all income levels, including housing for persons with disabilities. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing. The analysis should determine whether local regulatory standards pose an actual constraint and must also demonstrate local efforts*



to remove constraints that hinder a jurisdiction from meeting its housing needs.... The analysis of potential governmental constraints should describe past or current efforts to remove governmental constraints. Where the analyses identifies that constraints exist, the element should include program responses to mitigate the effects of the constraint. Each analysis should use specific objective data, quantified where possible. A determination should be made for each potential constraint as to whether it poses as an actual constraint. The analysis should identify the specific standards and processes and evaluate their impact, including cumulatively, on the supply and affordability of housing.

II. Requested specific areas of focus

We have identified certain policies that generally represent significant potential constraints in the Bay Area and we request that as you conduct the constraints portion of your housing element review, these issues in particular be addressed:

- **Did your jurisdiction commit to addressing specific constraints as a condition of HCD certification of the existing housing element?** If so, what was the constraint and what has been done to address it?
- **Does your jurisdiction have a mandatory inclusionary zoning policy?** If so, has an analysis been done that measures the economic impact? Does it contain meaningful and regularly available incentives, and is its implementation flexible so that there are alternatives to a “like for like must build requirement” such as payment of reasonable in lieu fees, land dedication, or acquisition and rehabilitation of existing units with provision affordability covenants? Are such alternatives available at the developer’s option or with staff approval—but without need for Council or Board approval on a project-by-project basis?
- **Has your jurisdiction adopted a density bonus ordinance consistent with governing state law (Gov’t Code Section 65915)?** Does the density bonus ordinance count mandatory inclusionary zoning units toward the density bonus threshold as required by the recent court of appeal decision in *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013)?
- **What is the cumulative fee and exaction burden on new housing in your jurisdiction?** This analysis should include not only development fees that are “formally” reflected in published fee schedules, but also include exactions imposed via housing allocation program/ “beauty contests,” community benefits/amenities agreements, CFD annexation requirements, and the like. The analysis should also include fees imposed by other agencies, for example school fees, sewer and water fees, and fees imposed pursuant to an applicable regional Habitat Conservation Plan. The analysis should determine the % of the sales price of new housing in the jurisdiction is represented by the cumulative fee/exaction burden, as well as the % of costs for rental housing units represented by the cumulative fee/exaction burden.
- **Does your jurisdiction have any recently adopted, proposed, or under consideration new or increased fee or exaction, such as an affordable housing impact fee?**
- **Has your jurisdiction required new housing projects, including multifamily/attached projects, to pay a fee or special tax for ongoing general governmental services?**

- **Does your jurisdiction have a designated Priority Development Area (PDA)? Is it a “planned” or “potential” PDA?** Have the number of residential units and densities shown in the PDA application been incorporated into the General Plan? Has the CEQA process been completed for the PDA so that no additional CEQA review is necessary for a proposed project consistent with the PDA? Have development restrictions and processes been streamlined in the area covered by the PDA?
- **What were the sites relied on for the adequate sites compliance of the existing housing element?** What has been the entitlement/development activity for these sites during the prior planning period? Were any of the sites subject to “by right” development procedures?
- **Does your jurisdiction have any type of cap or limitation on the number or type of housing units that may be permitted or constructed jurisdiction wide or in specific areas of the jurisdiction—including a cap or limitation tied to a specified level of new job creation in the jurisdiction?**
- **Has your jurisdiction provided for “by right” housing development in any areas?**
- **Are there zoning or other development restrictions (such as voter approval requirements, density limits or building height restrictions) that have impeded infill and/or transit oriented development?**
- **Has your jurisdiction consistently demonstrated compliance with both the letter and spirit of the Permit Streamlining Act?**
- **What are your jurisdiction’s historic preservation policies and review procedures and have they had a significant impact on the permit and entitlement processes for new development projects?**
- **Has your jurisdiction adopted an ordinance pursuant to the Quimby Act that gives developers credit for private open space?**
- **In implementing the Quimby Act, does your jurisdiction provide for consistency between the calculation of the existing neighborhood and community park inventory, and the criteria and procedures for determining whether to accept land offered for parkland dedication or to give credit for private open space?** For example, has your jurisdiction refused to accept an area in whole or in partial satisfaction of the parkland dedication ordinance on the basis that it is unsuitable for park and recreational uses even though the area is substantially similar to areas included in the overall parkland inventory used to calculate the parkland dedication requirement and fee?
- **In the project review process, has your jurisdiction required developers to use the Bay Area Air Quality Management District’s CEQA Thresholds of Significance for Toxic Air Contaminants (TAC Receptor Thresholds)?** Has your jurisdiction explored alternative procedures for addressing project siting and air quality concerns, such as in the general plan or zoning code?

- **Has your jurisdiction adopted a Climate Adaptation Plan that is more stringent with respect to the per capita GHG reductions for the land use sector/transportation sector than the equivalent per capita targets established for the region by CARB pursuant to SB 375?**

Our organizations intend to monitor housing element updates throughout the region, and we respectfully request that your jurisdiction formally respond to these questions early in the update process. We also ask that you send a paper or electronic copy of the responses to:

BIA of the Bay Area
Attn: Paul Campos
101 Ygnacio Valley Road, Suite 210
Walnut Creek, CA 94596
pcampos@biabayarea.org
415-223-3775

Yours very truly,



John Coleman
Bay Planning Coalition
Council



Paul Campos
BIA Bay Area



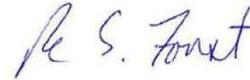
Tom Terrill
East Bay Leadership



Gregory McConnell
Jobs & Housing Coalition



Cynthia Murray
North Bay Leadership Council



Rosanne Foust
SAMCEDA



Jim Wunderman
Bay Area Council



Joshua Howard
California Apartment Association



October 23, 2014

Paul Campos
 Building Industry Association Bay Area
 101 Ygnacio Valley Road, Suite 210
 Walnut Creek, CA 94596

Subject: City of Hayward Housing Element Comment Letter

Dear Mr. Campos:

Thank you for participating in the process to update the City of Hayward Housing Element. In November of 2013, you submitted a letter to the City with a variety of questions related to the Housing Element and housing issues within the City. The City's responses to those questions are provided below:

1. Did your jurisdiction commit to addressing specific constraints as a condition of HCD certification of the existing housing element? If so, what was the constraint and what has been done to address it?

No, the City of Hayward was not required to address any specific constraints as a condition of HCD certification of the current 2009-2014 Housing Element. The 2014 Housing Element, does include a goal and policies related to removing governmental constraints related to the development of housing including an analysis of development standards to provide more flexibility and making sure our review and approval process for the development of housing is clear.

2. Does your jurisdiction have a mandatory inclusionary zoning policy? If so, has an analysis been done that measures the economic impact? Does it contain meaningful and regularly available incentives, and is its implementation flexible so that there are alternatives to a "like for like must build requirement" such as payment of reasonable in lieu fees, land dedication, or acquisition and rehabilitation of existing units with provision affordability covenants? Are such alternatives available at the developer's option or with staff approval—but without need for Council or Board approval on a project-by-project basis?

Yes, the City has an Inclusionary Housing Ordinance (Article 17 of the Hayward Municipal Code). In response to the downturn in the housing market during the last recession and recent court decisions,

Development Services Department – Planning Division

777 B Street, Hayward, CA 94541-5007
 Tel: 510/583-4200 Fax: 510/583-3649 TDD: 510/247-3340 Website: www.hayward-ca.gov

the City adopted an ordinance on January 18, 2011 that provided interim relief from certain inclusionary housing provisions (the Relief Ordinance). An additional ordinance (the First Amendment to the Relief Ordinance) was adopted on November 15, 2011 to clarify certain provisions of the Relief Ordinance. Based on the Relief Ordinance and its First Amendment, the City's inclusionary housing percentage requirement was reduced from 15% to 10% for single-family detached housing and to 7.5% for attached single-family homes, townhomes, and other attached housing units. In addition, developers now have the by-right option to pay in-lieu fees instead of providing units on site, and rental housing is exempt from the requirements if they do not receive assistance or subsidies from the City.

On December 18, 2012 the City extended the inclusionary housing relief provisions until December 2013 to give staff additional time to conduct a nexus study for reviewing and revising the Inclusionary Housing Ordinance. The City Council also authorized further extensions of the Relief Ordinance by resolution if there is not a noticeable improvement in the housing market and increase in local residential construction during 2013. A resolution was adopted on June 24, 2014 to extend the Relief Ordinance for an additional six months.

The City of Hayward retained David Paul Rosen & Associates (DRA) in 2013 to assist the City in preparing an Inclusionary Housing Ordinance Review and a Nexus Study examining the legality and basis for establishing a rational nexus between market-rate residential development and the need for affordable housing in the City. This study was completed in 2013 and was recently updated to represent 2014 economic conditions. A City Council work session on the Inclusionary Housing Ordinance and the Nexus Study is scheduled for November 4, 2014. The City anticipates the adoption of a new Inclusionary Housing Ordinance by the end of 2014.

3. Has your jurisdiction adopted a density bonus ordinance consistent with governing state law (Gov't Code Section 65915)? Does the density bonus ordinance count mandatory inclusionary zoning units toward the density bonus threshold as required by the recent court of appeal decision in *Latinos Unidos del Valle de Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160 (2013)?

Yes, the City has a density bonus ordinance (Article 19 of the Hayward Municipal Code) that is consistent with State law. According to Section 10-19.120 of the Density Bonus Ordinance, affordable housing units provided under the Inclusionary Housing Ordinance may be counted toward the requirements of the Density Bonus Ordinance. Therefore, the City's ordinance complies with the recent court of appeal decision in *Latinos Unidos del Valle de Napa y Solano v. County of Napa*.

4. What is the cumulative fee and exaction burden on new housing in your jurisdiction? This analysis should include not only development fees that are "formally" reflected in published fee schedules, but also include exactions imposed via housing allocation program/ "beauty contests," community benefits/amenities agreements, CFD annexation requirements, and the like. The analysis should also include fees imposed by other agencies, for example school fees, sewer and water fees, and fees imposed pursuant to an applicable regional Habitat Conservation Plan. The analysis should determine the % of the sales of price of new housing in the jurisdiction is

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represented by the cumulative fee/exaction burden, as well as the % of costs for rental housing units represented by the cumulative fee/exaction burden.

Cumulative fees and exaction burdens vary from project to project and are based on a number of factors. Nonetheless, the City of Hayward estimated the typical development fees and exactions for a single family home and a 25-unit apartment project in 2013. The fees for a typical single family home were estimated at \$54,104, which represents 11 percent of the median price of \$515,000 for a new three-bedroom home. If school fees were subtracted from the total, planning and development fees would be \$49,649 or 10 percent of the median price of a new home. The estimated fees (including school fees) to construct a typical 50,000 square foot multifamily development with 25 two-bedroom units were estimated at \$1.25 million, or approximately \$49,895 per unit. These fees represent approximately 12.5 percent of a \$10 million dollar project.

5. Does your jurisdiction have any recently adopted, proposed, or under consideration new or increased fee or exaction, such as an affordable housing impact fee?

As described in the answer to question 2, the City is currently evaluating changes to its Inclusionary Housing Ordinance.

6. Has your jurisdiction required new housing projects, including multifamily/attached projects, to pay a fee or special tax for ongoing general governmental services?

No, the City of Hayward does not require a fee or special tax for ongoing general governmental services. However, the City has required some development projects to establish community facilities districts to finance on-going government services. Community facilities districts are established on a project-by-project basis.

7. Does your jurisdiction have a designated Priority Development Area (PDA)? Is it a “planned” or “potential” PDA? Have the number of residential units and densities shown in the PDA application been incorporated into the General Plan? Has the CEQA process been completed for the PDA so that no additional CEQA review is necessary for a proposed project consistent with the PDA? Have development restrictions and processes been streamlined in the area covered by the PDA?

The City of Hayward has five Priority Development Areas (PDAs). They include:

- The Downtown City Center
- The Cannery Transit Neighborhood
- The Mission Boulevard Mixed-Use Corridor
- The South Hayward BART Mixed-Use Corridor
- The South Hayward BART Urban Neighborhood

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The City has adopted plans or form-based codes for all of the PDA's. Program-level Environmental Impact Reports have been prepared for the plans, which allows for streamlined environmental review for projects that are consistent with the plan or form-based code.

The plan for Downtown Hayward is relatively old and outdated, and the City has initiated the development of a new Specific Plan for the Downtown. A program-level EIR will be prepared for the Downtown Specific Plan to allow for streamlined environmental review.

The Hayward 2040 General Plan addresses the PDAs. The policies under Goal LU-2 of the Land Use Element encourage growth, in-fill development, and investment within the PDAs. Growth assumptions that were used in the General Plan and General Plan Environmental Impact Report are also consistent with the regional growth projections for the City's PDAs.

8. What were the sites relied on for the adequate sites compliance of the existing housing element? What has been the entitlement/development activity for these sites during the prior planning period? Were any of the sites subject to "by right" development procedures?

The City used vacant and underutilized parcels within the following planning areas to demonstrate that there were adequate sites to meet the City's 2009 to 2014 fair share regional housing needs allocation:

- The Cannery
- Mt. Eden Neighborhood
- South Hayward BART
- Mission Boulevard Corridor
- 238 Bypass Land Use Study Area

The following table shows the entitlement and development activity for these areas between 2009 and 2013:

Area	Entitled Units (Not constructed or Occupied)		Entitled, Constructed, and Occupied Units		Total Units
	Affordable	Market-Rate	Affordable	Market Rate	
The Cannery	0	214	0	623	837
Mt. Eden Neighborhood	0	144	0	130	274
South Hayward BART	151	357	0	0	508
Mission Boulevard Corridor	0	0	0	0	0
238 Bypass Land Use Study Area	0	0	0	0	0
TOTAL	151	715	0	753	1,619

Some of the residential projects approved and constructed in the above areas were subject to "by-right" development procedures. However, many were proposed as Planned Unit Developments, which require discretionary approval by the Planning Commission and/or City Council because they establish alternative zoning standards that are unique to the development project.

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9. Does your jurisdiction have any type of cap or limitation on the number or type of housing units that may be permitted or constructed jurisdiction wide or in specific areas of the jurisdiction—including a cap or limitation tied to a specified level of new job creation in the jurisdiction?

No, the City does not have any type of cap or limitations.

10. Has your jurisdiction provided for “by-right” housing development in any areas?

The City generally allows “by-right” housing development in all residential zones if the project complies with applicable development regulations. In these circumstances, projects go through an administrative design review process and they are not subject to a public hearing and discretionary approval by the Planning Commission.

11. Are there zoning or other development restrictions (such as voter approval requirements, density limits or building height restrictions) that have impeded infill and/or transit oriented development?

The City of Hayward encourages infill development and has adopted plans or form-based codes for its transit-oriented development areas (see the response to question 7). The plans and form-based codes establish relatively high maximum densities. Development applications in these areas have consistently been proposed at densities that are below the maximum density allowed by the zoning. The City is not aware of any zoning or development restrictions that have impeded infill or transit-oriented developments within the City.

12. Has your jurisdiction consistently demonstrated compliance with both the letter and spirit of the Permit Streamlining Act?

Yes, Hayward consistently demonstrates compliance with the letter and spirit of the Permit Streamlining Act. The Community Development Department regularly evaluates its entitlement process and is constantly seeking ways to improve processes. The City has a Development Review Process Focus Group that meets bi-monthly to provide feedback and insights to the Department.

13. What are your jurisdiction’s historic preservation policies and review procedures and have they had a significant impact on the permit and entitlement processes for new development projects?

The City of Hayward has a Historic Preservation Ordinance (Article 11 of the Municipal Code). The Ordinance requires development projects and building permit applications involving structures or buildings at least 50 years in age or which are located within a historic district to follow steps in the development review process to determine if a historical alteration permit and/or historical resource demolition or relocation permit is required. The requirements of the ordinance may require a detailed historical analysis of the project to comply with the requirements of the California Environmental Quality Act. This could result in increased entitlement fees, a longer entitlement process, and additional

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costs related to mitigation measures (if applicable). However, these costs would likely occur regardless of the City's Historic Preservation Ordinance, as the City is still responsible for evaluating impacts to potentially significant historical resources to comply with State law, including the California Environmental Quality Act.

14. Has your jurisdiction adopted an ordinance pursuant to the Quimby Act that gives developers credit for private open space? In implementing the Quimby Act, does your jurisdiction provide for consistency between the calculation of the existing neighborhood and community park inventory, and the criteria and procedures for determining whether to accept land offered for parkland dedication or to give credit for private open space? For example, has your jurisdiction refused to accept an area in whole or in partial satisfaction of the parkland dedication ordinance on the basis that it is unsuitable for park and recreational uses even though the area is substantially similar to areas included in the overall parkland inventory used to calculate the parkland dedication requirement and fee?

Article 16 of the City's Municipal Code establishes developer obligations for parks and recreation. Article 16 requires developers to set aside land and/or pay in-lieu fees to provide for park and recreational facilities in the community. Article 16 provides criteria and procedures for determining the acreage requirements for the land dedication or the in-lieu fee requirement. It also establishes procedures and criteria for granting credits for privately owned and maintained recreation improvements. <http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/MUNICIPAL-CODE/PropertyDevelopers-Parks&Recreation.pdf>

Article 16 requires the City, in consultation with the Hayward Area Recreation and Park District (HARD), to consider a number of factors when determining the suitability of the land dedications for park and recreational purposes. Generally speaking, if the land meant for dedication meets minimum requirements and criteria, it will be accepted. Factors include:

- The topography, soils, soil stability, storm drainage, existing flora, access, location, and general utility of the land in the development available for dedication;
- The size and shape of development and land available for dedication;
- The location of the land in relation to the surrounding street system, existing park and recreational facilities, and the surrounding residential population;
- Local recreational facilities to be privately owned and maintained by future residents of the development; and
- Conformance of the land offered for dedication with the park and recreation policies and strategies.

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15. In the project review process, has your jurisdiction required developers to use the Bay Area Air Quality Management District's CEQA Thresholds of Significance for Toxic Air Contaminants (TAC Receptor Thresholds)? Has your jurisdiction explored alternative procedures for addressing project siting and air quality concerns, such as in the general plan or zoning code?

The Hayward 2040 General Plan serves as Hayward's community risk reduction strategy to reduce health risks associated with toxic air contaminants (TACs) and fine particulate matter (PM2.5) in both existing and new development. The General Plan does not establish alternative procedures for addressing project siting and air quality concerns. The City's policy is to use the Air District's CEQA Thresholds of Significance for Toxic Air Contaminants (TAC) receptor thresholds. The City is currently monitoring the case of California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist., 312 P.3d 1070 (Cal. 2013) to determine if any adjustment to the City's procedures will be necessary as a result of the holding.

16. Has your jurisdiction adopted a Climate Adaptation Plan that is more stringent with respect to the per capita GHG reductions for the land use sector/transportation sector than the equivalent per capita targets established for the region by CARB pursuant to SB 375?

Hayward does have a Climate Action Plan (CAP) that has been incorporated into the Hayward 2040 General Plan. The City's targets for greenhouse gas reductions cannot easily be compared to the targets established by CARB for the Bay Area for the following reasons:

- Hayward's reduction targets are for total emissions, and CARB reduction targets are calculated on a per capita basis.
- Per SB 375, the CARB targets are to be achieved through the implementation of coordinated land use, housing, and transportation plans and strategies. Hayward's targets address the emissions that are accounted for in all sectors of the local inventory, which include vehicle emissions, building energy use, and the disposal of solid waste.

Based on the above distinctions, the CARB and City targets are not directly comparable. Nonetheless, the City's CAP and greenhouse gas reduction targets are 20% below 2005 levels by 2020, 61.7% by 2040 and 82.5% by 2050.

Again, thank you for participating in the Housing Element Update project. The Draft Housing Element is available for public review and can be downloaded from the City's website at:

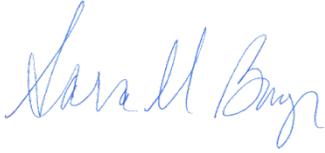
<http://www.hayward-ca.gov/GENERALPLAN/>

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The Draft Housing Element is scheduled for a public hearing before the Planning Commission on November 6, 2014. It will then be considered by the City Council on December 2, 2014. Please contact me if you have any remaining questions or comments.

Sincerely,

A handwritten signature in blue ink that reads "Sara Buizer". The signature is fluid and cursive, with the first name "Sara" and last name "Buizer" clearly legible.

Sara Buizer, AICP
Planning Manager

Development Services Department – Planning Division

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

**RECEIVED**

AUG 13 2014

Development Services Department

August 6, 2014

Mr. David Rizk, Director
Development Services
City of Hayward
777 B Street
Hayward, CA 94541-5007

Dear Mr. Rizk:

RE: Review of the City of Hayward's 5th Cycle (2015-2023) Draft Housing Element

Thank you for submitting Hayward's revised draft housing element update received for review on August 4, 2014 along with additional revisions received on July 29, 2014. Pursuant to Government Code (GC) Section 65585(b), the Department is reporting the results of its review. Our review was facilitated via teleconference on July 15, 2014 and through other communications with the City's consultant, Ms. Chelsey Norton of Mintier Harnish.

The Department conducted a streamlined review of the draft housing element based on the City meeting all eligibility criteria detailed in the Department's Housing Element Update Guidance. The City also utilized the Association of Bay Area Government's pre-approved housing element data.

The revised draft element meets the statutory requirements of State housing element law. The revised element will comply with State housing element law (GC, Article 10.6) when these revisions are adopted and submitted to the Department, in accordance with GC Section 65585(g).

Public participation in the development, adoption and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City must continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate.

The Department appreciates the hard work and dedication of Ms. Norton in preparation of the housing element and looks forward to receiving the City of Hayward's adopted housing element. If you have any questions or need additional technical assistance, please contact Paul McDougall, of our staff, at (916) 263-7420.

Sincerely,

A handwritten signature in blue ink that reads "Glen A. Campora".

Glen A. Campora
Assistant Deputy Director

Alameda County RHNA Comparison

2007-2014 RHNA

Alameda County	Very Low	Very Low % Total RHNA	Low	Low % Total RHNA	Moderate	Above Moderate	Total	Total L + VL
Alameda	482	24%	329	16%	392	843	2,046	811
Albany	64	23%	43	16%	52	117	276	107
Berkeley	328	13%	424	17%	549	1,130	2,431	752
Dublin	1,092	33%	661	20%	653	924	3,330	1753
Emeryville	186	16%	174	15%	219	558	1,137	360
Fremont	1,348	31%	887	20%	876	1,269	4,380	2235
Hayward	768	23%	483	14%	569	1,573	3,393	1251
Livermore	1,038	31%	660	19%	683	1,013	3,394	1698
Newark	257	30%	160	19%	155	291	863	417
Oakland	1,900	13%	2,098	14%	3,142	7,489	14,629	3998
Piedmont	13	33%	10	25%	11	6	40	23
Pleasanton	1,076	33%	728	22%	720	753	3,277	1804
San Leandro	368	23%	228	14%	277	757	1,630	596
Union City	561	29%	391	20%	380	612	1,944	952
Unincorporated	536	25%	340	16%	400	891	2,167	876
Alameda Total	10,017		7,616		9,078	18,226	44,937	

2015-2022 RHNA

Alameda County	Very Low	Very Low % Total RHNA	Low	Low % Total RHNA	Moderate	Above Moderate	Total	Total Diff	Total L + VL	L + VL Diff
Alameda	444	26%	248	14%	283	748	1,723	-323	692	-119
Albany	80	24%	53	16%	57	145	335	59	133	26
Berkeley	532	18%	442	15%	584	1,401	2,959	528	974	222
Dublin	796	35%	446	20%	425	618	2,285	-1,045	1,242	-511
Emeryville	276	18%	211	14%	259	752	1,498	361	487	127
Fremont	1,714	31%	926	17%	978	1,837	5,455	1,075	2,640	405
Hayward	851	22%	480	12%	608	1,981	3,920	527	1,331	80
Livermore	839	31%	474	17%	496	920	2,729	-665	1,313	-385
Newark	330	31%	167	15%	158	423	1,078	215	497	80
Oakland	2,059	14%	2,075	14%	2,815	7,816	14,765	136	4,134	136
Piedmont	24	40%	14	23%	15	7	60	20	38	15
Pleasanton	716	35%	391	19%	407	553	2,067	-1,210	1,107	-697
San Leandro	504	22%	270	12%	352	1,161	2,287	657	774	178
Union City	317	29%	180	16%	192	417	1,106	-838	497	-455
Unincorporated	430	24%	227	13%	295	817	1,769	-398	657	-219
	9,912		6,604		7,924	19,596	44,036			



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, November 6, 2014, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

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

ROLL CALL

Present: COMMISSIONERS: Loché, Enders, Faria, Lavelle, Parso
CHAIRPERSON: McDermott
Absent: COMMISSIONER: Trivedi

Planning Manager Buizer announced that Commissioner Trivedi would not be attending the remainder of Planning Commission meetings during this year due to unforeseen family medical circumstances.

Commissioner Enders led in the Pledge of Allegiance.

Staff Members Present: Buizer, Lawson, Madhukansh-Singh, Rizk

General Public Present: 1

PUBLIC COMMENTS

None

PUBLIC HEARING

1. Hayward General Plan 2015-2023 Housing Element

Planning Manager Buizer provided a synopsis of the staff report. She shared that staff received an email from the Building Industry Association Bay Area acknowledging the quality of response to their Housing Element Comment Letter that was provided to them by staff.

Planning Manager Buizer confirmed for Commissioner Loché that the changes to the Inclusionary Housing Ordinance would not impact the City's ability to meet the Regional Housing Needs Allocation (RHNA) requirements. She pointed out that the various requirements could be met based on density assumptions and noted that different developers were proposing to provide affordable housing units in future projects, therefore it would not be necessary to extract the affordable housing units through the ordinance.

Chair McDermott requested staff to clarify the language in the Employee Housing Act. Planning Manager Buizer indicated that the intent of the Employee Housing Act was to ensure that if a



**MINUTES OF THE REGULAR MEETING OF THE
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business is providing housing for six or fewer employees living in a particular residence then this residence be treated just like a single-family unit.

Chair McDermott expressed that developing the Hayward General Plan 2015-2023 Housing Element had been a long and arduous process which involved input from various segments of the community; she emphasized that the Housing Element document was a summary of the feedback received from the public, General Plan Update Task Force and staff.

Chair McDermott opened and closed the public hearing at 7:14 p.m.

Commissioner Loché made a motion to approve the Hayward General Plan 2015-2023 Housing Element, seconded by Commissioner Faria.

Commissioner Lavelle supported the motion and mentioned that the Regional Housing Needs Allocation of 3,920 housing units was a fair calculation for Hayward; however, she pointed out that these housing units do not necessarily have to be built by 2023, emphasizing that this was a goal set for the city. In regards to the reduction in the RHNA requirement for low-income housing units, Commissioner Lavelle commented that the city had worked very hard with community partners to bring new developments to Hayward. She commended staff for the positive feedback received from the Building Industry Association in regards to the city encouraging in-fill and transit oriented developments, and the adoption of the form-based code. She added that with Caltrans releasing some property for sale and also with the closure of some businesses in key areas, this created an opportunity for improvements at these locations. She supported utilizing these areas as in-fill development sites to accommodate new residences in the community.

Commissioner Parso abstained from the vote as he had not been a member of the Planning Commission during the Hayward General Plan 2015-2023 Housing Element planning phase.

The motion passed with the following vote:

AYES:	Commissioners Loché, Enders, Faria, Lavelle Chair McDermott
NOES:	None
ABSENT:	Commissioner Trivedi
ABSTAIN:	Commissioner Parso

COMMISSION REPORTS

2. Oral Report on Planning and Zoning Matters

Planning Manager Buizer updated the Planning Commission on the concerns expressed by a citizen at the October 2, 2014 Planning Commission meeting indicating that the speed bumps on Bermuda Lane would potentially be installed by the Maintenance Services department by January 1, 2015.



**MINUTES OF THE REGULAR MEETING OF THE
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Ms. Buizer shared that an orientation was scheduled for the new Planning Commissioners on November 19, 2014 and that the item scheduled for the November 20, 2014 Planning Commission meeting was regarding a new residential development located on Hill Avenue. Planning Manager Buizer polled the Planning Commissioners on their availability for meetings to be held in December. It was determined that the regular meeting scheduled for December 4, 2014 would be cancelled due to the Light Up The Season event happening at City Hall. All members indicated their availability to meet on December 18, 2014, with the exception of Commissioner Trivedi who was absent.

Commissioner Lavelle noted the Planning Commission preferred to not hold a meeting the same night as the Light Up The Season event due to the noise level that interfered with the meeting in the past.

3. Commissioners' Announcements, Referrals

None.

APPROVAL OF MINUTES

4. Approval of Minutes of the Planning Commission Meeting on October 2, 2014

It was moved by Commissioner Enders, seconded by Commissioner Parso, and carried unanimously with Commissioner Loché abstaining and Commissioner Trivedi absent, to approve the minutes of the Planning Commission Meeting on October 2, 2014.

ADJOURNMENT

Chair McDermott adjourned the meeting at 7:29 p.m.

APPROVED:

Heather Enders, Secretary
Planning Commission

ATTEST:

Avinta Madhukansh-Singh, Senior Secretary
Office of the City Clerk

DRAFT

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