



CITY OF
HAYWARD
HEART OF THE BAY

CITY COUNCIL AGENDA
JANUARY 20, 2015

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 JANUARY 20, 2015
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CLOSED SESSION
Closed Session Room 2B – 4:30 PM

1. PUBLIC COMMENTS

2. 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; Engineering & Transportation Director Fakhrai; Human Resources Director Collins; Assistant City Attorney Vashi; Community and Media Relations Officer Holland; Jack Hughes, Liebert, Cassidy and Whitmore

Under Negotiation: All Groups

3. Conference with Real Property Negotiators

Pursuant to Government Code 54956.8

- Under Negotiation: APN 428-007-1020-00 Located at 822 C Street, Hayward, CA
Lead Negotiators: City Manager David, Assistant City Manager McAdoo, Engineering & Transportation Director Fakhrai, City Attorney Lawson, Library & Community Services Director Reinhart

4. Adjourn to City Council meeting

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Zermeño

ROLL CALL

CLOSED SESSION ANNOUNCEMENT

PRESENTATION Teen Dating Violence Awareness and Prevention Month

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.

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

CONSENT

1. Adoption of Ordinance Repealing Section 6-10.00 to Section 6-10.27 of the City of Hayward Municipal Code and Adding Chapter 6, Article 10 to the Hayward Municipal Code Regarding Massage Establishments
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
[Attachment II Revised Ordinance](#)
2. Adoption of Ordinance Authorizing the Amendment of the Contract between the City of Hayward and the Board of Administration of the California Public Employees' Retirement System
[Staff Report](#)
[Attachment I Summary of Ordinance](#)
3. Resignation of Mr. Vishal Trivedi from the Planning Commission and Process for Filling the Vacancy
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[Attachment III Press Release](#)
4. Authorization to Negotiate and Execute a Professional Services Agreement with New City America for the Formation of a Downtown Community Benefit District
[Staff Report](#)
[Attachment I](#)



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 (60-Minute Limit)

5. Overview of the Scope and Schedule for the Downtown Specific Plan Project (Report from Development Services Director Rizk)

[Staff Report](#)

[Attachment I - Downtown Specific Plan Study Area Map](#)

[Attachment II - Project Framework](#)

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

6. Approval of Temporary Appointment of Communications Operator (Report from Director of Human Resources Collins)

[Staff Report](#)

[Attachment I](#)

7. New Solid Waste and Recycling Franchise Agreement – Approval of New Franchise Agreement and New Refuse, Recycling, and Organics Services Rates – Introduction of Ordinance (Report from Director of Utilities & Environmental Services Ameri)

[Staff Report](#)

[Attachment I Draft Ordinance](#)

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[Attachment V Summary of Community Outreach Effort and Feedback](#)

[Attachment Va Letter from Rental Housing Owners Association](#)

[Attachment Vb Email from Rental Housing Owners Association](#)



LEGISLATIVE BUSINESS

8. Introduction of an Ordinance to Amend the Hayward Plumbing Code to Allow Plastic Pipe as Allowed by the 2013 California Plumbing Code (Report from Development Services Director Rizk)
[Staff Report](#)
[Attachment I - Draft Ordinance](#)
-

Information items are presented as general information for Council and the public. Should Council wish to take action on any of the "information" items, they will direct the City Manager to bring them back on a future 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, January 27, 2015

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: January 20, 2015

TO: Mayor and City Council

FROM: City Clerk and City Attorney

SUBJECT: Adoption of Ordinance Repealing Section 6-10.00 to Section 6-10.27 of the City of Hayward Municipal Code and Adding Chapter 6, Article 10 to the Hayward Municipal Code Regarding Massage Establishments

RECOMMENDATION

That the City Council adopts the Ordinance introduced on January 13, 2015.

BACKGROUND

The Ordinance was introduced by Council Member Mendall at the January 13, 2015 special meeting of the City Council with the following vote:

AYES:	Council Members:	Zermeño, Jones, Mendall, Peixoto, Lamnin, Márquez Mayor Halliday
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

The ordinance was approved with three amendments to: Section 6-10.18(a)(7)(f)(3); Section 6-10.20(d); and Section 6-10.09.

- Section 6-10.18(a)(7)(f)(3) was modified by moving the second sentence of this subsection *“Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breast of any female”* to **Section 6-10.02(o) DEFINITIONS.**

The proposed subsection would read as follows:

SEC. 6-10.18 FACILITIES AND OPERATING REQUIREMENTS.

(a)(7)(f)(3) Perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron.

- Section 6-10.20(d) was amended by adding the language “*shall accompany the application for renewal*” at the end of the subsection.

The proposed subsection would read as follows:

SEC. 6-10.20 PERMIT DURATION AND RENEWAL.

d. Verification of continued certification, in good standing, from CAMTC, shall accompany the application for renewal.”

- Section 6-10.09 was modified by deleting the first reference to “Chief of Police” in the first sentence and replacing it with “City Manager or her/his designee.” The second reference to “Chief of Police” in the first sentence is unchanged. The subsection was further modified by deleting the “Chief of Police” in the second sentence and replacing it with “City Manager or her/his designee.”

The proposed subsection would read as follows:

SEC. 6-10.09 HEARING ON DENIAL OF PERMIT. If a permit for a massage establishment is denied, an applicant may, within seven calendar days after such action is taken, request a hearing before the City Manager or her/his designee, at which time evidence will be received for the purpose of determining whether the action of the Chief of Police in denying the issuance of an annual permit should be sustained or reversed. The City Manager or her/his designee shall render his/her decision, in writing, within seven calendar days after the hearing has been concluded.

Based on comments received by the City Council during the Council meeting, staff is recommending that additional changes be made to Section 6-10.20. These changes have not received City Council approval. Subsection (d) concerns the need for permittees to include proof of CAMTC certification when submitting an application for permit renewal. Certain language has been inadvertently omitted from this subsection of the ordinance.

Section 6-10.20(d) previously stated “Verification of continued certification, in good standing, from CAMTC.” The subsection now reads as follows: “Verification of continued certification, in good standing, from CAMTC, *of all massage therapists shall accompany the application for renewal. Verification of CAMTC certification of all new massage therapists hired by a massage therapy establishment shall be submitted to the Chief of Police within thirty days of hiring a new employee.*” (Italics added.)

Another change concerning Section 6-10.20 pertains to subsection (g). The proposed ordinance requires that a permittee update the Chief of Police for certain violations of applicable laws or changes to the CAMTC status of any employee. Updates are considered ‘supplementary material’ and must be submitted by a permittee within thirty days of the violation or within 30 days of any change in certification status. For clarification, we have placed directly into subdivision (g) the requirement that a permittee must submit information within thirty days.

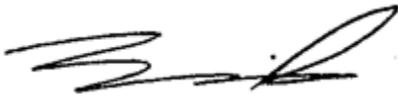
Section 6-10.20(g) previously said that “The permittee must update the Chief of Police of any violation of this Article, violation of Business and Professions Code section 4609, or any change in the status of the CAMTC certification of any employee or independent contractor.” The subsection now states that “The permittee must update the Chief of Police of any violation of this Article,

violation of Business and Professions Code section 4609, or any change in the status of the CAMTC certification of any employee or independent contractor *within thirty calendar days of the violation or change in certification status.*" (Italics added.)

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, January 17, 2015. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk and
Justin Nishioka, Deputy City Attorney II

Approved by:



Fran David, City Manager

Attachment:

- Attachment I Summary of Ordinance Published on 1/17/15
- Attachment II Revised Ordinance

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

AN ORDINANCE REPEALING SECTION 6-10.00 TO SECTION 6-10.27 OF THE CITY OF HAYWARD MUNICIPAL CODE AND ADDING CHAPTER 6, ARTICLE 10 TO THE HAYWARD MUNICIPAL CODE REGARDING MASSAGE ESTABLISHMENTS

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

Section 1. Upon the effective date of this ordinance, Hayward Municipal Code Sections 6-10.00 through 6-10.27 are hereby repealed and Article 10 of Chapter 6 of the Hayward Municipal Code is hereby enacted to read in full as follows:

ARTICLE 10
MESSAGE PERMIT ORDINANCE

Section	Subject Matter
6-10.00	TITLE
6-10.01	FINDINGS AND PURPOSE
6-10.02	DEFINITIONS
6-10.03	PERMIT REQUIREMENT
6-10.04	PERMIT EXEMPTIONS
6-10.05	MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE
6-10.06	APPLICATION REVIEW
6-10.07	PERMIT ISSUANCE OR DENIAL
6-10.08	DISQUALIFYING CONDUCT
6-10.09	HEARING ON DENIAL OF PERMIT
6-10.10	GROUND FOR SUSPENSION OR REVOCATION OF PERMIT
6-10.11	HEARING ON SUSPENSION OR REVOCATION OF PERMIT
6-10.12	BURDEN OF PROOF
6-10.13	APPEAL OF SUSPENSION OR REVOCATION OF PERMIT
6-10.14	MINIMUM AGE REQUIREMENT
6-10.15	PERMITS NONASSIGNABLE
6-10.16	CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING
6-10.17	DISPLAY OF PERMIT
6-10.18	FACILITIES AND OPERATING REQUIREMENTS
6-10.19	RESPONSIBILITY OF EMPLOYER
6-10.20	PERMIT DURATION AND RENEWAL
6-10.21	APPLICABILITY TO EXISTING BUSINESSES
6-10.22	CEASE OF BUSINESS
6-10.23	INSPECTION
6-10.24	ENFORCEMENT

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which

shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

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

Section 4. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3, of the California Code of Regulations) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) of the CEQA Guidelines (because it has no potential for resulting in physical change to the environment, directly or indirectly).

Introduced at a special meeting of the Hayward City Council held January 13, 2015, the above-entitled Ordinance was introduced by Mendall.

This Ordinance will be considered for adoption at a regular meeting of the Hayward City Council, to be held on January 20, 2015, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: January 17, 2015
Miriam Lens, City Clerk
City of Hayward

ORDINANCE NO.

AN ORDINANCE REPEALING SECTION 6-10.00 TO SECTION 6-10.27 OF THE CITY OF HAYWARD MUNICIPAL CODE AND ADDING CHAPTER 6, ARTICLE 10 TO THE HAYWARD MUNICIPAL CODE REGARDING MASSAGE ESTABLISHMENTS

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ARTICLE 10

MESSAGE PERMIT ORDINANCE

Section	Subject Matter
6-10.00	TITLE
6-10.01	FINDINGS AND PURPOSE
6-10.02	DEFINITIONS
6-10.03	PERMIT REQUIREMENT
6-10.04	PERMIT EXEMPTIONS
6-10.05	MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE
6-10.06	APPLICATION REVIEW
6-10.07	PERMIT ISSUANCE OR DENIAL
6-10.08	DISQUALIFYING CONDUCT
6-10.09	HEARING ON DENIAL OF PERMIT
6-10.10	GROUND FOR SUSPENSION OR REVOCATION

OF PERMIT

- 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT
- 6-10.12 BURDEN OF PROOF
- 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT
- 6-10.14 MINIMUM AGE REQUIREMENT
- 6-10.15 PERMITS NONASSIGNABLE
- 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING
- 6-10.17 DISPLAY OF PERMIT
- 6-10.18 FACILITIES AND OPERATING REQUIREMENTS
- 6-10.19 RESPONSIBILITY OF EMPLOYER
- 6-10.20 PERMIT DURATION AND RENEWAL
- 6-10.21 APPLICABILITY TO EXISTING BUSINESSES
- 6-10.22 CEASE OF BUSINESS
- 6-10.23 INSPECTION
- 6-10.24 ENFORCEMENT

ARTICLE 10

MESSAGE PERMIT ORDINANCE

SEC. 6-10.00 TITLE. This ordinance shall be known as the Massage Permit Ordinance.

SEC. 6-10.01 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- a. The City of Hayward is authorized to regulate a lawful massage business pursuant to Government Code section 51030, et seq., Business and Professions Code section 4600, et seq., 37101, section 16000, or section 16100 of the California Business and Professions Code, or by virtue of Section 7 of Article XI of the Constitution of the State of California.
- b. There is significant risk of injury to massage clients by improperly trained and/or uneducated massage therapists and this Article provides reasonable safeguards against injury and economic loss.
- c. There is risk of prostitution and/or sex trafficking and this Article provides safeguards against these practices.
- d. The permit requirements and restrictions imposed by this Article are reasonably necessary to protect the health, safety and welfare of the citizens of the City of Hayward, as well as to ward against illegal sexual commerce.

SEC. 6-10.02 DEFINITIONS. For the purpose of this Article, certain words and phrases shall be construed herein as set forth in this section, unless it is apparent from the context that a different meaning is intended:

- a. ‘Acupuncture.’ Whereas acupuncture is described as the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electro acupuncture, cupping, and moxibustion; ‘Acupressure’ is based on a theory similar to acupuncture except that it stimulates acupuncture points by the application of pressure rather than needling.
- b. ‘Adult-oriented merchandise.’ Any sexually-oriented implements, paraphernalia, or novelty items, such as but not limited to: condoms and sexually-oriented items that are designed or marketed primarily for the stimulation of human genital organs.

- c. 'Applicant.' In the case of a massage establishment permit, means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of the massage establishment, who applies to obtain a permit under this Article. In the case of a massage therapist permit, "applicant" means an individual who applies for a permit under this Article.
- d. 'CAMTC.' California Massage Therapy Council
- e. 'Chief of Police.' The Chief of Police of the City of Hayward or his or her designee.
- f. 'Employee.' Includes any owner, partner, operator, manager, supervisor or worker, (whether part-time, full-time, temporary, permanent, or independent contractor) whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
- g. 'Massage.' The scientific manipulation of the soft tissues. For purposes of this definition, the terms "massage", "massage therapy", and "bodywork" shall have the same meaning.
- h. 'Massage establishment.' A fixed location where massage is performed for compensation, excluding those locations where massage is only provided on an out-call basis.
- i. 'Massage therapist.' Any person who provides massage therapy services to another person for compensation. For purposes of this definition, "Massage therapist", "Massage Technician", and "Masseuse" shall have the same meaning.
- j. 'Managing employee.' Any employee of a massage establishment who has been designated by the massage establishment permittee to manage the business.
- k. 'Out-call massage therapy.' A massage therapy performed or administered for money or other consideration by a licensed massage practitioner at a location other than a licensed massage establishment.
- l. 'Permit.' The permit to engage in the business of massage therapy as required by this Article.
- m. 'Permittee.' Any person possessing a permit required and issued under this Article, or any owner or operator of the permitted establishment.
- n. 'Person.' Any individual, co-partnership, firm, association, joint stock company, corporation, joint venture, or combination of individuals of whatever form or character.

- o. 'Sexual or Genital Part.' Sexual and genital parts shall include the genitals, pubic area, anus, perineum of any person and the breasts of any female.

SEC. 6-10.03 PERMIT REQUIREMENT.

- a. **Massage Establishment Permit:**
 - (i) Except as otherwise provided in section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on, in or upon any premises within the city, the operation of a massage establishment without first having obtained a massage establishment permit issued by the Chief of Police pursuant to this Article. A separate permit shall be obtained for each separate massage establishment and any change in ownership to any establishment.
 - (ii) Prior to commencing operations pursuant to a Massage Establishment Permit issued by the Chief of Police, applicants must also obtain appropriate land use approvals pursuant to the City's Zoning Ordinance.
 - (iii) A permit issued under this Article does not authorize the permittee to practice massage therapy until the permittee has complied with all business license requirements, zoning/planning requirements, and all other applicable federal, state, and City of Hayward laws and regulations.
- b. **Massage Therapist Certification:** Except as otherwise provided in Section 6-10.04, it shall be unlawful for any person to engage in, conduct or carry on the function of a massage therapist without a current, valid certificate from the California Massage Therapy Council ("CAMTC"), or a current, valid license or certificate from the Department of Consumer Affairs to practice massage therapy.
- c. Persons practicing acupuncture under the direction of a licensed State of California acupuncturist shall obtain CAMTC certification as required in this Article.

SEC. 6-10.04 PERMIT EXEMPTIONS.

- a. The permit requirements of this Article shall not apply to the following persons while engaged in the performance of their duties:
 - (1) Physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice their respective professions in the State.
 - (2) Barbers, beauticians, cosmetologists, and estheticians who are duly licensed under the laws of the State while engaging in practices within the scope of their licenses.

- (3) Hospitals, nursing homes, sanitariums, or any other health facility duly licensed by the State.
- (4) Accredited high schools, junior colleges, colleges, or universities whose coaches and trainers are acting within the scope of their employment.
- (5) Accredited colleges or universities that offer massage therapy programs whose instructors and students are acting within the scope of their employments or within the scope of their curriculum.
- (6) Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes; and trainers working in conjunction with a specific athletic event such as road races, track meets, triathlons, biathlons, or similar single occurrence athletic or recreational events.

SEC. 6-10.05 MESSAGE ESTABLISHMENT PERMIT APPLICATION AND FEE.

- a. Each applicant for a massage establishment permit shall file a written application with the Chief of Police on a form provided by the Police Department. The application shall be forwarded to the Planning Director to determine if the use is allowed in the zoning district where the massage establishment is proposed to be located. A massage establishment permit does not authorize the permittee to provide massage therapy services, and it is unlawful to do so without valid CAMTC certification.
- b. Each application shall be accompanied by a nonrefundable fee, in an amount established by resolution of the City Council. The application fee shall be used to defray, in part, the costs of the investigation and report, and is not made in lieu of any other fees or taxes required under this Code. Applicants are required to make payment to the Department of Justice for fingerprinting services as required by this Article. A copy of the receipt for the nonrefundable fee shall accompany the application. Separate checks are not required to pay the required fees as outlined in this Article.
- c. Each applicant shall submit the following information in the application under penalty of perjury:
 - (1) The full, true name under which the business will be conducted.
 - (2) The present or proposed address where the business is to be conducted.
 - (3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number or identification number, Social Security number, present residence address

and telephone number, gender, height, weight, color of hair, and color of eyes.

- (4) The names and addresses of all persons financially interested in the business.
- (5) The applicant's two most recent street addresses and the dates of residence at each address.
- (6) The name, street address, and telephone number of other businesses in which the applicant has owned or been employed within the past seven years. This shall include the dates of employment, positions held by the applicant, and a contact person at each location. Applicant shall disclose or declare that within the seven years preceding submission of the application, the owner, operator, manager, and/or responsible managing officer/employee has not:
 - (i) Had a massage establishment, massage therapist, or other similar permit or license denied, suspended, or revoked by the city, or any other federal, state or local agency;
 - (ii) Engaged in conduct or operated a massage therapy or similar establishment in a manner that would be grounds for denial, suspension, or revocation of a permit under this Article; or Chapter 10.5 (commencing with section 4600) of Division 2 of the Business and Professions Code.
 - (iii) Owned or managed a massage establishment or similar establishment where persons required to be licensed were allowed to work without the required license or permit.
- (7) A statement of the permit history of the applicant which identifies whether or not such person has ever held a professional or vocational license or permit, other than as required under this Article, issued by any agency, board, city, county, territory, or state; the date of issuance of such permit or license; whether or not the permit or license is still in effect; if the permit or license is no longer in effect, whether or not it was revoked or suspended, and if so, the reason(s) therefore. The name and location of the jurisdiction or agency, which suspended or revoked such license, certificate, permit, or other authorization shall also be included.
- (8) The name and street address of any other massage business operated or managed by the applicant during the last seven years.
- (9) A statement whether the applicant intends to personally provide massage therapy services at the business. The applicant for a massage

establishment permit is required to obtain a certificate from CAMTC if that person intends to provide massage therapy services.

- (10) Written proof of the applicant's current, valid certification by CAMTC, and proof of certification for any employees or independent contractors who will perform massage services at the applicant's massage establishment.
- (11) Applicant's criminal convictions in California or any other jurisdiction for offenses other than traffic violations within ten years before the date of the application. For the purposes of this subsection, the term 'applicant' shall apply to:
 - (i) an individual if the applicant is an individual;
 - (ii) any officers, directors, stockholders holding more than 5 percent of the stock of the corporation, or the managing responsible officer, if the applicant is a corporation; and
 - (iii) a partner or the managing responsible officer, if the applicant is a partnership.
- (12) The name, street address, telephone number, and date of birth of each massage therapist or employee who is or will be employed at the massage establishment, regardless of the nature of the employment.
- (13) The name, street address, and telephone number of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
- (14) Documentation to prove that the applicant has a lawful right to work in the United States, to include but not limited to: Department of Justice Immigration and Naturalization Service Employment Authorization Document.
- (15) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.
- (16) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this subsection

pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within 90 calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.

- (17) Two recent, identical, passport-size, color photographs of the applicant and any employees or independent contractors who will be performing massage services at the applicant's massage establishment.
- (18) Fingerprints taken by a representative of the Hayward Police Department and submitted to the Department of Justice for processing pursuant to this Article.
- (19) Written authorization for the city, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer/employee of the massage establishment.
- (20) Such other identification and information shall be provided as required by the Chief of Police, necessary to discover the truth of the matters specified and required in the application.

SEC. 6-10.06 APPLICATION REVIEW. The application and supplementary material shall be reviewed by the Chief of Police. If it is clear from the face of the application and supplementary material that the applicant is not qualified for the Massage Establishment Permit, or if the required fee has not been paid, the application may be denied without further investigation. If it appears from the face of the application and supplementary material that the applicant may be eligible for the Massage Establishment Permit, the Chief of Police shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

- a. The Hayward Police Department shall take a full set of the applicant's fingerprints, and shall submit the fingerprints to the Department of Justice for evaluation. Upon receipt of the report from the Department of Justice, the Chief of Police shall review the criminal history (if any) of the applicant;

- b. The Chief of Police may conduct additional investigations in a manner authorized by law when necessary to determine if the applicant meets the qualifications for a permit pursuant to this Article; and
- c. Upon receipt of an application for a massage establishment permit, the Chief of Police shall refer the application to other City of Hayward departments, as appropriate, for review of the application and inspection of the premises to ensure compliance with applicable local, state and federal laws and regulations, including, but not limited to, building, health, and fire safety regulations.

SEC. 6-10.07 PERMIT ISSUANCE OR DENIAL.

- a. The Chief of Police shall issue or deny the application for a Massage Establishment Permit within 60 calendar days of a completed application. When necessary, the Chief of Police may extend the time to issue or deny the permit.
- b. The Chief of Police shall deny a permit if any of the following circumstances exist:
 - (1) The application is incomplete and/or required supplementary material is not submitted within 30 calendar days of the date the material is requested;
 - (2) The applicant does not have sufficient proof of the required CAMTC certification requirements pursuant to section 6-10.05 of this Article;
 - (3) The operation as proposed by the applicant would not comply with all applicable ordinances and laws, including, but not limited to, the city's building, health, and fire safety ordinances;
 - (4) The applicant has previously had a massage establishment permit, massage therapist permit, or any similar license, certificate, or permit revoked by the city or any public agency;
 - (5) The applicant is found to have made a material misstatement or omission in the application or in a previous application.
 - (6) The applicant has been successfully prosecuted under the Red Light Abatement Act (California Penal Code section 11225 et seq.) or any similar law in another jurisdiction; or
 - (7) The applicant has been convicted of any of the following offenses during the seven years preceding the date of the application:
 - (i) Conduct which requires registration under California Penal Code section 290.

- (ii) Conduct which is in violation of California Penal Code sections 220, 245.3, 245.5, 261, 264.1, 266(h), 266(i), 266(j), 286, 288, 314, 315, 316, 318, 647(a), 647(b), or 647(d).
 - (iii) Crimes that are designated in California Government Code section 51032(b).
 - (iv) Any other crime involving dishonesty, fraud, deceit, violence, or moral turpitude.
 - (v) Conspiracy or attempt to commit any of the aforementioned designated offenses.
 - (vi) Convictions to a charge of a violation of California Penal Code sections 415 and 602, or any lesser included or related offense, in satisfaction of, or as a substitute for, any of the previously listed crimes, or any crime committed while engaged in the ownership of a massage establishment or the practice of massage therapy.
 - (vii) Convictions that have been expunged and convictions under the laws of other jurisdictions which proscribe the same or similar conduct as therefore designated crimes shall be reported.
 - (viii) Been convicted of a Health and Safety Code section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058.
 - (ix) Whether the applicant has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to California Penal code sections 11225 et seq. or any similar provisions of law in a jurisdiction outside the state.
- c. If prosecution is pending against the applicant either for conduct listed in section 6-10.08 or for conduct violating this Article's provisions, the Chief of Police may postpone decision on the application until the final resolution of the prosecution. As used in this subsection, prosecution means charges filed by the district attorney, administrative proceedings brought by a local government or agency, or a civil or administrative action maintained by any city, county, state, or government.
- d. The Chief of Police may postpone decision on a license or permit application until the City of Hayward receives the applicant's fingerprint review results from the California Department of Justice.

- e. The Chief of Police shall give written notice of the grounds for denial to the applicant personally or by first class mail, postage prepaid, at the address provided in the application. The notice shall advise the applicant of the right to appeal the decision.

SEC. 6-10.08 DISQUALIFYING CONDUCT.

- a. Conviction of, or entry of a plea of guilty or no contest to, an offense that requires registration under California Penal Code section 290, or which is a violation of sections 266(i), 314, 315, 316, 318 or 647(b) or the sections in Part 1, Title 9, Chapters 7.5 or 7.6 of the Penal Code or equivalent offenses under the laws of another jurisdiction, or any offense involving sexual misconduct with children or adults, even if expunged pursuant to Penal Code section 1203.4;
- b. Conviction of, or entry of a plea of guilty or no contest to, an offense involving the sale of a controlled substance specified in sections 11054, 11055, 11056, 11057, 11058, 11351, 11352, 11358 through 11363 or 11378 through 11380 of the California Health and Safety Code, or equivalent offenses under the laws of another jurisdiction, even if expunged pursuant to Penal Code section 1203.4;
- c. Conviction of, or entry of a plea of guilty or no contest to, a violation of Penal Code Section 415 as a result of an arrest for violation of Penal Code section 647(b).
- d. Any conduct presented in Section 6-10.10, or any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.09 HEARING ON DENIAL OF PERMIT. If a permit for a massage establishment is denied, an applicant may, within seven calendar days after such action is taken, request a hearing before the City Manager or her/his designee, at which time evidence will be received for the purpose of determining whether the action of the Chief of Police in denying the issuance of an annual permit should be sustained or reversed. The City Manager or her/his designee shall render her/his decision, in writing, within seven calendar days after the hearing has been concluded.

SEC. 6-10.10 GROUND FOR SUSPENSION OR REVOCATION OF PERMIT. The Chief of Police may revoke or suspend any permit granted under this Article if any of the following are found:

- a. The permittee does not possess the qualifications for the permit as required by this Article;
- b. The permittee has been found to be in violation of any provision of this Article;

- c. The permittee has engaged in conduct or operated a massage establishment or has engaged in conduct as a massage therapist in a manner which violates this Article, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit;
- d. There is fraud, material misrepresentation, false statement, or omission of a material fact in any application for a permit or in any supplementary material;
- e. An activity authorized in the permit has been conducted in an unlawful manner or in such a manner as to constitute a menace to the health, safety, or general welfare of the public;
- f. Upon a recommendation from the city and/or county officials which states that such business is being managed, conducted, or maintained without regard for public safety or public health;
- g. Out-Call services not authorized by the Chief of Police, and/or out-call services not in accordance with any provision within this Ordinance, or Chief of Police out-call policy described in the massage establishment permit application, or applicable State or Federal statute, rule, or regulation; or
- g. Any prohibited activity or violation of any relevant California and Federal statute, including but not limited to, Business and Professions Code sections 4600, et seq.

SEC. 6-10.11 HEARING ON SUSPENSION OR REVOCATION OF PERMIT. Prior to the suspension or revocation of any permit issued pursuant to this Article, a hearing as provided in section 6-10.09 of this Article, shall be held by the Chief of Police, at which time evidence will be received for the purpose of determining whether or not such permit shall be suspended or revoked, or whether the permit may be retained. The Chief of Police shall render her/his decision within seven calendar days after the hearing has been concluded.

SEC. 6-10.12 BURDEN OF PROOF. Unless otherwise specifically prohibited by law, the burden of proof is on the applicant or permittee in any hearing or other matter under this Article.

SEC. 6-10.13 APPEAL OF SUSPENSION OR REVOCATION OF PERMIT. Appeal from the decision of the Chief of Police to suspend or revoke a permit pursuant to section 6-10.11 may be appealed to the City Manager within seven calendar days of the decision of the Chief of Police.

SEC. 6-10.14 MINIMUM AGE REQUIREMENT.

- a. No person shall be employed in a massage establishment or perform massage therapy or manage or hold an ownership interest in a massage establishment who is not at least 18 years of age.

- b. It is unlawful for the owner, proprietor, managing employee, or any other person in charge of any massage establishment to employ any person under eighteen (18) years of age.

SEC. 6-10.15 PERMITS NONASSIGNABLE. No permit shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a massage therapy establishment must submit a new application for a massage establishment permit in accordance with this Article.

SEC. 6-10.16 CHANGE OF NAME OR LOCATION, EXPANSION OF BUILDING.

- a. No permittee shall operate under any name or conduct any massage establishment under any designation or location not specified in the permit.
- b. In the case of any proposed change of name, notification thereof shall be made to the Chief of Police at least 30 calendar days prior to the change. Any proposed change of name is subject to the approval of the Chief of Police.
- c. Any proposed change of location of a massage establishment is subject to the approval of the Chief of Police, in addition to compliance with all city ordinances and regulations.
- d. Any application for an expansion of a building of a massage establishment shall require compliance with this Article and all other applicable laws.

SEC. 6-10.17 DISPLAY OF PERMIT.

- a. The massage establishment permit and a copy of the CAMTC certification of each and every massage therapist employed in the establishment shall be displayed in an open and conspicuous place on the premises.
- b. Each massage therapist shall be issued a photograph identification badge from the Police Department. When visiting a location other than a massage establishment in order to give a massage, each massage therapist shall display the badge.

SEC. 6-10.18 FACILITIES AND OPERATING REQUIREMENTS.

- a. Every massage establishment and every massage therapist shall comply with standards established by the Alameda County Health Services for such businesses and practitioners and the following facilities and operations requirements:
 - (1) The massage establishment's premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements

of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and cleanliness of the facility.

- (2) Massage establishments and massage therapists shall at all times have an adequate supply of clean sanitary towels, coverings, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be deposited in separate receptacles.
- (3) In the massage establishment, wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bathrooms, tanning booths, whirlpool baths, and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day when the premises are open, with a disinfectant. Bathtubs shall be thoroughly cleaned with a disinfectant after each use. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
- (4) All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
- (5) If separate dressing rooms are offered, they may be occupied by no more than one person at a time. Dressing rooms need not be separate from the room in which the massage therapy is being performed.
- (6) Toilet facilities shall be provided in convenient locations within the massage establishment and shall consist of at least one unisex toilet with lavatories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- (7) A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.
 - b. Massage therapy shall be provided or given only between the hours of 7:00 a.m. and 10:00 p.m. No massage establishment shall be open and no client shall be in the establishment between 10:00 p.m. and 7:00 a.m.

- c. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises of any massage establishment.
- d. Controlled substances must not be consumed in a massage establishment unless the person has a prescription for the substance.
- e. No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage therapist contractor shall offer or perform, any service other than those permitted under this Article.
- f. No permittee or employee of a massage establishment shall:
 - (1) Expose the sexual or genital part of the permittee or employee in the course of a massage therapy; or
 - (2) Touch or expose the sexual or genital part of any other person in the course of a massage therapy.
 - (3) Perform massage therapy on a patron with the intent or purpose of arousing, appealing to, or gratifying the sexual desires of said patron.
 - (4) Perform any task or service associated with the massage establishment while nude, semi-nude, or dressed in lingerie, see-through or transparent attire.
- g. No permittee or employee of a massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available that is prohibited under this Article nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited under this Article.
- h. The use or possession of adult-oriented merchandise in or on any part of a massage establishment is expressly prohibited.
- i. Condoms must not be kept or used for any purpose in the massage establishment.
- j. Recordings.

- (1) No electrical, mechanical or artificial device shall be used by the operator and/or manager, massage therapist or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage therapy, or the conversation or other sounds in the massage rooms without the knowledge and written consent of the patron.
- (2) No surveillance cameras, or video recording devices of any type, may be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of a massage establishment or the surrounding area. No video recording devices may be installed into rooms in which massage services will be rendered.

k. Locks prohibited.

- (1) No massage therapy shall be conducted within any cubicle, room, booth or treatment room on the premises of a massage therapy business which is fitted with a lock.
- (2) All entrance and exit doors on the premises of a massage establishment shall remain unlocked during business hours unless the massage establishment is a business entity owned by one individual with one or fewer employees or independent contractors.

l. All massage services shall be paid for in the reception area. Massage establishments may utilize a system where tip envelopes are provided in the treatment rooms to be utilized and deposited by the client in the reception area.

m. A massage establishment must not be used for residential or sleeping purposes unless the massage establishment is properly zoned and has all necessary use permits, and the massage establishment is owned by one individual with one or fewer employees or independent contractors.

n. No person other than the client and the client's immediate family or guardian is allowed in the massage room while the client is dressing or undressing.

o. No person other than the client, the massage therapist assigned to the client, and the client's immediate family or guardian are allowed in the massage room if any door into the massage room is closed. Others may be in the massage room so long as all doors to the room are fully open.

- p. Massage establishment personnel or any massage therapist must not inquire as to whether any client is a peace officer.

SEC. 6-10.19 RESPONSIBILITY OF EMPLOYER. It shall be the responsibility of the massage establishment permittee who employs or allows any person acting or purporting to act as a massage therapist, or the employer of any person acting or purporting to act as a massage therapist, to ensure that such person complies with the requirements of this Article and all laws.

The massage establishment permittee shall be held responsible for the conduct of all persons on the premises who engage in providing the service of massage therapy. Any act or omission of any person giving massage therapy, or any service of massage therapy, shall be deemed the act or omission of the holder of the massage establishment permit for the purposes of determining whether the permit may be revoked, suspended, or denied. Proof of knowledge of any violation of this section shall not be required for purposes of suspension, revocation, or denial of a massage establishment permit.

SEC. 6-10.20 PERMIT DURATION AND RENEWAL.

- a. A permit shall be valid for two years from the date of issuance unless revoked or suspended.
- b. A permittee may apply for a renewal of a permit 30 calendar days prior to the expiration of the permit. If, upon the 31st day after the expiration of a permit, an application of renewal has not been received, the permit shall be deemed expired. Any permit issued under this Article shall be returned to the Chief of Police within 48 hours of its expiration. No privilege to provide massage therapy shall exist until an application for renewal has been granted. After a permit expires, a new application may be filed.
- c. Permits may be renewed by filing an application for renewal under penalty of perjury updating information in the original application provided to the Chief of Police.
- d. Verification of continued certification, in good standing, from CAMTC, of all massage therapists shall accompany the application for renewal. Verification of CAMTC certification of all new massage therapists hired by a massage therapy establishment shall be submitted to the Chief of Police within 30 days of hiring a new massage therapist.
- e. To renew a permit under this Article, the permittee shall pay the city a nonrefundable fee in an amount set forth by resolution of the City Council. A copy of the receipt for the nonrefundable fee shall accompany the application for renewal.

- f. After investigating the application for renewal , the Chief of Police shall renew the permit if the permittee continues to meet the requirements for the issuance of a permit, and none of the grounds for denial of a permit set forth in this Article exist. The Chief of Police shall renew the permit within 30 calendar days of such request if the information upon which the original application was granted remains unchanged and no violations of this Article have been committed.
- g. The permittee must update the Chief of Police of any violation of this Article, violation of Business and Professions Code section 4609, or any change in the status of the CAMTC certification of any employee or independent contractor within 30 calendar days of the violation or change in certification status.

SEC. 6-10.21 APPLICABILITY TO EXISTING BUSINESSES.

- a. All persons currently holding a valid massage establishment permit shall have six months following the enactment of this Ordinance in which to comply with the requirements of this Article. Except as provided in section 6-10.24b., if a permittee does not attain compliance with this Article within the prescribed time limits, the Chief of Police shall immediately suspend or revoke the permittee's permit(s).
- b. The Chief of Police may issue a provisional permit to any massage establishment, for a period not to exceed six months, if the applicant is able to show that substantial compliance with the requirements of this Article has been met and that the remaining compliance can be achieved within the period of the provisional permit. This six-month provisional permit shall not be renewed.
- c. Any business that holds itself out as a massage establishment in any way will be subject to the provisions of this Ordinance.

SEC. 6-10.22 CEASE OF BUSINESS. If at any time during the duration of a permit issued under this Article a permittee ceases to do business as a massage establishment, the permittee shall:

- a. Return any permit issued under this Article to the Chief of Police within five business days; and
- b. Notify the Revenue Division of the Finance Department.

SEC. 6-10.23 INSPECTION. The Police Department shall, from time to time and during any hour in which a massage establishment is open for business, make an administrative inspection of each massage establishment for the purpose of determining compliance with this Article.

SEC. 6-10.24 ENFORCEMENT.

- a. It is the duty of the Chief of Police to enforce rules and regulations in accordance with this Article.
- b. Pursuant to the City’s prosecutorial discretion, the city may enforce violations of the provisions of this Article as criminal, civil and/or administrative actions.
- c. If a person falsely states or advertises or puts out any sign or card or other device, or falsely represents to the public through any print or electronic media, that he or she or any other individual is licensed, certified, or registered by a governmental agency as a massage therapist or massage practitioner, that person shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, to be assessed and collected in a civil action brought by the City Attorney, District Attorney, or Attorney General.

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

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

Section 4. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3, of the California Code of Regulations) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) of the CEQA Guidelines (because it has no potential for resulting in physical change to the environment, directly or indirectly).

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the __ day of __ , 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2015, by the following votes of members of said City Council.

AYES:
NOES:
ATTEST:
ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: January 20, 2015
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Adoption of Ordinance Authorizing the Amendment of the Contract between the City of Hayward and the Board of Administration of the California Public Employees' Retirement System

RECOMMENDATION

That the City Council adopts the Ordinance introduced on January 13, 2015.

BACKGROUND

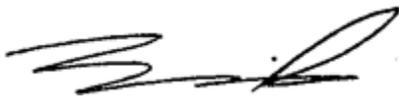
The Ordinance was introduced by Council Member Zermeño at the January 13, 2015 special meeting of the City Council with the following vote:

AYES:	Council Members:	Zermeño, Jones, Mendall, Peixoto, Lamnin, Márquez
	Mayor	Halliday
NOES:	Council Members:	None
ABSENT:	Council Members:	None
ABSTAIN:	Council Members:	None

The summary of the Ordinance was published in the Hayward Daily Review on Saturday, January 17, 2015. Adoption at this time is therefore appropriate.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachment:

Attachment I Summary of Ordinance Published on 1/17/15

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

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

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

Section 1. Provisions.

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

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

Introduced at a special meeting of the Hayward City Council held January 13, 2015, the above-entitled Ordinance was introduced by Council Member Zermeño.

This Ordinance will be considered for adoption at a regular meeting of the Hayward City Council, to be held on January 20, 2015, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: January 17, 2015
Miriam Lens, City Clerk
City of Hayward

DATE: January 20, 2015

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Resignation of Mr. Vishal Trivedi from the Planning Commission and Process for Filling the Vacancy

RECOMMENDATION

That the City Council accepts the resignation of Mr. Vishal Trivedi from the Planning Commission and adopts a resolution; and approves a process for filling the vacancy.

BACKGROUND

Mr. Vishal Trivedi was appointed to the Planning Commission on September 11, 2012, and reappointed on September 16, 2014. Mr. Trivedi also served on the Keep Hayward Clean and Green Task Force from September 20, 2011 to September 11, 2012.

Mr. Trivedi's resignation became effective immediately per the attached resignation letter (Attachment II).

Applications for the Planning Commission vacancy were made available beginning January 14, 2015, at City Hall and on the City's web site. A press release announcing the vacancy was issued on January 14, 2014 (Attachment III) and an ad was published in the Hayward Daily Review on January 17, 2015. Staff utilized all available social media to publicize the vacancy, including Facebook, Twitter, electronic billboards, and blast email messages. Individuals who applied during the annual recruitment for the Council's appointed bodies and who had expressed interest in serving on the Planning Commission were also informed of the vacancy. These individuals will not need to reapply for the new vacancy and staff will utilize their prior application if they express an interest in this appointment.

The application period is expected to close at noon on Friday, February 6, 2015. Copies of the applications will be forwarded to the City Council for review and will be available for public review upon request in the Office of the City Clerk. Staff is recommending that if the City receives more than ten applications, each Council Member could select up to five applicants and individually notify their selections to the City Clerk by noon on Monday, February 9, 2015. Interviews are tentatively scheduled for Tuesday, February 10, 2015.

ECONOMIC AND FISCAL IMPACT

There is no economic impact of the appointment process.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution
Attachment II	Resignation Letter
Attachment III	Press Release

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE RESIGNATION OF VISHAL TRIVEDI FROM THE PLANNING COMMISSION

WHEREAS, Mr. Vishal Trivedi was appointed to the Planning Commission on September 11, 2012 and reappointed on September 16, 2014 and,

WHEREAS, Mr. Vishal Trivedi also served on the Keep Hayward Clean and Green Task Force from September 20, 2011 to September 11, 2012 and,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby accepts the resignations of Vishal Trivedi from the Planning Commission; and commends him for his civic service to the City,

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015.

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

From: "Vishal Trivedi" <vjtrivedi@gmail.com>
 Date: Jan 6, 2015 4:40 PM
 Subject: Re: Hayward Planning Commission
 To: "Barbara Halliday" <Barbara.Halliday@hayward-ca.gov>, "Greg Jones" <Greg.Jones@hayward-ca.gov>, <Francisco.Zermeño@hayward-ca.gov>, <marvin.peixoto@hayward-ca.gov>, "Al Mendall" <Al.Mendall@hayward-ca.gov>, <Sara.Lamnin@hayward-ca.gov>, <Elisa.Marquez@hayward-ca.gov>, "Dianne McDermott (dianne.mcdermott@fremontbank.com)" <dianne.mcdermott@fremontbank.com>, <heather.enders@yahoo.com>, "Al P" <alparso@yahoo.com>, "Rodney Loche" <rodneyloche@sbcglobal.net>, "Mariellen Faria (mefaria@yahoo.com)" <mefaria@yahoo.com>, <marylav@comcast.net>
 Cc: "David Rizk" <David.Rizk@hayward-ca.gov>, "Sara Buizer" <Sara.Buizer@hayward-ca.gov>, "Miriam Lens" <Miriam.Lens@hayward-ca.gov>

Dear Mayor Halliday, City Council, Planning Commissioners, staff, and members of the Hayward community,

I hope the new year finds you well, and that you all had a joyous and festive holiday season. It is with deep and sincere regret that I am writing to submit my resignation from the Hayward Planning Commission. As you may be aware, over the past several weeks I have been unable to participate in Planning Commission business due to an ongoing family situation. This unforeseen change in my personal circumstances has left me unable to devote the full measure of my time and energy to my duties as a member of the Commission. I do not know for how long this situation may persist.

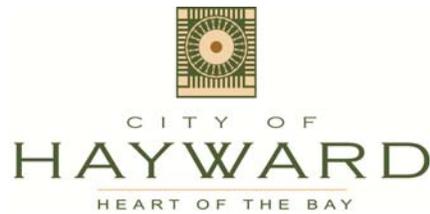
So, after deep reflection and consideration, I have come to the conclusion that the most responsible course of action is for me to resign from the Commission and allow the Hayward City Council to appoint a replacement. After having come to know so many wonderfully active, informed members of the Hayward community, I am extremely confident that there are plenty of highly capable and qualified candidates who could take my place and offer their own perspectives and insights to the Planning Commission. The residents of Hayward deserve to have an active and engaged voice on the Commission, and unfortunately, right now it is extremely difficult for me to serve that role effectively. At this time my family responsibilities and personal obligations preclude me from offering the degree of involvement and attention that I feel is required from a member of the Commission. Until recently, I have always done my best to maintain a strong record of attendance and preparation for Commission meetings, and so the fact that I have needed to be absent over the past two months is something that troubles me.

I would like to offer a heartfelt apology to the Hayward community for being unable to continue serving on the Commission. I place great value on public service, and it has been a distinct honor and point of pride to be able to contribute my knowledge, skills, and abilities to help inform Hayward's future growth and development. When I applied for reappointment to the Commission this past summer, it was with every expectation and hope that I would be able to serve out the full 4 years of the term, so I am very disappointed that I have had to make this decision. However, it is not fair to keep a seat effectively vacant while I take an indefinite leave of absence

over a period of months; the residents of Hayward should have full representation on their Planning Commission. I am extremely grateful to the City of Hayward and the City Council for giving me an opportunity to serve, and I thank the staff and my fellow Commission members for their comity, professionalism, and warmth. I hope my time on the Commission has been received favorably by the community, and that I have made a positive contribution to our City.

Best wishes,

Vishal Trivedi



FOR IMMEDIATE RELEASE

Date: 1/14/15

Media Contact:

Miriam Lens
Hayward City Clerk
510.583.4400
Miriam.Lens@hayward-ca.gov

CITY OF HAYWARD SEEKS PLANNING COMMISSION APPLICANTS

(HAYWARD, CA) – The City of Hayward will be accepting applications for potential candidates to fill the remaining term of former Planning Commission Member Trivedi. The vacancy was created when Planning Commissioner Trivedi submitted a resignation letter on January 6, 2015.

Applicants must be residents of incorporated Hayward and registered voters of the City of Hayward. Individuals who have served on City commissions are encouraged to apply. Individuals appointed to the Planning Commission will need to file a Fair Political Practices Commission Statement of Economic Interests (Form 700).

All interested individuals must complete an application available from the Office of the City Clerk, 777 B Street, Hayward, Monday through Friday, 8:00 a.m. to 5:00 p.m., or online at <http://www.hayward-ca.gov/>

All completed applications must be filed in the Office of the City Clerk by noon, Friday, February 6, 2015.

A process for filling the vacancy will be approved by the City Council at its Council meeting on January 20, 2015.

Interviews with the City Council are tentatively scheduled for Tuesday, February 10, 2015.

For further information, please call the City Clerk at (510) 583-4400.

###

DATE: January 20, 2015

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Authorization to Negotiate and Execute a Professional Services Agreement with New City America for the Formation of a Downtown Community Benefit District

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment I) authorizing the City Manager to execute an agreement expiring no later than December 31, 2015 with New City America in an amount not to exceed \$50,000 to pursue the creation of a Downtown Community Benefit District.

BACKGROUND AND DISCUSSION

In the wake of mounting fiscal pressures on the City's General Fund and the loss of Redevelopment monies for downtown improvement projects, the City contracted with New City America in May of 2014 to explore the possibility of creating a Downtown Community Benefit District (CBD), which has been used as a successful tool to revitalize business districts throughout the Bay Area and across the country.

Community Benefit Districts, which are property-based assessment districts set up to fund special benefit services above and beyond those provided by the City, have been widely adopted by property owners to enhance neighborhood appearance, increase marketing activities, improve local amenities and ultimately to develop a more vibrant, positive experience for visitors to the downtown. Community benefit districts have been found to provide quantitative benefits, including reduced crime rates and increased property values.

The improved maintenance, security and marketing activities facilitated by Community Benefit Districts in Oakland's Downtown and Uptown/Lake Merritt neighborhoods have spurred a dramatic turnaround of those communities since 2010. In 2013, property owners in Downtown San Leandro approved their Downtown Community Benefit District and their special services have recently begun to roll out. New development is already occurring there.

A Downtown Hayward CBD would be a special benefits assessment district in which property owners would pay for and control the assessments they generate through the CBD. The CBD can

fund solutions to public safety and vagrancy; fund sidewalk cleanliness, install/improve decorative amenities such as street furniture/fixtures/equipment/lighting; promote and enhance the brand/image of Downtown; manage events; manage parking/transportation services etc.; create a strong social media presence and promote public relations for Downtown businesses; and other activities that are warranted. The purpose of the CBD is to increase commerce, increase rents, attract new businesses and development, and to enhance the stature and image of Downtown Hayward.

Currently, limited downtown improvement activities are carried out by the Downtown Business Improvement District (DBIA), which serves as an appointed body of the City Council and exists solely to administer the expenditure of its small, annual budget comprised of business owner fees. Unlike the DBIA, the Downtown Hayward CBD, if formed, would be managed and controlled by the Downtown Hayward property owners themselves through a new nonprofit corporation outside the purview of the City Council. All funds paid by property owners will be allocated for the sole purpose of improving the areas surrounding those properties. The CBD funds cannot, by law, be used outside of the new district boundaries.

The CBD's assessment of property owners, including public agencies like the City and BART, instead of business owners ensures both larger revenues and a stronger long-term vision for their expenditure within the Downtown, with renewed focus on projects that will provide lasting value for the district. As an independent nonprofit corporation, a Downtown Hayward CBD would also be far more maneuverable from an administrative perspective. Furthermore, a Downtown Hayward CBD would provide property owners with a strong incentive to take renewed responsibility for the viability and upkeep of their properties.

Many factors augur well for a Downtown Hayward CBD, including the following:

1. An excellent linear retail corridor along A and B Streets and Foothill with historic buildings throughout the district;
2. Major anchors including City Hall (with its hundreds of employees) and the movie theatre complex which brings thousands of movie goers to the Downtown every week;
3. Easy access from the 580, 92, and 880 freeways
4. A strong student base with more than 14,000 students at CSU East Bay and an additional 13,000 at Chabot Community College, along with hundreds more enrolled in local technical and professional programs;
5. An extensive inventory of structured as well as street parking yielding more than 1,500 parking spaces throughout the District;
6. A Downtown BART station (Locations and developments near BART stations will generate the highest property values in the next twenty years throughout the Bay Area);
7. Downtown Hayward already has a small inventory of market rate housing near the BART station and has the ability to develop further units either in or directly surrounding Downtown. This would extend the Downtown retail day and drive demand on commercial spaces on B and A Streets.
8. Downtown already has two major grocery stores, which most emerging Downtowns beg to have.

Over the summer and autumn of 2014, NCA conducted a feasibility analysis for creating a successful Downtown Hayward CBD. A steering committee made up of Downtown property owners was formed to guide the process of gauging conceptual support for the idea of a Downtown CBD.

Following a series of small outreach meetings to Downtown property owners and reports to the Downtown Business Improvement Area, a survey was mailed to all Downtown property owners to assess conceptual support for a Downtown Hayward CBD. The survey was open for approximately two months, through October and November.

From experience in other locations, the threshold level of support giving a strong indication of success in forming a CBD is 30% in each of three categories: building SF total, lot size total and frontage total. In other words, for a CBD to have a strong chance of success, 30% of the total district (measured by each of the aforementioned metrics) should reflect support for the concept.

The Downtown Hayward CBD survey response indicated the following levels of support in each area, each exceeding the critical 30% threshold:

- Building square footage: **53%** supportive 3% opposed
- Lot size: **43%** supportive 2% opposed
- Frontage: **31%** supportive 2% opposed

With the investigative phase of the project now complete and positive results in hand, the next step in the process is to enter the formation stage of the CBD, which will involve a series of steps over the next several months:

- The consideration of a new Hayward CBD ordinance
- The development (with the direction of the steering committee) of a supportable management district work plan for the CBD
- The development of a work plan budget
- Determination of the CBD board/governance model/structure
- Preparation of legal documents, including Proposition 218 ballots and engineer's report
- Outreach and educational plans, including fliers, brochures and other material
- Outreach efforts to achieve the minimum 30% weighted petition support in order to move forward with adoption under the CBD ordinance
- Coordinating the adoption process

It is currently impossible to estimate the annual revenues to be generated and controlled by a potential Downtown Hayward CBD, as assessments will be determined by the steering committee after further study and outreach as part of the formation process. However, the CBD stands to generate significant annual revenue enabling it to make a strong impact in the Downtown area without representing an unreasonable financial burden to any one property owner.¹

¹ The funds are entirely managed by the 501(c)3. The City – as a contributor to the CBD – would be represented on the board and would have a say in the allocation of the funds, but it would not hold a controlling interest. The City itself would have no role in the direct administration of the CBD or the expenditure of the funds.

ECONOMIC IMPACT

The development and implementation of a Downtown Hayward CBD has the potential to significantly improve the quality of Hayward's downtown, from improved appearance to enhanced security to a more prosperous business environment. The investment and engagement of property owners in the appearance and activities in Downtown will help these owners attract quality tenants and will help these tenants and their businesses ultimately be more successful, creating a robust and vibrant Downtown with both increased property values and higher sales tax generation.

FISCAL IMPACT

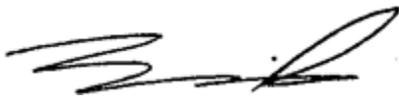
This contract for professional consulting services with New City America shall not exceed \$50,000. In discussions with property owner members of the formation steering committee, the agreement has been that the City shall be reimbursed the full cost of this contract from future CBD revenues/assessments in the event that a Downtown Hayward CBD is successfully formed. If formation is unsuccessful or somehow does not go forward, the costs of the study are funded in the current Economic Development budget as approved by Council in the FY2015 budget.

NEXT STEPS

If the Council approves the resolution, staff will work with New City America to develop and execute the agreement.

Prepared and Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

- I. Attachments: Resolution Approving Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH NEW CITY AMERICA, INC. FOR COMMUNITY BENEFIT DISTRICT FORMATION CONSULTING SERVICES TO EXPIRE NO LATER THAN DECEMBER 31, 2015.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs the City Manager to negotiate and execute a contract with New City America, Inc., in an amount not to exceed \$50,000 for a predetermined scope of brand marketing services, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: January 20, 2015

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Overview of the Scope and Schedule for the Downtown Specific Plan Project

RECOMMENDATION

That Council reviews and comments on this report and staff's presentation.

SUMMARY

This report provides Council an overview of the Downtown Specific Plan (Plan) project scope, timeline, and approach. There are eight distinct tasks from project initiation to publishing the final Specific Plan, zoning, and a “self-mitigating” Environmental Impact Report (EIR) associated with this endeavor. The tasks are outlined in pages 5-13 of Attachment II. There will also be an update to the City's historic context statement. Most importantly, completion of the project will emphasize implementation, meaning that the plan will have significant, up-to-date details guiding future private development and public improvements in the Plan area.

Planning and Public Works Transportation Division staff members have been meeting for the last three months with staff at the Alameda County Transportation Commission (ACTC), BART, and AC Transit to review consultant proposals, interview consultants, and refine the project scope of work. A consultant team led by Dyett and Bhatia has been selected. City staff and the consultant team will hold a “kickoff” meeting in late January signaling formal commencement of the project. Total time to complete the project will be within twenty-four months, or by the end of 2016. Extensive community outreach will be a major component of the project, as described in the Project Scope of Work (Attachment II).

BACKGROUND

The Downtown Specific Plan will provide a community-supported vision for the Downtown, specific development and zoning standards, and implementation measures to realize the Plan's goals and objectives. The Plan area has two supermarkets, several cafes and restaurants, a drugstore and movie theaters with excellent transit connectivity. The plan will build upon existing strengths and continue efforts to energize the City's emerging Downtown. This effort will also bring the

Downtown Specific Plan into synch with the updated General Plan and provide implementation strategies for some of the over-arching policies in the General Plan. .

Existing Downtown Plans - The City of Hayward has a number of outdated documents that currently cover development for the downtown area:

- the [Downtown Hayward Redevelopment Plan](#), adopted in 1975 and revised in 2001;
- the [Downtown Hayward Design Plan](#), adopted in 1987 and revised in 1992;
- the [Downtown Focal Point Master Plan](#), adopted in 1991;
- the [Core Area Plan – A Component of the Downtown Hayward Design Plan](#), adopted in 1992;
- the [Commercial Design Manual – Hayward Downtown Historic Rehabilitation District](#), adopted in 1993; and
- the [City of Hayward Design Guidelines](#), adopted in 1993.

While these documents all have served a past purpose and contain some relevant policies and goals, they are all decades old and in part, do not reflect current development/land use conditions and/or goals, objectives, and policies of Hayward’s new General Plan. For example, the Core Area Plan contains goals that are still applicable, such as, “The integration of BART into the pedestrian network of Downtown is a key element of this plan.” However, the buildout diagram from that plan shows a supermarket anchoring B Street at Foothill Boulevard, where the theater complex now exists and a former Lucky’s store existed.

General Plan Policies - Hayward’s new General Plan was adopted on July 1, 2014 after nearly a two-year process entailing extensive community engagement. The General Plan provides the policy framework and context for this significant project, as described below.

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.” Hayward is one city that is fortunate to have an authentic and historic Downtown while other Bay Area cities have goals to develop a city center or downtown. The Downtown Specific Plan will enhance this important community asset and set forth policies and strategies to encourage private sector investment to help transform Downtown into a safe, vibrant, and prosperous arts and entertainment district. The General Plan envisions Downtown as a regional destination offering enhanced shopping, dining and cultural experiences for residents, families, students and visitors. Continued support for Downtown housing opportunities will be part of the plan and such housing will afford people to live in a safe, mixed-use, walkable and transit-oriented urban setting. Downtown Hayward will transform into a place everyone gathers to interact, shop, dine, play and celebrate as envisioned by the new General Plan.

General Plan Land Use Chapter Policies LU-2.1 through LU-2.7 – Policy LU-2.7 indicates the City will pursue development of a Downtown Specific Plan establishing “a vision for Downtown Hayward . . . to guide and regulate development . . . and infrastructure improvements” within the Plan area.

Policy LU-2.1 speaks to revitalization and enhancement: “Hayward’s Priority Development Areas (or PDAs) to accommodate and encourage growth within compact, mixed use, and walkable neighborhoods and districts that are located near the city’s job centers and regional transit facilities.” The Downtown Specific Plan will have an implementation strategy for Land Use Chapter policies. Policies LU-2.2 and LU-2.3 encourage the community to “maintain Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions” while striving to ensure Downtown will have “a safe, comfortable and enjoyable pedestrian environment encouraging walking, sidewalk dining, window shopping and social interaction.”

Requiring “retail frontages on new or renovated buildings” within the Downtown (policy LU-2.4) also will be addressed. New Downtown housing projects pursuant to policy LU-2.5 will be promoted in the Specific Plan to be “less dependent on” the automobile and provide “a diverse range” of housing for “different families and households,” including “college students and faculty.” It is hoped that new housing will “increase market support for businesses” and “extend hours of activity” Downtown. Policy LU-2.6 encourages “a mix of commercial, office, high-density residential, and mixed-use development around the Downtown BART Station.”

DISCUSSION

Attachment II provides a project overview and context/approach, including a scope of work and project timeline. The project will entail not only development of a specific plan that will include State-required components (e.g., infrastructure assessment, financing measures associated with proposed improvements), but will also entail creation of new zoning regulations to help provide clarity for specific development projects and public improvements. Emphasis will be on Plan implementation to guide development, including “urban design standards, densities, intensities, land uses and land use mix, access and connectivity, historic preservation, and hazard mitigation.”

Council may have concerns with a Specific Plan development process defined herein as covering a projected twenty-one month timeframe from initiation when the General Plan Update was completed in two years. However, the General Plan was general in nature and resulted in very few land use designation changes, and the Downtown Plan will have specific new zoning regulations, which is similar to the recent Mission Boulevard Corridor Specific Plan/form-based code and the South Hayward BART form-based code the City adopted, both of which took significantly longer than twenty-one months to develop. The Downtown Plan will require significantly more attention to assure it will adequately and smoothly guide development and assure the Downtown envisioned by the Council and the community. Understanding the critical nature of this Specific Plan, staff will make every effort to complete the process as quickly as possible while still assuring a quality, inclusive process.

Overview of Major Tasks - Below is a table that identifies the major tasks, work products, and timeframe for each task.

Major Task No.	Major Task	Work Products	Timeframe
1	Project Start-Up and Community Involvement Strategy	<ul style="list-style-type: none"> • Community Involvement Strategy • Website content • Stakeholders Memorandum 	Mid-January to end of March, 2015
2	Existing Conditions and Opportunities Analysis	<ul style="list-style-type: none"> • Opportunity Sites Analysis • Transportation Analysis • Market Demand Analysis • Updated Historic Context Statement • Infrastructure Analysis • Community Workshop Report 	March to end of July, 2015
3	Ideas and Concepts	<ul style="list-style-type: none"> • Key Choices Workshop Boards • Opportunity Sites Concepts and Analysis 	August to end of November, 2015
4	Plan Components and Policy Framework	<ul style="list-style-type: none"> • Preferred Plan and Policy Framework • Transportation and Parking Strategies • Draft Urban Design Standards • Infrastructure Needs Assessment • Implementation Plan 	Mid-November to end of February, 2016
5	Draft Downtown Specific Plan	<ul style="list-style-type: none"> • Administrative Draft Specific Plan • Public Review Draft Specific Plan 	Mid-February to end of June, 2016
6	Environmental Impact Report (EIR)	<ul style="list-style-type: none"> • Administrative Draft EIR • Draft EIR • Final EIR • Notice of Completion 	Mid-February to mid-September, 2016
7	Zoning	<ul style="list-style-type: none"> • Administrative Draft Code • Public Review Draft Code 	July to end of October, 2016
8	Public Review and Adoption; Final Specific Plan	<ul style="list-style-type: none"> • Planning Commission Hearings (2) • City Council Hearings (2) 	November to end of December 2016

Key Plan Tasks/Components – Tasks/components of this project include the community involvement strategy, a market demand analysis, opportunity sites analysis, multi-modal access and connectivity, transit user/pedestrian/bicycle-friendly design standards within a multimodal transportation master plan, accessible design, coordination with the Complete Street study for central Alameda County, a parking analysis, infrastructure development and budget, and an

implementation plan/financing strategy. Below is a summary of the significant tasks of the Specific Plan.

Existing Conditions Assessment (pages 5-7 of Attachment II) – This second task is an analysis of existing conditions and opportunities within the Plan area. It will entail review of prior studies and current parallel activities already underway, such as development of opportunity sites and other currently identified projects. .

Plan Components and Policy Framework (pages 8-9 of Attachment II) – This fourth task involves development of plan components and policy framework in the form of a preferred draft plan. Work will utilize efforts completed in Task No. 2 to develop the core of the Specific Plan.

Draft Specific Plan (pages 9-10 of Attachment II) – The Specific Plan content will utilize work in Task No. 4 and include the following sections: Context, Land Use, Design Standards and Guidelines, Key Opportunity Sites, Circulation and Access, Affordable Housing, Infrastructure and Public Facilities, Implementation Program, and Environmental Resources and Review.

Zoning (pages 12-13 of Attachment II) – Based on work completed prior to this seventh task, this work will entail development of zoning regulations that focus on “streamlining proposed development project review for new projects, enabling greater flexibility in uses while ensuring compatibility and design consistency...” Of course, based on input from Council and the community, certain areas/sites may also have less flexibility in terms of land use to meet project objectives. The zoning code will be extensively illustrated and utilize a combination of various zoning approaches.

Key Areas of Focus - Based on input to date, the key areas of focus that the Plan will address are summarized below.

Downtown Loop and Circulation – The Plan will consider and evaluate traffic and circulation improvements in and around the Plan area, specifically looking at bicycle and pedestrian circulation, transit accessibility, improved circulation, and an analysis of the impacts of the Downtown Loop on current and future development in the Downtown. It is anticipated that improvements and changes will be suggested during the community involvement portions of the project. Information from the City’s Downtown Parking Study and Transit Feasibility Study, currently underway, will be used as part of the Downtown Specific Plan project.

Entertainment Areas – The idea of “entertainment areas” within Downtown will be explored as part of Specific Plan process as the vision for Downtown is developed, with the idea of also exploring what other similar cities have developed as part of their Downtown planning efforts.

Three Opportunity Sites Analysis – An Opportunity Sites Analyses will be done for three specific sites within the Plan area (see Attachment II for a study area map and location of recommended opportunity sites). Specifically, the “A Street Blocks” (defined as parcels fronting on A Street and bordered by Mission and Foothill Boulevards), the Bryman College block (bordered by McKeever Avenue, Main and A Street , and Maple Court), and the block centered around the BART construction trailer site located between A and B Streets and between Grand and

Montgomery Streets . The sites were chosen because each has a single owner comprising a good portion of each site (the City owns property within the A Street blocks), and the possible density, massing and building height of each site could potentially support projects that are compact, mixed use, and walkable located near jobs and regional transit connections/connectivity, consistent with the goals, policies and programs contained in the new General Plan. The urban design structure will be analyzed, which includes an assessment of building massing, nodes, corridors, focal points, districts, pedestrian environment, and opportunities for connections. Another possible opportunity site could be the block bordered by C and Main Streets and Foothill Boulevard, given its location and visibility.

Infrastructure Needs and Cost Analyses – An infrastructure needs assessment will be prepared that will include utility demand forecasting to help determine whether existing infrastructure can serve any proposed improvements in the Plan area. An implementation and finance strategy will also be prepared which may have potential public funding sources such as a creation of an infrastructure financing district (IFD), land-secured financing (Mello Roos CFD special tax), developer impact fees, and evaluation of other financing tools yet to be determined.

Market Demand Analysis – As part of the project consultant team, Economic and Planning Systems, Inc. (EPS), will provide a market demand analysis evaluating market support for housing (types, densities and price points), retail, including dining and entertainment, office, and hotel space uses. EPS will build upon existing data sources and studies as much as possible, including recent market and feasibility analysis work EPS and PKF prepared for opportunity and catalyst sites in Hayward, to create a complete qualitative and quantitative demand for development in Downtown for both the near- and long-term.

Community Participation – There is a robust community involvement strategy that’s part of this project (see “Public Contact” section of this report and pages 3-10 in Attachment II).

ECONOMIC IMPACT

With the adoption of the General Plan, South Hayward BART/Mission Boulevard Form-Based Code, and the Mission Boulevard Corridor Specific Plan/Form-Based Code, the comprehensive update of the community vision for the Downtown is one of the most important development-related activities the City will undertake. As mentioned above, the City has multiple planning studies and visions of the Downtown dating back to 1992. The comprehensive update will provide a renewed vision of the Downtown taking into account the dynamic changes for Hayward over the past twenty years. With a full understanding of the community vision for desired goods and services to be provided, intensity and type of development, and existing and needed infrastructure, the City will be able to help guide future development consistent with the community vision providing for re-investment into the Downtown.

As part of the specific plan process, market analysis and identification of emerging development markets and trends will be identified giving the City strategic development pathways and evaluation tools for development of retail, office, and mixed-use housing projects. In addition, the City will have an opportunity to establish place-making attributes that define the Downtown as a marquee location within Hayward and draw for both residents and visitors. The overall economic impact of

the Plan has not yet been identified given the Plan needs to be developed through community input; however, it is anticipated that timely development and aggressive implementation of the Plan will provide a net positive economic impact given potential for economic growth within the Plan boundaries.

FISCAL IMPACT

The Downtown Specific Plan effort is funded through a federally funded grant awarded through a competitive process by the Alameda County Transportation Commission (ACTC) on March 27, 2014. These funds are part of the One Bay Area Grant (OBAG) program allocated to ACTC from the Metropolitan Transportation Commission (MTC) for local Priority Development Area (PDA) planning and implementation projects. A total of \$950,000 will come from ACTC while up to \$75,000 in matching funds is coming from the City of Hayward General Fund, already approved as part of the FY15 Development Services Department budget.

In terms of fiscal impacts of Plan implementation, Task 4-1 on page 9 of Attachment II entails development of an Implementation Plan and Financing Strategy that “will include consideration of public funding sources, such as infrastructure financing district (IFD), land-secured financing (such as a Mello-Roos Community Facilities District special tax), as well as development impact fees and other financing tools.”

PUBLIC CONTACT

As reflected on pages 3 and 4 in the Project Scope of Work in Attachment II, there will be up to fifteen stakeholder interviews and five stakeholder meetings, and five community workshops/charrettes. Staff will work closely with the Task Force and will plan six work sessions and up to four public hearings before the City Council and/or Planning Commission. It is envisioned that stakeholders will include, but not be limited to, individuals for detailed focus group interviews, such as Economic Development Committee members, Chamber of Commerce Board and staff members, Downtown Business Improvement Area Advisory Board members, Downtown building owners, commercial brokers, neighborhood/homeowners’ association representatives, and Cal State East Bay representatives, BART, and AC Transit. Staff has already started contacting stakeholders.

City staff will also work with the consultant team to use the City’s web site and social media to both provide updated information on Plan development as well as solicit continuous input. The consultant has indicated that either Mind-Mixer or Peak Democracy will also be used as part of the community outreach strategy. Mind-Mixer was used successfully during the General Plan update process.

The project scope also envisions creation of a task force that would provide detailed review of various draft documents of the Downtown Plan and provide feedback and input to staff, which will be used to formulate recommendations to Council and the Planning Commission. Task force members are envisioned to be former members of the General Plan Task Force, local business owners, developers, and residents within or near Downtown. Staff will be responsible for putting together a Task Force that may have up to ten members.

NEXT STEPS

Staff will work with the consultant team to incorporate comments and direction from Council into the Plan scope of work and analysis. Staff will also inform the Planning Commissioners, so that they are aware of Council's thoughts on the project. Staff will be providing regular updates to City Council and Planning Commission regarding the project, and opportunities will be afforded for the Council to evaluate and provide input during development of the Downtown Plan document.

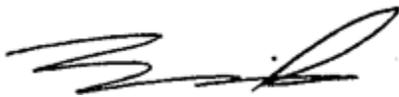
The next important task will be the formation of a Task Force to discuss ideas and goals for the project.

Prepared by: Damon Golubics, Senior Planner

Reviewed by: Sara Buizer, AICP, Planning Manager

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

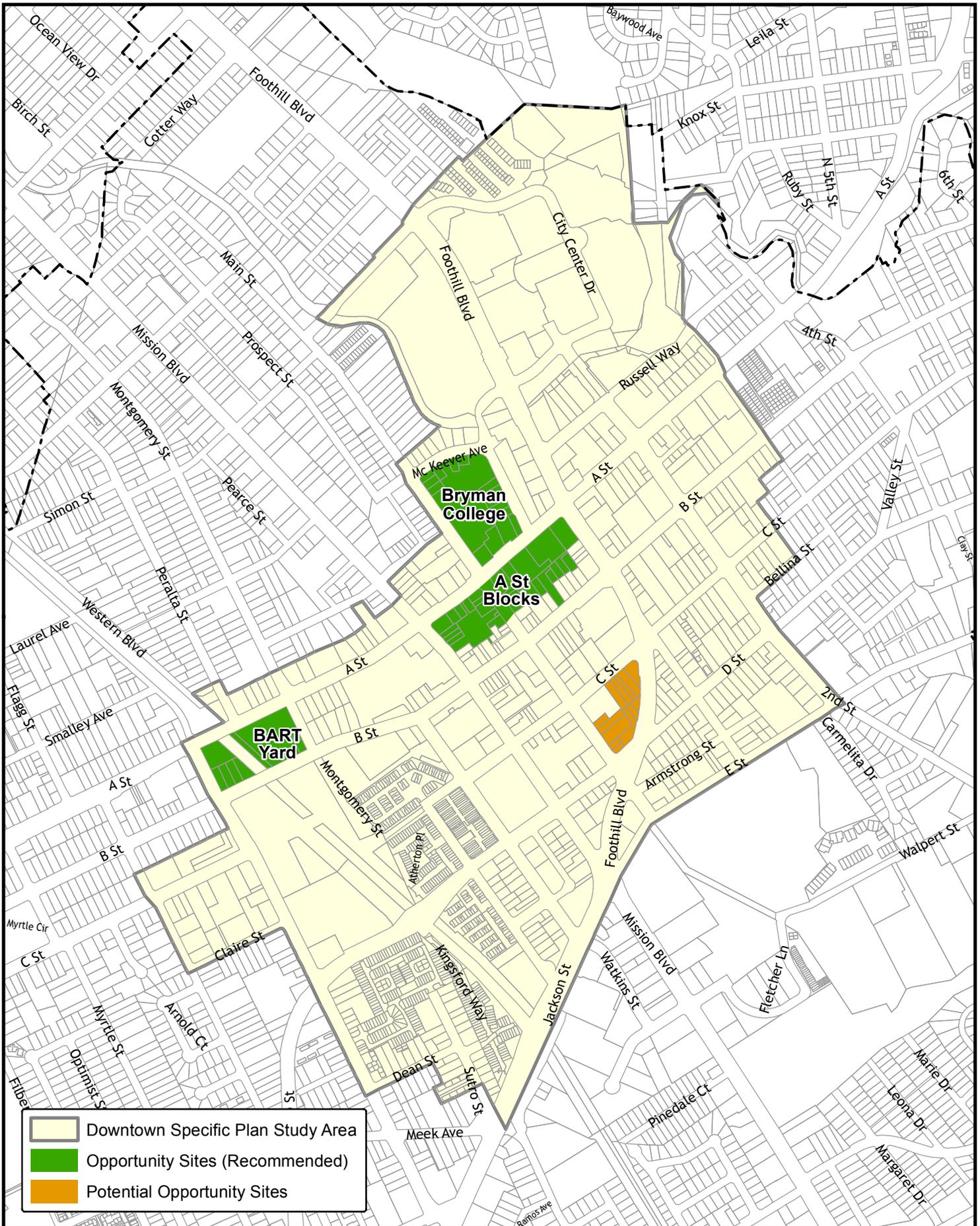
Attachments:

Attachment I	Downtown Specific Plan Study Area Map
Attachment II	Project Framework/Scope



Downtown Specific Plan Study Area

0 250 500 750 Feet



PROJECT UNDERSTANDING AND APPROACH

1

Hayward's downtown dates to the City's establishment during the California Gold Rush in 1876; downtown still contains several buildings from its early development period. The Downtown "core" was the first platted land in the city, and is marked by a gridiron development pattern. Downtown flourished along with the city, which grew rapidly following World War II and construction of I-880. Foothill Boulevard emerged as the "Golden Strip" anchored by major department stores.

Starting in the 1960s, Downtown lost its major retail operations to Southland Mall and other centers along I-880, and in a certain sense has never fully recovered. Physically, the walkable grid eroded with land assembly and development of suburban-style City Center and office developments, as well as major transportation interventions — conversion of First Street to Foothill Boulevard that sliced through blocks, and the BART station, which was designed with vast surface parking lots as suburban drive-to station.

In recent years the City has made a conscious effort to rebuild and re-integrate, such as with development of the new City Hall close to BART, several hundred new housing units near BART, a supermarket across City Hall with smaller dining establishments along streets, and most recently, a revitalized B Street together with 12-screen Cinema Place (designed by team-member Field Paoli).

Downtown Hayward holds many promises and challenges. The planning area itself — about 425 acres — is relatively large, with many vacant buildings, major opportunity sites such as Mervyn's and the former City Hall with vacant buildings, and strip commercial uses that remain financially challenged. While new residential development, Cinema Hall, and dining establishments along B Street have provided much-needed boost, the core energized area is rather small for Bay Area's sixth largest city with a population of over 150,000.

1.1 PROJECT OBJECTIVES

The City's new General Plan outlines poli-

cies that seek development of downtown as "a center for shopping and commerce, social and cultural activities, and political and civic functions". It speaks to enhance the pedestrian environment, promote a variety of housing types, and protect historic resources, although mandatory retail frontage requirement for all of the streets listed in policy LU-2.3 (A, B, C and Main streets, and Mission and Foothill boulevards) may be ambitious given market challenges.

The project RFP and the presentation at the bidders' meeting outline several project objectives, which we support. These include revitalizing downtown by encouraging new housing, attracting new high quality retail and entertainment uses, and improving access to BART. The City also seeks to incorporate Crime Prevention through Environmental Design principles, promote multi-modal access and complete streets, require preservation of cultural and historic resources, and promote partnerships with transit providers and CSU East Bay.

Revitalization of the core of the "Heart of the Bay" will also be aided by completion of BART's Silicon Valley extension, the first phase of which will be operational in 2017, and upon completion of the second phase (for which all funding is in place) shortly thereafter, bring reliable direct transit connection to the heart of Silicon Valley, with Hayward located equidistance between San José and Oakland along the transit system.

Downtown Hayward today has key amenities — two supermarkets, a drugstore, several cafés and restaurants, and a movie theater. These local amenities, combined with excellent transit connectivity will enable Downtown to reinvent itself as an urban transit-oriented district. Young families or Cal State workers and students seeking relief from the high housing costs and congestion of other locations can live Downtown, pursue a pedestrian/bicycle oriented lifestyle for many non-work trips, and easily commute to major employment centers in Oakland and San Francisco, and soon Milpitas, San José and, and Santa Clara to the

south. While earlier generations of homebuyers may not have valued these assets, the millennial generation members, who are just now starting to form their own households, are seeking alternatives to isolated auto-oriented subdivisions; historic downtown neighborhoods can offer the best of both worlds.

Given the large geographic area of Downtown, we also envision working to creating distinctive identities for different neighborhoods and sub-districts, and fostering linkages and connections between them — a strategy we deployed successfully in the San Diego Downtown Plan.

Project Outcomes

In addition to producing a plan, the planning process should provide an impetus for real development projects and specific public improvements. The work with property owners, developers, and the community should lead to a consensus about specific project, and generate interest and enthusiasm about future retail, housing, and other development Downtown. The Plan should also generate consensus about the most important public improvement projects for station access. People should be able to see possibilities, and be convinced about the financial feasibility of specific projects. The Plan should also demonstrate the commitment from the City and other public agencies to making projects happen, and position the City to pursue OBAG grants for specific projects.

Emphasizing Implementation

Implementation is an integral part of the planning process, not an afterthought. This will be critical to ensure that the Downtown Specific Plan has the desired result in guiding private development and public improvements, providing enough detail, including urban design standards, densities, intensities, land uses and land use mix, access and connectivity, historic preservation, and hazard mitigation (such as Hayward Fault, hazardous materials, and noise) to guide development. Dyett & Bhatia’s considerable experience writing zoning and development regulations informs practical policy formulation to effectively achieve community goals.

An example of implementation-oriented plan prepared by D&B is the Milpitas Transit Area Specific Plan (which is for 437 acres of land,

very comparable to Hayward Downtown), which envisions the largest increase in housing around a BART station in the Bay Area, and where more than 2,000 housing units have been approved or are under construction since adoption of the Specific Plan in 2008.

1.2 KEY SCOPE ADDITIONS/ EMBELLISHMENTS

Our scope of work includes all tasks and products identified in the RFP. Following are some additions/embellishments proposed by us and included in the base scope of work/budget:

A Complete Specific Plan

The Plan will meet stipulation of CA Govt. Code Sections 6450-65457, to enable streamlined implementation. Thus, we propose to integrate development standards, chapter on environmental resources protection/hazards (including seismic, noise, air quality) and program of public works, etc. to ensure full compliance with state mandates for specific plans. This will enable exemption for residential projects from CEQA (CEQA Guidelines Section 15162), as well as new CEQA exemptions under SB 743 for residential, employment or mixed-use projects.

Zoning

We propose to prepare comprehensive new zoning regulations as part of the base scope of work, so the Specific Plan will be “implementation ready” upon adoption. This can be integrated with the Specific Plan or as part of the City’s Municipal Code. Dyett & Bhatia brings unsurpassed national leadership in preparation of zoning regulations; we will combine the best of form-based, traditional (Euclidean), and performance-based approaches to produce tailored regulations for downtown that will facilitate development and lead to positive on-the-ground results. The best zoning regulations achieve the desired results with the minimum number of rules, and are easy to understand and implement.

Comprehensive Opportunity Sites Evaluation & Analysis

Team member Field Paoli (FP) will prepare building massing studies that will re-envision three opportunity sites in detail, and Economic and Planning Systems (EPS) will perform financial pro-forma analysis based

on the architectural studies. Kittelson would conduct a preliminary evaluation of potential alternatives. This way, feasibility of different approaches — for example, subterranean vs. above-grade parking, mixed uses, development intensities, etc. — will be tested before preferred plan and design and development standards are prepared.

All team members involved with the task bring exceptional familiarity with the area — FP were the architects for the movie theater/retail complex at Foothill/B Street, and EPS is currently conducting market and financial feasibility analysis for the Hayward City Center/Mervyn's Opportunity Site, and for the Cannery Redevelopment Area for the City of Hayward, and Kittelson were the transportation consultants on the General Plan.

Updated Historic Context Statement, and Historic Preservation Standards and Guidelines

Garavaglia Associates (GA) was a subconsultant to Circa and authored much of the *Historic Context Statement and Historical Resources Survey & Inventory Report* for the City of Hayward in 2010. The survey for the report was conducted in 2009, and was structured around a property information matrix that listed approximately 1,200 properties, and findings were catalogued using State of California Department of Parks and Recreation Primary Recordation Forms. The survey resulted in the identification of additional individual resources that could be eligible for inclusion on the City's list of Officially Designated Architecturally & Historically Significant Buildings. Several historic districts were re-surveyed for updated inventory statistics; the Marks Historic Rehabilitation District was found to have 31 historic properties with a "high degree of integrity;" the Upper B Street Historic District was found to have 125 properties with "a moderate to high degree of physical integrity;" and the B Street Historic Streetcar and Prospect Hill Historic Districts were both found to "possess a significant concentration of historic residential buildings displaying a wide variety of late-20th- and early-19th-century architectural styles."

The findings of the survey make clear that the City possesses a remarkable volume of historic

architecture with high physical integrity. In general, buildings that are 50 years or older trigger historic resource significance review. In the five years that have passed since the previous survey, an untold number of buildings in Hayward have become eligible for review. As such, the City would benefit from additional guidance and resources for future policy management and planning with an update to its Historic Context Statement that reflects current future planning objectives.

As part of the base of scope of work, GA will update the *Historic Context Statement document* (for downtown portions) and will also develop a set of general treatment guidelines for Downtown that honor the recommendations set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. GA possesses expert knowledge of the California Historic Building Code and California Building Code, which will aid in the determination of appropriate treatments for historic structures within Downtown.

Combination Program/Project EIR, and "Self-Mitigating" Plan

The EIR will be a Program EIR on the Specific Plan, with project-level analysis for three key opportunity sites, to enable development to proceed forthwith. As the environmental review work is being performed, we will identify Specific Plan policies that will mitigate any adverse environmental effects of Plan implementation, thus, integrating the planning and environmental process and resulting in a "self-mitigating" plan.

1.3 COMMUNITY ENGAGEMENT

A plan is only successful if it reflects the aspirations and priorities of the community. While the recently adopted General Plan establishes a broad vision for Downtown, community collaboration is critical to development of detailed strategies that enjoy broad support.

We have outlined a multi-pronged outreach program that will educate the community, provide varied opportunities of input by stakeholders and community members, and build ownership of the Specific Plan. This is a suggested program; as one of the very first steps in the process, we will work with City staff

to devise a strategy that best fits Hayward’s needs. Components include:

Stakeholder Interviews (15)

At the outset of the process, we will conduct face-to-face reconnaissance or “listening” meetings with key stakeholders — City leaders, residents, property owners, Cal State EB, Chamber of Commerce, etc. By interviewing individuals or small groups, we can speak to approximately 20-30 people this way.

Stakeholder Meetings (5)

As specific proposals are drawn, we will conduct meetings with stakeholders such as Cal State East Bay, the Historical Society, and key property owners to solicit ideas, priorities, and specific feedback before the Preferred Plan is finalized.

Community Workshops/Charrettes (4 Specific Plan; 1 EIR Scoping)

Our work program includes four community workshops at key stages in the process. These will be designed as charrettes, drop-in open houses, or structured interactive workshops, depending on the project stage and feedback sought. A scoping meeting for the EIR will also be conducted. Workshop results will be documented and made available online and at City Hall. We want community members to know that their input has been recorded and is being considered in the planning process.

Task Force (7)

The TF will make recommendations on key issues and weigh in on critical decisions, leading to a preferred plan and key goals and strategies. This type of group can be an effective vehicle for achieving compromise and/or win-win solutions that meet the needs of different groups. D&B will be responsible for preparing agendas, facilitation, and meeting summaries.

Planning Commission/City Council Meetings and Hearings (10)

Decision-makers will be involved at key stages in the process, to ensure there are no surprises. Six meetings are envisioned leading to hearings, with additional four hearings budgeted.

Project Website and Social Media

We understand from the bidders’ meeting that City staff will maintain the project webpage; we will provide all documents and other information in format ready for posting. Dur-

ing two key stages (as Preferred Plan is being drawn up and strategies worked on) Mind-Mixer or Peak Democracy would be used.

City Staff Coordination

We envision working in close partnership with City staff. Regular check-in conference calls, timely review of documents, and early coordination before meetings and deadlines will ensure that the project stays on time and on budget, and that needs and issues are adequately addressed as they arise. We will meet with staff as appropriate and needed.

1.4 SCOPE OF WORK

This section outlines our proposed work program for all phases of the Downtown Specific Plan. The program is organized into eight tasks, from project initiation to publishing the final Specific Plan, zoning, and EIR documents, incorporating the work outlined in the RFP. The sequence of work products, community meetings, Task Force and City Council/ Planning Commission meeting are graphically illustrated in Section 1.3: Schedule.

The task-by-task descriptions that follow present our approach to data collection, alternatives analysis, policy formulation, and preparation of the documents. We have covered all of the various topics covered in the RFP and at the proposers’ meeting within this task structure. Initials in parentheses following the subsection heading identify the lead firm for each sub-task:

- D&B: Dyett & Bhatia
- EPS: Economic & Planning Systems, Inc.
- N\N: Nelson\Nygaard, Transportation
- K: Kittelson Associates, Transportation
- FP: Field Paoli, Architects
- BDP: Bottomley Design and Planning, Landscape Architects
- G: Garavaglia, Historic Resources
- BKF: BKF Civil Engineers
- BASE: Baseline, Hazardous Materials
- CSA: Charles M. Salter Associates, Inc.

“Team” refers to the entire consulting team.

Task 1: Project Start-Up and Community Involvement Strategy

Objective: Solicit input from stakeholders, community, staff, and decision-makers to determine major issues of concern, and priorities for land use and policies.

- 1-A Kickoff Meeting and Field Visit (Team).** In a kickoff meeting with staff, the team will Identify data sources, clarify roles and responsibilities, establish communication protocol, and discuss any program modifications and key project milestones. Conduct a walking tour of the study area with staff, with a focus on the opportunity sites.
- 1-B Conduct a Kickoff Meeting with the Task Force (Team).** Meet with Task Force representatives to discuss their ideas and aspirations for the project.
- 1-C Community Involvement Strategy (D&B).** Develop a detailed Community Involvement Strategy using the components identified in this proposal and milestones reviewed with City staff. The Strategy will outline all outreach tools for the plan, their timing, and purpose.
- 1-D Conduct Stakeholder Meetings (D&B and Team, as needed).** Conduct face-to-face interviews with approximately 15 key stakeholders (in groups of two to three; or about six to eight total meetings over one day). These may include property owners, developers, community leaders, business owners, elected officials, and others. This will elicit candid input on planning issues and give us a broad sense of the community, major issues of concern, deal breakers, desirables, and the political factors that may come into play.
- 1-E Project Website (D&B).** City staff will maintain the project website as part of the City’s overall web page, and D&B will provide content specific to the project, such as a project overview, FAQs, meeting materials, and similar. During key stages of public input (such as consideration of Alternatives), the project website will be supplemented by Mind-Mixer or a similar forum for online community engagement.

Meetings

- Kickoff Meeting and Tour
- Task Force Meeting #1
- Stakeholder Interviews (approx. 15 in small groups over one day)

Products

- Community Involvement Strategy
- Website content
- Stakeholders Memorandum

Task 2: Existing Conditions and Opportunities Analysis

Objective: Prepare existing conditions report, documenting land use, opportunity sites, and key development constraints. Conduct a market demand analysis to inform preparation of land use alternatives.

- 2-A Prepare GIS Database (D&B).** Using information from the City, County, and focused field work, a GIS database of the station area will be compiled, showing parcels, key natural features, and other information germane to the project. If feasible, information from the assessor’s office will be imported to the database to include land use information (such as building area and housing units), while recognizing that the County Assessor’s information is not always current or accurate.
- 2-B Prepare Opportunity Sites Analysis (Team).** The report will largely consist of maps with supporting narrative. The following information will be compiled:
 - Existing land use and densities/intensities in the Planning Area, based on information from the City, County Assessor’s office, and focused fieldwork;
 - Existing land use designations and zoning districts;
 - Vacant and opportunity sites, based on technical analysis and fieldwork;
 - Urban design structure: nodes, corridors, focal points, districts, pedestrian environment, opportunities for connections;
 - Public facilities (schools, parks, fire stations, and other public facilities);
 - Objectives identified in previous planning and design studies, including the General Plan and the various planning and zoning documents affecting the area.

2-C Prepare Access, Connectivity, Transit, and Parking Analysis (N\N; K). Kittelson, with support from N\N, will build on the transportation background report prepared for the Hayward 2040 General Plan focusing on the Plan Area. BART and AC Transit staff will be consulted in addition to City staff. This information will be used to develop a multi-modal access and connectivity strategy for the downtown area as part of the “enhanced” Circulation Element as well as serve as the basis for the environmental setting for the EIR. This effort would include:

- Current and future street classifications and roadway improvements
- The latest BART station access study as well as specific station access and circulation needs both internal and external to the station, including intermodal transfers, wayfinding, accessible transit information, and real-time technology as well as station capacity to accommodate the future growth.
- Amtrak Station access and circulation.
- Recent studies of traffic operations and traffic flow related to the Loop.
- Safety, including reported vehicle, bike, and pedestrian-related collisions from SWITRS as well as security and safety in downtown based on police reports.

As part of this task, opportunities and constraints will be identified. The biggest challenge to address is the Downtown Loop, which has created a constraint for shoppers and diners due to the challenging access for all modes.

2-D Conduct Market Demand Analysis (EPS). EPS will characterize the market support for various types, densities, and price points of housing, as well as retail, office, and hotel space. EPS will build on existing data and studies as much as possible (including ongoing market and feasibility analysis work EPS is currently conducting as part of the City’s assessment of the City Center and Mervyns

sites) to create a fuller portrait of the qualitative and quantitative demand for development in downtown Hayward in both the near- and longer-term.

2-E Prepare Updated Historic Context Statement (G). Garavaglia will update the 2010 Historic Context Statement for the Downtown Planning Area.

2-F Conduct Infrastructure Analysis (BKF). BKF will research existing conditions and develop background infrastructure assessment that identifies the major utility infrastructure that serves the area. Based on the data collected and site review, BKF will assess the infrastructure to determine the suitability of the existing systems to serve the specific plan area.

2-G Conduct an Open House/Community Workshop #1 (D&B). Conduct a community workshop visioning session to assist the team in understanding issues and considerations from a community perspective. This could be conducted as a formal workshop, drop-in open house, or other community event. Regardless of the format, the objectives are:

- Confirm vision for Downtown established in the General Plan;
- Provide an overview of the specific plan and environmental review process;
- Present findings from the existing conditions technical analysis; and
- Engage community members in a dialogue about their vision for downtown and their concerns and priorities.

Results of the Workshop will be summarized in a short report.

2-H Task Force Meeting #2 (D&B). The existing conditions and opportunities analysis will be presented to the Task Force for their review and comment.

2-I Conduct Joint City Council and Planning Commission Meeting #1 (D&B). Results of the existing conditions and market demand analysis, and the workshop will be presented at a joint City

Council and Planning Commission meeting. Their feedback and ideas for alternatives will be gathered to inform the next task.

Meetings	Products
<ul style="list-style-type: none"> • Open House/Community Workshop #1 • Task Force Meeting #2 • CC/PC Meeting (1) 	<ul style="list-style-type: none"> • Opportunity Sites Analysis • Transportation Analysis • Market Demand Analysis • Historic Context Statement • Infrastructure Analysis • Community Workshop report

Task 3: Ideas and Concepts

Objective: Engage community and decision-makers on choices/concepts relating to: land use generally within the overall framework of the General Plan); densities/intensities/desired building design characteristics; nodes and focal points; linkages enhancement; streetscape improvement proposals; transit, bikeway, and pedestrian design choices.

3-A Frame Choices (D&B, K, NN). In consultation with staff, prepare materials for community charrette “stations” that consider different alternatives, consisting of maps, graphics, images, and accompanying text. The concepts will consider revitalization strategies, basic circulation patterns, and development opportunities. The alternatives will explore opportunities for land use intensification; development on opportunity sites; extent of downtown core; land use distribution, mix, type, and intensity of development; building heights; linkages to BART/transit access and circulation for various transportation modes; and parking.

3-B Key Opportunity Sites Concepts and Feasibility Analysis (FP; EPS; D&B). In consultation with D&B, FP will develop prototypical massing for each of the three major opportunity sites that reflect various development programs, use mixes, height/intensity, and parking standards/arrangements.

For each site, EPS will estimate the values that may be expected compared to the expected costs of new construction to estimate the residual land val-

ues. Among other things, this analysis can be used to refine the development program, estimate the amount of subsidy and/or market appreciation that may be required to make those uses feasible.

Kittelson would conduct a preliminary evaluation of potential alternatives. This evaluation would consist of trip generation estimates for the opportunity sites, connectivity and access to transit, and other more qualitative measures for this preliminary evaluation of alternatives. In addition Kittelson could apply the findings from the Cannery travel survey to apply appropriate trip generation reductions for the modeling.

3-C Community Charrette on Concepts and Ideas (D&B, NN). Conduct a community charrette in which options and possibilities for opportunity sites and the Downtown planning area as a whole can be explored and compared. We envision a half-day long drop-in session with “stations” on various topics. Structured feedback will be sought through forms, post-its, or drawing mark-ups.

3-D Task Force Meeting #3 (D&B). The TF will discuss the concepts and review feedback from the community charrette to identify preferred plan components.

3-E Planning Commission and City Council Study Sessions (D&B). In one meeting each of the Planning Commission and the City Council, results from the community charrette and opportunity sites feasibility analysis will be presented and discussed. We will look for direction from the decision-makers on preliminary direction for a Preferred Plan and its components.

Meetings	Products
<ul style="list-style-type: none"> • Community Charrette • Task Force Meeting #3 • Planning Commission & City Council 	<ul style="list-style-type: none"> • Key Choices Workshop Boards • Opportunity Sites Concepts and Analysis

Task 4: Plan Components and Policy Framework

Objective: Develop specific recommendations to be included in the Downtown Specific Plan, including a preferred land use and circulation plan and other key maps/diagrams, densities/intensities, a framework for policy development, urban design standards, and an infrastructure needs assessment. Together these plan components will establish the framework for the plan and a strategy for implementation.

4-A Stakeholder Engagement (D&B). As specific proposals are drawn, we will conduct up to five meetings with stakeholders such as Cal State East Bay, the Historical Society, the Chamber of Commerce, and others to feedback before the Preferred Plan is finalized.

4-B Prepare Preferred Land Use and Circulation Plan and Policy Framework (D&B). A Preferred Plan for land use and circulation, together with key goals/policies, will be developed. The plan will be primarily a series of graphic depictions, and will describe all proposed land uses, including any land use mix requirements or incentives and major public improvements. Goals and key policies will be prepared to establish the guiding principles of the plan and framework for policies and implementation actions: such as strategies for improving transit access and multi-modal connections.

4-C City Council and Planning Commission Meetings. In one meeting of each body, the Planning Commission and City Council will review the Draft Preferred Plan and key goals/policies and “sign off” on these before work on plan components begins. Any needed changes to the Preferred Plan will be made following the decision-making meetings.

4-D Multi-Modal Access, Connectivity, and Transportation Strategy (N\N, K). Collaborating closely with BART and AC Transit, N\N and K will work to develop strategies to improve connections between Downtown Hayward, Hayward BART station, and surrounding destinations, including Amtrak, Cal State East Bay, Chabot College, and

industrial employment areas to the east. This will include analyzing and making recommendations regarding all modes of transportation within the project area, addressing elements such as:

- Complete Street typologies that address modal priorities;
- Key pedestrian corridors;
- An effective parking plan (see Task 4-D);
- An integrated transit network; and
- BART station plaza improvements.

The recommendations will be designed to help achieve overall community goals for economic development, environmental protection and quality of life.

4-E Parking Strategy (N\N). This strategy will build off of the recent parking study led by CDM Smith, assessing parking occupancy in the downtown area and developing recommended strategies to address parking demand and pricing. Strategies considered will include:

- Development of appropriate vehicular and bicycle parking standards and strategies, given the land use goals and vision for the Plan.
- Shared parking strategies to maximize the efficiency of existing parking facilities, limit the construction of unneeded new parking facilities, and maximize the feasibility of the construction.
- Appropriate pricing strategies and/or permit parking programs
- Potential expansion of the South Hayward BART station JPA, with attention to the impacts of the parking fees implemented in South Hayward and city-owned garages.

N\N will also propose Transportation Management Strategies to reduce parking demand and encourage non-auto modes of transportation.

4-F Draft Design Standards and Guidelines (Team). Draft design standards and guidelines will be developed that articulate sufficient detail to guide future development. They will draw from community and stakeholder input received

to date as well as policies and strategies contained within MTC's Transit-Oriented Development and Pedestrian Program and Policy Framework. Contents and topics will include:

- Densities, intensities, and building heights (D&B);
- Site planning, building form, and building orientation (FP);
- Historic Preservation Standards and Guidelines (G).
- Street and streetscape design sections, that include landscape, pedestrian/bicycle pathways and crossings, and streetscape furniture guidelines (BDP); with N\N support on concepts for street modifications for key access corridors, and recommended dimensions, lane configurations, and other transportation-related standards.
- Gateway treatment recommendations and sign policies (i.e. legibility, architectural compatibility, etc.; BDP)
- Special treatments such as bus stops, walkways, bicycle parking, and other points of interest/accent points (D&B; BDP)
- Station access design, including multi-modal connections and ADA requirements (N\N);

4-G Community Open House on Key Strategies (Team). Conduct a community workshop or open house to present the key strategies and solicit feedback. This could be conducted as a formal workshop or drop-in open house.

4-H Infrastructure Needs Assessment (BKF). BKF will prepare utility demand forecasts to determine whether the current infrastructure may be capable of serving proposed improvements. Make recommendations on how to improve utility systems or identify future studies that may be needed. Develop infrastructure strategies for improving and/or replacing infrastructure in the core area to facilitate business attraction. Develop an order of magnitude infrastructure Engineer's Forecasts (based on a per

lineal foot cost of roadways and major utility improvement) for use in determining an order of magnitude cost for the infrastructure improvements.

4-I Implementation Plan and Financing Strategy (EPS). The implementation plan and financing strategy will include consideration of public funding sources, such as infrastructure financing district (IFD), land-secured financing (such as a Mello Roos CFD special tax), as well as development impact fees and other financing tools. EPS will detail sources and uses of funds for public improvements, considering the financial capacity of proposed development and responsibilities of both public and private participants. Prepare a preliminary phasing strategy for real estate development and the construction of infrastructure improvements. EPS will integrate the preferred alternative into its financial model to test feasibility.

4-J Task Force Meetings #4 & 5 (D&B). The Task Force will discuss and review the preferred plan, key strategies, design and guidelines standards, and infrastructure needs assessment. Feedback from the Task Force will help to revise and consolidate components into the Draft Specific Plan.

Meetings	Products
<ul style="list-style-type: none"> • Community Open House • Task Force Meeting #4 & 5 • City Council and Planning Commission (2) 	<ul style="list-style-type: none"> • Preferred Plan and Policy Framework • Transportation and Parking Strategies • Draft Urban Design Standards • Infrastructure Needs Assessment • Implementation Plan

Task 5: Draft Downtown Specific Plan

Objective: Prepare the full Draft Specific Plan, incorporating the major substantive content developed during preceding tasks.

5-A Administrative Downtown Specific Plan (Team). Prepare the Specific Plan with extensive illustrations and photos,

using strategy reports from Task 4. Up to four ground level photo simulations or hand sketches will be prepared. Content of the Plan will include:

- *Context.* Planning process, public participation efforts, policy framework with context, vision, and goals.
- *Land Use.* Land use designations, permitted mixes, and development intensities. Development potential, including market-rate and affordable housing units, building square footage, population and job projections.
- *Design Standards and Guidelines.* Pedestrian- and transit-oriented land use, building, open space, sustainability, historic preservation, and street/urban design standards and regulations that enhance the walking environment and promote transit use and other alternative modes of transportation.
- *Key Opportunity Sites.* Concepts and guidelines for development of key opportunity sites previously studied.
- *Circulation and Access.* Key improvements for circulation, access and connectivity, including pedestrian and bicycle paths, integration with the broader citywide context, BART ridership projections and station access by mode, and parking management strategies.
- *Affordable Housing.* The Plan will build on the City’s most recently adopted Housing Element and recommend any additional policies or strategies to maintain consistency with current housing regulations and case law and enable an array of housing choices in the Downtown.
- *Infrastructure and Public Facilities.* Schools, parks, and any other special community facilities, and public infrastructure improvements, such as the station platform, that support policy and plan implementation.
- *Implementation Program.* The implementation program will collect in one place measurable actions, new policies, an estimated timeline for implementation (including near-

and longer-term priorities), phasing of new infrastructure and public developments, and the infrastructure financing program.

- *Environmental Resources and Review.* Policies identified during the concurrent environmental review process that may be needed to mitigate adverse environmental impacts.

5-B Task Force Meetings #6 and 7 (D&B). The Task Force will meet two times during preparation of the Draft Specific Plan to review specific proposals, policies, and strategies.

5-C Public Review Draft Specific Plan (D&B). Based on feedback from City staff and the Task Force, a Public Review Draft Plan will be prepared for discussion before the community open house/workshop and public hearings.

5-D Community Open House (D&B). The Draft Specific Plan will be presented to the public for review and comment in a drop-in, “open house” format.

Meetings	Products
<ul style="list-style-type: none"> • Task Force Meetings #6 and 7 • Open House/Community Workshop #3 	<ul style="list-style-type: none"> • Administrative Draft Specific Plan • Public Review Draft Specific Plan

Task 6: Environmental Impact Report

Objective: Prepare the Draft Environmental Impact Report (EIR), which will be a Program EIR for the Specific Plan and provide project-level analysis for up to three key opportunity sites.

6-A Notice of Preparation for the EIR. Prepare the Notice of Preparation for the EIR. (This will likely be completed during the Existing Conditions analysis.) A Scoping Meeting on the EIR will be held following the NOP; this could be integrated as part of a regular Planning Commission meeting.

6-B Establish Significance Thresholds (D&B). Determine significance thresholds to be used in the impact analysis. These will be based on CEQA Guide-

lines Appendix G, other recent State guidance, and the City's recent General Plan EIR.

6-C Environmental Setting and Impact

Analysis. The effect of Specific Plan policies and development potential on the environment will be analyzed and significant impacts will be identified. The impact analysis will be comprehensive in scope, covering all CEQA requirements.

As required by CEQA Guidelines, the effects of the project will be defined as changes from the environmental setting that are attributable to the project, under reasonable buildout of the Draft Specific Plan. Maps, graphics, tables, and charts will be used to depict clearly the location and nature of any potential significant impacts identified in the Draft EIR, and any other relevant information. Specific topic areas expected to be addressed in the Draft EIR are summarized below:

- *Land Use (D&B).* Analysis will consider potential changes in land uses that could divide established communities, displace existing housing or population, or conflict with existing plans.
- *Traffic and Transportation (K).* Analysis of impacts related to incremental growth associated with the Plan for all modes of traffic including automobiles, transit, bicyclists, and pedestrians. To the extent possible, the analysis will be based on the recently completed Hayward 2040 General Plan and ensure a scaled down level of analysis fully consistent with the policy based general plan EIR but with more detail around the opportunity sites.
- *Air Quality (D&B).* Assess consistency of the Plan with the regional Bay Area Air Quality Management District's Clean Air Plan, with reference to population and employment forecasts as well as trends in vehicle miles traveled.
- *Energy, Climate Change and Greenhouse Gas Emissions (D&B).* Analyze impacts associated with energy use and GHG emissions from the Plan as contributions to the cumulative impact of GHG emissions. Develop energy use and GHG emissions estimates and projections for the Existing Condition, No Project (a Business-as-Usual Future Condition), and a Future Condition that considers State Mandates. These estimates will be based on a combination of residential, commercial/ industrial, transportation, and waste emissions.
- *Noise/Vibration (CSA).* Conduct long-term (i.e., 72-hour) continuous noise measurements at up to five locations in the plan area (e.g., Hwy 238, Hwy 185, A Street, D Street, and the BART railway). Assess the potential for increased exposure to noise or vibration as a result of the implementation of the Plan, over the short term and long term. Develop existing and future noise contours for the Plan and qualitatively discuss overall impacts.
- *Biological Resources (D&B).* Assess the potential for impacts to special status species and potential conflict with local policies and ordinances, as a result of the Plan.
- *Safety, Hazards, and Toxics (BASE).* Assess potential impacts on general public health and safety; the potential for new development or redevelopment to result in areas where there are public safety issues or hazardous materials; potential safety hazards related to the nearby airport; and potential conflicts with emergency response plan or emergency evacuation plan.
- *Geology and Seismicity (BASE).* Review available geologic and seismic hazard mapping to describe of existing conditions in the downtown area. Analyze potential impacts related to geology, soils, and seismicity that may result under development of the proposed Plan.
- *Hydrology, Drainage, and Water Quality (D&B, BKF).* Assess whether implementation would violate water

quality standards or waste discharge requirements; deplete or interfere substantially with groundwater, alter drainage patterns or cause erosion or siltation effects; increase polluted runoff or exceed drainage system capacity; or result in flood hazard.

- *Public Facilities and Services (D&B, BKF)*. Assess potential impacts to public services such as schools, solid waste, police facilities, fire fighting facilities, and utilities.
- *Cultural and Historic Resources (D&B, G)*. Assess potential impacts to cultural and historic resources as a result of implementation of the Plan.

6-D Mitigation Measures. Practical and feasible mitigation measures to reduce the environmental impacts of implementation of the Specific Plan will be identified as needed, as well as the parties responsible for implementation will be identified. Mitigation measures will be incorporated as policies within the Specific Plan, where feasible.

6-E CEQA-Required Impact Analysis. As required, additional impacts need to be assessed beyond the detailed analysis by topic area. These include Growth-Inducing Impacts, Significant Environmental Effects of the Proposed Project, Significant Irreversible Environmental Changes, and Effects Found Not to Be Significant.

6-F Project Alternatives. This section will also include analysis of the No Project Alternative, which will be the continuation of existing land use regulations and two additional alternatives. The relative merits and disadvantages of the alternatives will be assessed and compared with the proposed Specific Plan. An “environmentally superior” alternative will be identified. The alternatives analysis will be less detailed than the analysis of the proposed project.

6-G Administrative Draft and Draft EIR. Prepare Administrative Draft EIR. Upon review and comment by appropriate City staff, the Draft EIR will be prepared for distribution.

6-H Notice of Completion (D&B). Prepare the Notice of Completion (NOC) for the Draft EIR for distribution.

6-I Final EIR (D&B, Team as needed). Following the 45-day public review period, a response to comments will be prepared. This, together with the Draft EIR, will constitute the Final EIR. Because the Specific Plan will be “self-mitigating,” and any mitigation identified will be incorporated into the final Specific Plan presented for Council action, a separate mitigation monitoring and reporting plan will not likely be necessary. The City shall prepare the Findings of Fact and Statement of Overriding Considerations, if required.

Meetings	Products
<ul style="list-style-type: none"> • EIR Scoping Meeting 	<ul style="list-style-type: none"> • Administrative Draft EIR • Draft EIR • Final EIR • Notice of Completion

Task 7: Zoning

Objective: Prepare an updated zoning ordinance for Downtown, with the intention of streamlining proposed development project review for new projects, enabling greater flexibility in uses while ensuring compatibility and design consistency, and creating a cohesive “look and feel” for the planning area. We will work with City staff on the best combination of different zoning approaches.

7-A Administrative Draft Specific Plan Zoning Code (D&B). Based on technical analysis, design standards and guidelines, and plan policies, prepare an Administrative Draft Specific Plan Zoning Code. The code format will be based on discussions with Staff and/or the Planning Commission, and may include form-based elements as well as use-based and/or performance-based elements. It will include building form standards, frontage types, public space standards, administrative standards, incentives, definitions, and updated mixed use parking regulations. Regardless of the approach, the Zoning Code would be extensively illustrated, and designed to be user- and implementation friendly.

7-B Zoning Code Workshop (D&B). Review Draft Specific Plan Zoning Code at a Community Workshop. This may be held as part of a regularly scheduled Planning Commission meeting.

7-C Public Review Draft Zoning Code (D&B). Review all comments on the Draft Specific Plan Zoning Code and prepare the Public Review Draft. Prepare an Administrative Draft for City staff review and revise based on a consolidated set of comments. Meetings and/or calls with City staff will be scheduled to review outstanding issues.

Meetings	Products
<ul style="list-style-type: none"> Zoning Code Workshop 	<ul style="list-style-type: none"> Administrative Draft Code Public Review Draft Code

Task 8: Public Review and Adoption; Final Specific Plan

Objective: Conduct the public review and successfully take the Draft Specific Plan and EIR through the public hearing process. The Specific Plan will be revised after adoption to reflect the Council's decision.

8-A Public Hearings. Present the Specific Plan and EIR at two Planning Commission and two City Council hearings for review and adoption.

8-B Adopted Specific Plan. Following adoption by the City Council, revise the Draft Plan to incorporate specific text and diagram changes made by the City Council as part of adoption, if any.

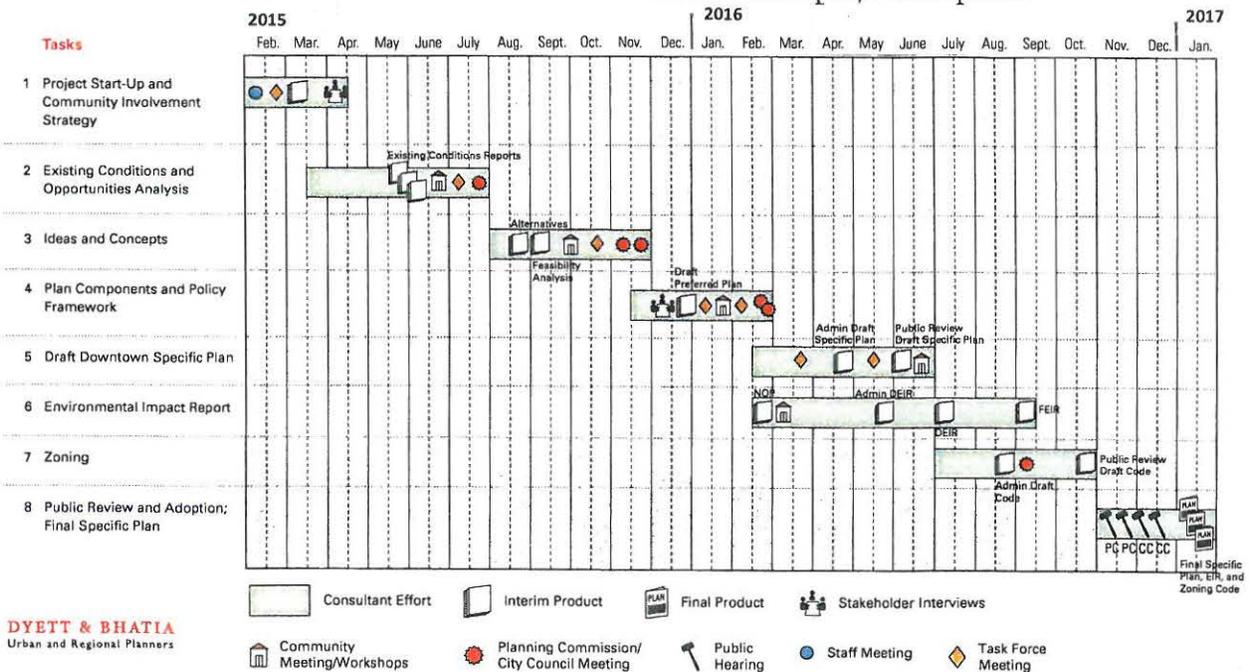
Meetings	Products
<ul style="list-style-type: none"> Adopted Specific Plan 	<ul style="list-style-type: none"> Planning Commission Hearings (2) City Council Hearings (2)

1.5 SCHEDULE

The schedule proposed for project is presented below. The graphic shows a 17-month schedule to release of public review drafts of the Specific Plan and the Draft EIR, and 19 months to release of the Final EIR. With another two months of hearings, the project should be completed in 21 months from ini-

tiation. This schedule provides flexibility for completion within two years, even if additional time is needed for meetings, outreach, and decision-making at key steps.

Dyett & Bhatia has been able to deliver on similar schedules—we completed the full public review drafts of the Windsor Station Area/Downtown Specific Plan and EIR in 14 months after project inception.



DYETT & BHATIA
Urban and Regional Planners

DATE: January 20, 2015
TO: Mayor and City Council
FROM: Director of Human Resources
SUBJECT: Approval of Temporary Appointment of Communications Operator

RECOMMENDATION

That the City Council adopts the attached resolution for exception to the one hundred and eighty (180) day waiting period required for CalPERS retirees in order to temporarily appoint Leah Bethea to the position of Communications Operator in the Hayward Police Department effective January 26, 2015.

BACKGROUND

As of January 1, 2013, CalPERS requires a retired employee to wait a minimum of one hundred and eighty (180) days before accepting temporary employment with a CalPERS agency. Per Government Code 7522 (f)(1), an exception to the one hundred and eighty (180) day waiting period may be made if the employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before one hundred and eighty (180) days have passed and the appointment has been approved by the governing body in a public meeting. The Government Code also limits compensation to the hourly rate for the position that is most closely related to the duties performed. For the position being proposed, the hourly rate that most closely relates to the duties performed is the Communications Operator classification. By law, temporary employees may not receive benefits, compensation in lieu of benefits, or any other form of compensation.

DISCUSSION

The Communications Center responds to approximately 6,100 emergency and 2,100 non-emergency calls per month. The Hayward Police Department is allocated nineteen (19) Communications Operators, four (4) Communications Supervisors and one (1) Communications Administrator. Typically, the Communications Center is staffed with one (1) Communications Supervisor and four (4) Communications Operators to meet minimum staffing requirements. Currently, the Communications Center has four (4) vacant Communications Operator positions and there are several more operators on modified duty or approved leave. Consequently, there is a critical need to fill Communication Operator positions to respond to the emergency and non-emergency needs of the Hayward community. The recruitment process to fill the Communications Operator vacancies is currently in progress at the Departmental interview stage; however, upon selection by the department, candidates are required to undergo a full background process and psychological evaluation. Both the background process and psychological evaluation last approximately eight (8) weeks total, indicating that the soonest date the

Communications Center would be able to fill current vacancies is in early March 2015. In addition to the extensive background and evaluation process, the training program required to onboard a new Communications Operator takes approximately eight (8) to twelve (12) months.

Leah Bethea has served in the capacity of Communications Operator, and most recently Communications Supervisor, for a total of more than twenty (20) years. She has undergone specialized training to help her in the performance of these duties. Her knowledge and experience performing the duties of a Communications Operator, as well as her knowledge and understanding of the City of Hayward geography make her an asset to the City. Ms. Bethea retired on December 29, 2014. The City of Hayward has a critical need for her extensive knowledge and specialized training in the Communications Center until qualified candidates complete the background process and requisite training. In accordance with Government Code §21224, Ms. Bethea's employment will not exceed nine hundred and sixty (960) hours per fiscal year and compensation will be set equivalent to the established salary for a Communications Operator.

Staff recommends that the City Council temporarily appoint the incumbent, Leah Bethea, to the position of Communications Operator effective January 26, 2015 at a rate of \$37.30 per hour to perform the functions described above and other comparable projects for which she is uniquely qualified. The appointment can be terminated at any time by either party; however, the current plan is that it would continue until new Communications Operators are recruited for and filled on a permanent basis, and until they pass the training program. Ms. Bethea is agreeable to the terms and conditions of the proposed temporary employment.

FISCAL IMPACT

There is no fiscal impact associated with this recommendation. Since no benefits or additional compensation beyond an hourly salary rate would be paid, the total cost of this temporary appointment would not exceed \$36,000 in a fiscal year, which will be offset by salary savings from the currently vacant positions in the Communications Center.

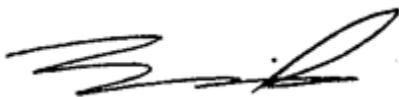
NEXT STEPS

If approved by the City Council, staff will prepare the necessary documents for this temporary appointment, ensuring that all Government Code requirements are met related to retiree employment.

Prepared by: Samantha Halverson, Human Resources Analyst I

Recommended by: Nina S. Collins, Director of Human Resources

Approved by:



Fran David, City Manager

Attachments:

Attachment I: Resolution

HAYWARD CITY COUNCIL
RESOLUTION NO. _____
Introduced by Council Member _____

RESOLUTION FOR EXCEPTION TO THE 180-DAY WAIT PERIOD
AND APPROVAL OF TEMPORARY APPOINTMENT
TO THE POSITION OF COMMUNICATIONS OPERATOR

WHEREAS, in compliance with Government Code section 7522.56 the City of Hayward must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since his or her retirement date; and

WHEREAS, Leah Bethea retired from the City of Hayward in the position of Communications Supervisor, effective December 29, 2014; and

WHEREAS, section 7522.56 requires that post retirement employment commence no earlier than 180 days after the retirement date, which is June 19, 2015 without this certification resolution; and

WHEREAS, section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the City Council of the City of Hayward and Leah Bethea certify that Leah Bethea has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council of the City of Hayward hereby appoints Leah Bethea as an extra help retired annuitant to perform the duties of the Communications Operator for the City of Hayward under Government Code section 21224, effective January 26, 2015; and

WHEREAS, the entire employment agreement, contract or appointment document between Leah Bethea and the City of Hayward has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum base monthly salary for this position is \$6,465.33 and the hourly equivalent is \$37.30, and the minimum base monthly salary for this position is \$5,312.67 and the hourly equivalent is \$30.65; and

WHEREAS, the hourly rate paid to Leah Bethea will be \$37.30, which is the maximum hourly rate for the position of Communications Operator; and

DATE: January 20, 2015

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: New Solid Waste and Recycling Franchise Agreement – Approval of New Franchise Agreement and New Refuse, Recycling, and Organics Services Rates – Introduction of Ordinance

RECOMMENDATION

That Council:

1. Introduces the attached ordinance (Attachment I) granting an exclusive franchise to Waste Management of Alameda County (WMAC) incorporating the proposed, recently negotiated Franchise Agreement;
2. Approves the attached resolution (Attachment II) authorizing the City’s participation in Phase II of StopWaste’s Mandatory Recycling Ordinance; and
3. Approves the attached resolution (Attachment III) authorizing the City Manager to execute an extension to the current Memorandum of Understanding (MOU) with the Oro Loma Sanitary District (OLSD) and WMAC.

BACKGROUND

The City entered into the most recent franchise agreement with Waste Management of Alameda County (WMAC) for services effective June 1, 2007. This agreement had an initial period of seven years, set to expire on May 31, 2014; however, on November 5, 2013, Council authorized a one year extension so that the contract is now set to expire on May 31, 2015. Under the original agreement, the City has the option of extending the contract for two more one-year terms, with the same terms and conditions as the current contract. So, if necessary, under the original terms, the current franchise can be extended through May 31, 2017. Last year, the City and WMAC amended the original ultimate expiration date and agreed to allow the City to extend the final expiration of the franchise through October 29, 2017, if necessary.

On July 9, 2013¹, Council considered options for securing solid waste and recycling services after the expiration of the current franchise. After review of the various options, staff recommended that negotiating a new agreement with the current service provider could potentially be the most cost-effective and efficient approach. Based on this recommendation, Council authorized an initial 120-day exclusive negotiation period with WMAC. Council then authorized two separate 120-day

¹ See Item 6 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca070913full.pdf>

extensions each on November 5, 2013², and March 4, 2014³. On July 1, 2014⁴, Council authorized a 150-day extension to the exclusive negotiations period, which extended the authorized negotiations time to December 8, 2014. These extensions were authorized due to incremental but steady progress made in the negotiations.

The City formed a negotiating team including the Assistant City Manager, Director of Utilities & Environmental Services, Environmental Services Manager, and Solid Waste Manager. The City Team started meeting with representatives of WMAC beginning in July 2013, shortly after Council authorized negotiations with WMAC.

DISCUSSION

The City entered into negotiations with WMAC with the following principles:

1. Holding the current and long-term rates as low as possible;
2. Meeting the City Council and the community's expectations for service enhancements,
3. Meeting new state and local regulations related to new mandatory services,
4. Meeting the Council's expectations to achieve the City's sustainability goals regarding reducing solid waste that is sent to the landfill, and
5. Meeting Council's direction regarding WMAC's responsibility to mitigate its impact on the community infrastructure related to delivery of its services.

The company, on the other hand, was primarily concerned with improving its revenue picture, while responding to City service needs

It is noteworthy that the nature of past WMAC contracts, including the existing one with Hayward, has been to partially rely on somewhat unrealistic expectations for economic and population growth to generate new business and revenue increases. These assumptions have resulted in the company finding in the out years of a contract that they are unable to meet their revenue projections. The company has been not only unable to achieve its anticipated return on investments, but in some years, even unable to meet the revenue requirements to cover their costs. The result is that every time that WMAC enters into a new franchise agreement, regardless of the municipality, there usually is a substantial rate hike just to bring the company to a reasonable starting point to have a sustainable business model.

For example, when the City negotiated its current contract in 2007, the new contract resulted in a 31.6% increase in rates. This was deemed necessary to stem the company's losses and give it what turned out to be an approximately 5.5% return on investment in the first year of the contract. Neighboring jurisdictions have experienced similar increases. For example, Castro Valley saw more than a 30% jump in 2012 and Newark a 25% jump in 2012. Just recently, the City of Oakland negotiated a contract, *after a bid process*, with WMAC and California Waste Solutions which will result in an initial increase of 36% and additional substantial planned increases in subsequent years.

² See Item 9 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca110513full.pdf>

³ See Item 3 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca030414full.pdf>

⁴ See Item 14 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca070114full.pdf>

Hayward's current contract has been impacted by lower revenues resulting from built-in rate adjustment formulas that did not, by design, keep up with inflation (i.e., the adjustment formula was based on paying only 80% of CPI), as well as by the great recession starting in 2008, which caused WMAC business activities to contract rather than expand; and they did not begin to improve until about 2012. In light of this, at the onset of current negotiations, WMAC's initial requests for rate increases started at the low- to mid-20% range, and as the company analyzed their costs more closely, rose to mid-30%, and eventually higher. Crucially, the company was also asking that the City tie its future annual rate increases to WMAC's labor cost increases, as has been done by various other jurisdictions, including most recently by the City of Oakland.

With assistance from HFH Consultants, the City Team and WMAC spent several months discussing their respective positions. Given the divergence of goals between the parties, sufficient progress was not made in the initial months. However, these sessions resulted in both sides gaining a better understanding of each other's barriers, constraints, and goals. The City Team was able to make its position known that it believes that as a private for-profit company, WMAC is entitled to a fair and reasonable profit, which they are apparently not making now. WMAC, on the other hand, realized that while the City Team understood and appreciated the company's need for a reasonable return on investment, City staff was not willing to recommend a 30% or more rate increase to Council through the negotiations process. WMAC also acknowledged that the City of Hayward was a long-term, stable, fair, and valuable customer and deserved to be treated as such. The negotiating teams then started working earnestly to find mutually acceptable terms, realizing that both parties had to compromise to reach a resolution.

After several more weeks of negotiations, the City Team offered a proposal whereby WMAC's first year revenue would increase by 10% plus the negotiated cost of any new services. The company would then receive a fixed 3% increase in each of the next two years and a CPI increase in the out years with a floor and a ceiling. Reflecting on the current contract where WMAC received an initial adjustment of 31.6% only to see an erosion of revenue and earnings due to the economic recession, WMAC was reluctant to accept terms with fixed increases. A compromise was reached in the form of the City agreeing to review WMAC's audited revenues, expenses, and profits for the Hayward operations in year three, and if, based on the findings of a formal third-party review, it is shown that the company is not realizing a reasonable return on investment (ROI), the City would consider adjusting rates in the following year (i.e., year four) to enable the company to earn a reasonable ROI in that year.

Following several weeks of review, WMAC responded that they would agree to such an arrangement only if they could be assured of an after-tax minimum ROI of 10% in year four. The City Team took that under advisement, and after reviewing the company's Hayward Franchise performance over the past several years, offered a minimum ROI of 5.5%. Several more weeks of negotiations sessions ensued before WMAC finally agreed to the City's counter offer.

Council Review During a Recent Worksession:

Staff presented an update to the City Council during a worksession on October 14, 2014⁵. Council was generally supportive of the direction that staff had taken and the principal points of the negotiations. Council made several comments regarding certain aspects of the terms including the need for public education and outreach, more gradual increases for commercial recycling so that the impact of a rate increase on businesses is much more gradual, the timing of the implementation of the new street (or vehicle) impact fee, and a reduction in the cost of distributing self-haul waste disposal coupons.

Staff reviewed all of comments in detail and worked with WMAC to incorporate them. Staff believes that all have been incorporated in the current version of the current version of newly negotiated Franchise Agreement.

Phase II of ACWMA Mandatory Recycling and Organics Collection Ordinance

In January 2012, Alameda County Waste Management Authority (ACWMA) Board adopted an ordinance to regulate organics collection and recycling by multi-family properties, businesses, and self-haulers. In February of that year, the City Council adopted a resolution⁶ opting into Phase I of the ordinance, which required all commercial customers with weekly trash collection service of four cubic yards or larger to subscribe to recycling service. That program has been successfully implemented.

Phase II of the ordinance would require all commercial customers, regardless of garbage service size, to subscribe to recycling service. It also requires all multi-family properties, and all businesses that generate significant organic waste, to subscribe to organics collection.

Due to the fact that organics collection services from multi-family properties are not offered under the City's existing franchise agreement, in November 2013⁷, the City Council decided to opt out of the Phase II program until such time when the City either negotiated or otherwise secured a new Franchise Agreement which would offer these services. Since these services will now be provided under the proposed Franchise Agreement, staff recommends that Council opt into Phase II effective with the effective date of the new Franchise Agreement. However, staff further recommends that Council defer enforcement of the mandatory participation provisions of the ordinance until staff has completed a thorough public outreach and education campaign. Staff recommends that enforcement of the organics collection be deferred to January 1, 2016, and that of the business recycling services to January 1, 2017.

CONTRACT TERMS

Duration: New contract duration will be identical to the current one: A seven year initial term, plus three one-year extensions at the sole discretion of the City.

Franchise Fees: No change.

⁵ See item 1 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca101414full.pdf>

⁶ See item 4 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca022812full.pdf>

⁷ See Item 9 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2013/CCA13PDF/cca110513full.pdf>

Rate Increase (or Revenue Enhancements):

- Initial Year: 10% revenue enhancement when new Franchise takes effect plus the cost of any new services directed by City. (WMAC will receive an overall 10% increase in revenue, which will come from a combination of fees/rates for new services, new fees on existing services, and an increase in rates.)
- Year two: 3% rate increase at the anniversary of the New Franchise Agreement
- Year three: 3% rate increase at the anniversary of the New Franchise Agreement
- Year four: Rate adjustment, capped at 10%, to allow WMAC to earn an after-tax ROI of 5.5%
- Year five: Rate adjustment equal to Consumer Price Index (CPI) (min. 3%, max. 6%)
- Year six: Rate adjustment equal to CPI (min. 3%, max. 6%)
- Year seven: Rate adjustment equal to CPI (min. 3%, max. 6%)
- Extensions: Rate adjustment equal to CPI (min. 3%, max. 6%)

Details of Year Four Rate Adjustment:

- City agrees to adjust the rates in year four such that WMAC's prospective After-Tax ROI, i.e., after-tax profits divided by gross revenues, in that year will be 5.5%.
- WMAC will provide the City with audited financials for year two.
- WMAC will pay cost of City's review of the audited financials, not to exceed \$40K.
- City will complete review of audited financials before the anniversary of the Franchise Agreement (FA) in year four
- Any necessary rate increase to reach after-tax ROI of 5.5% will be capped at 10%
- If the 5.5% ROI would require more than a 10% rate increase in year four, WMAC will have the following options:
 - Accept the 10% rate increase and continue with the FA under the same terms and conditions for the remaining term, or
 - Request a higher rate increase from the City
- If WMAC requests a higher rate increase and the City refuses to grant or negotiate the increase, then WMAC will have the following options:
 - Accept the 10% rate increase and continue with the FA under the same terms and conditions for the remaining term, or
 - Give notice to City to terminate the FA
- If WMAC gives the City notice to terminate the FA, the City will have thirty-six months from the next anniversary of the FA after the notice is given to terminate its FA with WMAC.
- If ROI calculations show a higher required rate increase in year four but WMAC agrees to continue with the 10% capped rate, then City agrees to negotiate in good faith with WMAC to find mutually acceptable solutions to address the revenue shortfall. If negotiations fail, WMAC could give the City notice to terminate the FA and the City would then have thirty-six months from the next anniversary of the FA to find another service provider.

NEW OR ENHANCED SERVICES AND ASSOCIATED COSTS

Increased Diversion of Waste from Landfill:

- City's diversion rate for 2013 was 74%. Council has a goal of 75% diversion. Staff is confident that with continued effort and program enhancements, the 75% goal can be achieved in the next year or two, independent of the new Franchise Agreement.
- CalRecycle, the state agency responsible for solid waste issues, is considering changes to the materials allowed to be included in the diversion calculation; the changes could effectively lower the City's current diversion rate.
- Through the Franchise negotiations process, WMAC has agreed to implement programs to divert additional tonnage from the landfill over the next three years to an additional annual diversion of 15,000 tons.
- Diversion of the additional 15,000 tons from the landfill would increase the City's diversion rate to nearly 80% by the end of the proposed Franchise Agreement if CalRecycle leaves the diversion calculation process unchanged.
- If CalRecycle decides to disallow some diversion credits, the additional 15,000 tons of diversion can help ensure that the City's diversion will still remain above 75%.
- The new Franchise Agreement requires WMAC to hire a full time staff person dedicated to promoting, implementing, and expanding waste diversion programs in Hayward. The position will initially be assisted by three part-time employees during the first few months of the new Franchise.

Two Annual Bulky Pickups for Single Family Homes (All customers on cart service)

- Current contract provides for a single annual appointment to collect two cubic yards of trash per household, as well as three large appliances, three household furniture items, four passenger tires, two mattresses, and two televisions or other electronic waste items
- Current participation rate is approximately 20%
- New Franchise Agreement will provide for a second appointment each year that would accept all of the same items and quantities listed above
- Twice annual opportunity can help increase participation in the program

Bulky Pickup for Multi-Family Properties

- Currently no service is provided (i.e., none embedded in the rates)
- This has been a top request of multi-family dwellers and property owners and managers
- New Franchise will provide four cubic yards per dwelling unit per year (same volume as the two annual pickups negotiated for single family customers)
- Property manager or HOA may arrange to use the property's four-cubic-yard allocation by scheduling delivery of roll-off containers at its convenience
- Property managers at smaller complexes, thirty or fewer units, will have the option to schedule appointments for individual dwelling units, similar to the single-family service.

Illegal Dumping Pickup

- Maintenance Services staff will continue to do much of this work but has asked that WMAC help by removing six pickups each week;
- WMAC will remove trash within twenty-four hours of notification
- City will investigate possibility of allowing requests from Access Hayward to be automatically forwarded to WMAC

Big Belly Trash Receptacles

- The pilot use of three pairs of Big-Belly trash and recycling containers on B Street in the Downtown has been successful.
- The container openings make it difficult to stuff large household trash in the trash receptacle.
- The recycling container makes scavenging difficult due to the locked door and small access holes.
- City will receive twenty pairs to be added to the current three pairs.
- The new pairs will not be solar powered.
- The new containers will be placed in the Downtown and elsewhere.

Traditional Trash Receptacles

- The FA allows for a total of 350 public trash receptacles to be serviced by WMAC.
- City currently has about 280 traditional receptacles in service.
- There are currently very few units in inventory for deployment.
- City will receive fifty new units.
- They will be the exposed aggregate type with a fixed flat top and side access ports, making it difficult to stuff large household trash in the trash receptacle.
- The new containers will be placed throughout the City as needed and upon request, if placement criteria are met.

Trash, Recycling, and Composting Receptacles for City Hall

- New Agreement includes replacement of trash and recycling receptacles at City Hall.
- Existing hodge-podge of containers will be replaced with appropriate sized and shaped containers so that City Hall can lead by example for minimizing waste and maximizing recycling and composting.

Organics Collection for Multi-Family Properties

- If Council authorizes the City's participation in Phase II of the Alameda County Waste Management Authority's (ACWMA, aka StopWaste) Mandatory Recycling Ordinance, all multi-family properties in Hayward, approximately 420 properties and 15,000 units, would be eligible and required to participate in organics collection. This service will be provided free of charge to these customers.

- Organics collection service will be available with the effective date of the franchise Agreement. However, to allow for adequate public education and outreach, enforcement would be delayed to January 1, 2016.
- Carts or bins will be provided to each multi-family property, and presentations will be made to property managers and tenants.

Bin Service for Recyclables at Multi-Family Properties

- Collection of recyclables is currently provided by Tri-CED using carts and 14-cubic yard roll-offs.
- Some multi-family property managers have asked for availability of bin service.
- Tri-CED currently does not have the capability to provide bin service as the company does not have the necessary vehicles or bins.
- Upon request by individual multi-family property managers for larger complexes, WMAC will provide collection of recyclables using bins.
- For those complexes that choose to not use cart service but request bin service, there will be a nominal surcharge, equivalent to 20% of the cost of comparable bin size garbage service, to switch to bins.

Commercial Recycling

- In the current Franchise Agreement, business recycling service is provided free of charge.
- This was a successful pilot program, but is not sustainable in the long run.
- Staff is proposing to set the rate for commercial recycling at 50% of the commercial garbage rate, to keep this service an attractive alternative to garbage service.
- However, based on Council comments during the worksession in October, in order to manage this increase properly and not cause undue hardship on businesses, this new rate will be implemented at 20% of the comparable commercial garbage rate for the first two years, 30% for the third year, 40% for the fourth year, and 50% for the fifth year and beyond.
- Currently all businesses subscribing to four-cubic-yard garbage service are required to participate in recycling services.
- If Council authorizes the City's participation in Phase II of the Alameda County Waste Management Authority's (ACWMA, aka StopWaste) Mandatory Recycling Ordinance, all businesses in Hayward would be required to participate in recycling services.
- Commercial service under Phase II will be available with the effective date of the Franchise Agreement. However, to allow for adequate public education and outreach, enforcement would be delayed to January 1, 2017.

Commercial Organics

- In the current Franchise Agreement, organics collection is provided at 50% of the garbage rate for comparable level of service. This rate structure would remain unchanged under the proposed Agreement.
- If Council authorizes the City's participation in Phase II of the Alameda County Waste Management Authority's (ACWMA, aka StopWaste) Mandatory Recycling Ordinance, all food waste generating businesses in Hayward would be required to participate in organics services.
- Organics collection service will be available with the effective date of the Franchise Agreement. However, to allow for adequate public education and outreach, enforcement would be delayed to January 1, 2016.

Coupons for Self-Haul to Davis Street

- WMAC currently offers 100 coupons per month on a first come, first served basis.
- Out of a total of 1,200 coupons distributed, only a small fraction are redeemed.
- Under the new Franchise Agreement, each residential (single-family and multi-family) dwelling unit will be eligible for one self-haul coupon each year.
- The total number of coupons distributed will be capped at 5,000.
- Coupons will be mailed to customers upon request or can be picked up in person at WMAC's downtown office on Main Street.

Main Street Customer Service Office

- No change from current contract. The downtown office will remain open to serve WMAC's customers, including all residents and businesses.

Street Impact Fee

- Council expressed a desire for any future franchisee to pay a street (vehicle) impact fee to mitigate the impacts that collection trucks have on the quality and state of repair of City streets.
- New Franchise Agreement will include a new fee for street repairs and rehabilitation, which will be 1% of annual revenue.
- Originally staff had contemplated recommending this fee effective year four; however, based on Council comments during the worksession discussions last October, the effective date will be year two.

Costs Related to Negotiations

- WMAC will pay the City \$150,000 to cover the City's consultant cost. This payment will be included in one-time expenses paid by WMAC as described below.

One-Time Expenses

- WMAC will pay 1% of its first year revenue to the City so that the revenue can be used to cover all of the one-time expenses including costs of purchasing Big Belly and traditional public receptacles, costs of receptacles for City Hall, and the consultant costs for these negotiations.

Street Sweeping Fee

- No change from the current contract, which requires WMAC to provide 2.5% of annual revenue.

Measure D Fund Augmentation

- The City receives funds from StopWaste to implement or continue recycling services.
- Approximately 80% of the annual Fund revenues pay for recycling and sustainability program staff costs, with the rest paying for public education and programs such as the Earth Day Poster & Essay Contest.
- The funds are allocated based on the tons of garbage disposed at the landfill; and as tonnage recycled through various programs has increased, the funds received have decreased to one-half that of several years ago, and the fund balance is dwindling fast.
- To maintain services, the City needs to replenish the City's Recycling Fund.
- Beginning in year four, WMAC will provide 1% per year of annual revenue towards these services.

Recycling Workers Wage Issue

- Residential recycling services in Hayward are provided by Tri-CED; TriCED workers are represented by Teamsters Local 70. The Local 70 contract is valid through 2017. WMAC provides commercial recycling services in Hayward. WMAC recycling workers are represented by International Longshore and Warehouse Union (ILWU) Local 6. WMAC and ILWU Local 6 recently reached agreement on a new contract.
- Recycling workers at certain classifications at either WMAC's Davis Street facility (represented by Local 6) or TriCED's Union City facility (represented by Local 70) are not currently paid at the same pay rates as those in San Jose and San Francisco.
- Cities that have entered into agreements with service providers that include an obligation to pay for negotiated labor cost escalations, such as Fremont and Oakland under its new contract, are compelled to pay the labor cost increases to bring these workers to parity with similar workers in San Francisco and San Jose. For example, Fremont has agreed to bring recycling workers' wages to parity with those in San Francisco and San Jose over six years as part of the City's agreement with its service provider, which obligates the City to pay negotiated labor cost increases. Oakland has tentatively agreed to the same mechanism in their new draft contract.

- At the October 14 Council worksession and December 2 Council meeting, TriCED, along with union representatives and advocates, attended the meetings and urged the Council to consider similar increase to bring certain classifications of recycling employees working under Hayward’s new franchise to the same pay levels. The new Franchise Agreement has been negotiated, and rates have been set, to accommodate these requests, and WMAC and Tri-CED have agreed to them and to bring their respective recycling workers serving Hayward to parity wage rates with similar workers in San Francisco and San Jose.

Total Required Revenue Increase:

The following is a listing of all WMAC’s additional expenses in the newly negotiated franchise agreement as of this writing:

New Services (ongoing annual costs):

2 nd Bulky Pick up for Single Family Customers:	\$58,678
Bulky Pickup for Multi-Family Complexes:	\$167,952
Illegal Dumping Assistance:	\$42,744
Organics Collection for Multi-Family:	\$247,831
Coupons for Self-Haul:	\$25,000
Additional Public Education:	\$205,889
Bagged Organic Compost for Public Distribution:	\$30,000

One-Time Expenses:

Big Belly Trash and Recycling Receptacles:	\$66,652
Traditional Public Trash Receptacles:	\$52,645
City Hall Trash, Recyc., & Organics Receptacles	\$40,000
Cost of the City’s Current Consultant (HFH):	\$150,000
Third year audit cost:	\$40,000

Additional City Fees:

One-Time Expenses Reimbursement (Year one)	1% of Revenue
Street (Vehicle) Impact Fee (Beginning Year two)	1% of Revenue
Measure D Augmentation (Beginning Year four)	1% of Revenue

Potential Sources of WMAC Revenue (to minimize rate increases):

In addition to the new revenue related to customer rate increases, there are other areas of potential additional revenue that help to offset the need for higher rate increases as part of the Franchise Agreement.

Commercial Recycling Fees – This new fee can bring in an estimated \$1.3M in the first two years. The revenue will increase over years three through five to more than \$3.4M annually.

Construction and Demolition Debris Recycling – A relatively significant source of revenue is related to charges for construction and demolition (C&D) debris recycling services. Under

the current Franchise, WMAC has almost exclusive rights for providing C&D recycling using roll off boxes. However, there are several other companies that have entered the Hayward market and may be in violation of the City’s Franchise Agreement. By tightening the enforcement of existing C&D service regulations, more revenues can be generated for WMAC, thus reducing the pressure for a general rate increase. The additional annual revenue has been estimated at \$360,000.

Demurrage Charge for Roll Off Boxes – When a customer requests a roll off box, WMAC charges a City-approved rate to deliver and remove the box. The rate is the same regardless of whether the customer keeps the box for one week or much longer. A “demurrage charge” would be applied when a customer asks for a roll-off box and does not arrange to have the roll-off serviced for an extended period of time, resulting in loss of revenue to the company. By placing a reasonable demurrage charge on this activity, customers would be more diligent about when to call for service, and in the cases of unavoidable or desired extended usage, the customer could keep the box longer and the company would be authorized to collect a reasonable fee. This new fee is estimated to generate approximately \$30,000 per year.

The following is a summary of new revenue sources:

Gradual New Fee for Commercial Service	\$1.3M to \$3.4M
C&D Regulation Enforcement	\$360,000
Demurrage Charge:	\$30,000
Rate Increases	Not to exceed 10%

MEMORANDUM OF UNDERSTANDING WITH WMAC AND OLSD:

The Council approved a Memorandum of Understanding (MOU) in 1997 between Oro Loma Sanitary District (OLSD), WMAC and the City regarding some areas in Hayward that have historically been served by OLSD for sewer and refuse services. These areas, which include about 3,500 single-family homes and multi-family residences in five locations, are generally located in the northern areas of Hayward between A and Longwood Streets and along Foothill Boulevard north of the City Center Drive (see the maps included in Attachment III).

Under that MOU, which was set to expire with the current franchise Agreement, the City was given the authority to provide recycling services in those areas. OLSD and WMAC have signed a new MOU whereby extending the same authority to the City for the duration of the new franchise. Staff recommends Council approve the attached resolution (Attachment III) authorizing the City Manager to execute the MOU.

ECONOMIC IMPACT

Both residential and commercial customers will see rate increases. As mentioned earlier, the first year residential and commercial rate increase should be set such that the combination of the new rates and the combination of current and new expenses and current and new revenues, would generate a total *revenue increase* of 10% for WMAC.

ACTUAL RATE INCREASES EFFECTIVE MARCH 1, 2015

Staff has calculated the new rates as follows:

Residential Rate Increase: 9.23% (includes garbage, recycling, and organics)

Multi-Family Rate Increase:

Garbage	6.15%	(organics is included in garbage rate)
Recycling	10.98%	
Typical Average Overall	8.5 - 10%	

Commercial Rate Increase:

Garbage	6.15%	
Recycling	(New rate)	
Organics	6.15%	
Typical Average Overall	(Varies)	(13.1% for the example shown on page 15)

Single Family Residential (and all other cart-based customers):

The standard monthly garbage, recycling, and organics collection and processing costs for a single family (or any other customer with standard cart service) would go up from current \$27.29 per month, to \$29.81 per month, or a total increase of \$2.52 per month. As mentioned earlier, with this increase, customers will get the additional or enhanced services mentioned in this report as well.

The following is a comparison of Hayward's current rate and its new rate, for residential single-family customers with standard service, compared with those of some nearby agencies:

- Current Hayward residential monthly rate: \$27.29
- Hayward's new rate: \$29.81
- What some area agencies with newer franchises are paying for monthly residential service:
 - Newark (Republic): \$28.91
 - Fremont (Republic): \$33.39 (For the most common service, i.e., 64-gallon cart)
 - Oakland (WMAC): \$36.82 (23.5% increase, with additional significant increases in years 2-5)
 - Castro Valley (WMAC): \$36.92 (After bid process, a 40+% increase two years ago)
 - Union City (Republic): \$39.43

Low-income Discount for All Cart Based Customers

A discount of \$7.74 per month is available for low-income customers with individual solid waste and recycling service. This discount is also available to low-income residents of mobilehome

parks with individual cart service. Currently, residents of six out of nine mobilehome parks in the City's service area subscribe to individual cart-based service. The low-income eligibility starts at a one-person household earning up to \$32,750 per year and income levels are higher for larger households.

Multi-Family Properties:

Multi-Family properties receive their garbage service from WMAC, based on the schedule of rates for commercial properties, and recycling services from Tri-CED, based on per unit charges. Given that commercial garbage rates will see a 6.15% increase and recycling cart service an increase of 10.98%, the overall rate increase for multi-family properties depend on the garbage service level. In general, most properties should see an increase in the 8% range and none over 10%.

The following table shows the impact of the proposed rates on a 50-unit multi-family property in Hayward that has a three-cubic-yard garbage bin, cart service for recycling, and a one-cubic yard organics bin. Such a property currently pays \$594.66 per month as detailed below. With the proposed rates, this customer would pay \$645.28, or an 8.5% increase. The following table also lists the rates paid by multi-family customers in surrounding jurisdictions.

Table 3. Multi-Family Rate Comparison (Assuming 50 units)

Name of Municipality (Franchisee)	Garbage (3 cy)	Recycling	Organics	Total
Newark (Republic)	\$309.91	\$46.85 (1 cy)	\$87.85 (1 cy)	\$444.61
Fremont (Republic)	\$197.80	\$5.83 Per D.U.	Not Offered	\$489.30
Current Hayward (WMAC)	\$307.66	\$5.74 Per D.U.	Included in garbage rate	\$594.66
Proposed Hayward (WMAC)	\$326.58	\$6.37 Per D.U.	Included in garbage rate	\$645.28
Castro Valley (WMAC)	\$696.78	Included in garbage rate	Included in garbage rate	\$696.78
Union City (Republic)	\$335.85	\$6.10 Per D.U.	\$64.18 (1 cy)	\$705.03
Oakland (eff. July 2015) (WMAC)	\$649.35	\$9.20 Per D.U.	Included in garbage rate	\$1,109.35

Commercial Customers:

Commercial customers would see a 6.15% increase plus a new rate related to the cost of commercial recycling. The new rate would start at a nominal amount (i.e., 20% of comparable garbage service rate for the first two years) and would be capped in year five at 50% of the comparable garbage service rate.

As shown in the table below, a commercial customer who, for example, subscribes to weekly collection of a three-yard garbage bin, a 1-yard mixed recycling bin, and a one-yard organics bin, will see their total cost go up from the current \$367.37 per month to a new \$415.32 per month (\$307.66 x 6.15% plus \$126.75 x 20% plus \$63.38) or an effective increase of 13.1%, or \$47.95 per month. Again, the higher rate increase for commercial customers is related to the fact that the businesses will be required to gradually pay for the commercial recycling cost. The following table lists the proposed rates and rates paid by commercial customers in surrounding jurisdictions.

Name of Municipality (Franchisee)	Garbage (3 cy)	Recycling (1 cy)	Organics (1 cy)	Total
Fremont (Republic)	\$195.45	\$65.21	\$116.76	\$377.42
Proposed Hayward (WMAC)	\$326.58	\$25.35	\$63.38	\$415.32
Newark (Republic)	\$309.91	\$46.85	\$87.85	\$444.61

Union City (Republic)	\$335.85	\$51.26	\$64.18	\$451.29
Oakland (eff. July 2015) (WMAC)	\$462.27	\$153.42	\$166.57	\$782.26
Castro Valley (WMAC)	\$696.78	Included in garbage rate	Included in garbage rate	\$696.78

Fremont rates for bins, which are used in this example, are lower than Hayward's (but the cost of service using drop boxes are higher there). While in this particular example, Fremont's rate appears substantially less, this is not the case for other commercial customers in Fremont who subscribe to a different set of commercial services.

Additional examples showing the impact of the proposed rates are included in Attachment IV.

It is important to note that because commercial recycling is currently provided free of charge, regardless of the container size, some businesses with small garbage service have opted for large commercial recycling containers. Because commercial recycling will be charged at 20% of the comparable garbage rate for the same size containers, these businesses are going to potentially see a rate increase far exceeding those mentioned above. Staff will work with these particular businesses to right-size their service, allowing them to pay for only the recycling containers that they truly need.

FISCAL IMPACT

Negotiation activities and drafting the new Franchise Agreement has no impact on the General Fund. WMAC has agreed to pay the cost of the City's consultant assisting with the negotiations. There has been and will continue to be staff time expended on contract negotiations, implementation and ongoing management, especially that of the City's negotiating team, the City Attorney and City Manager's offices. However, they are all within the budgeted hours for the respective departments. Any cross-departmental charges will be absorbed by special funds such as the Recycling Fund.

The new Franchise Agreement would benefit the City's General Fund with about 10% (about \$300,000) higher Franchise Fees in the first year due to higher revenues for the company resulting from new services revenues and general rate increases. There would also be benefits to certain special funds such as the Stormwater Fund, which pays for the cost of street sweeping, the street maintenance fund which would receive new street impact fees, and the Recycling Fund which will receive revenues that would augment the declining Measure D funds.

PUBLIC CONTACT

Beginning in March 2014, staff solicited input from various community groups regarding potential new services, enhancements to existing services and to identify any current service deficiencies. These needs have been evaluated, including any related cost impact, for inclusion in the new Franchise. Attachment V is a summary of the feedback received. Staff attempted to balance requests for new services with the desire to minimize rate increases.

In accordance with the requirements of Proposition 218, on December 5, 2014, a notice was prepared and mailed to all property owners and rate payers in Hayward. As some of the cost information and rate impacts had not been finalized at that time, the Notice indicated that the rate

increases would not exceed 10% (plus the cost of commercial recycling). The notice must be mailed forty-five days prior to the public hearing and the mailing date was selected to meet this requirement. The Notice advised the recipients that if they disagree with the potential increases they can protest, in writing, and that if Council receive protests from more than 50% of the rate payers, Council would not approve the new rates. To date, thirty-one protest letters have been received, two of which were from commercial customers. In addition, five petitions with a total of 129 signatures were received from mobilehome owners from the Pueblo Springs Mobilehome Park and the Eden Gardens Residents Club. For comparison, at the same time during the process of the public hearing for the existing Franchise in 2007, staff had received over 550 protest letters.

The protest letters and petitions under the current process include the following arguments:

- Proposed rate increases exceed CPI.
- Mobilehome park residents and multi-family residents have no need for the new services that have been proposed (i.e. Bulky Pick-ups and Free Compost).
- Did the City consider any haulers other than WMAC?
- Small households already pay for more trash service than is needed. While 20 gallons is the minimum cart size, some would like to have and pay for a 10-gallon cart.
- WMAC does not need such steep increases – one reason being that fuel prices are declining.
- Proposed rate increases should be put on a ballot for voter approval and that there is taxation without representation.
- The City should improve streets with the tax money that is already collected.
- Regarding new services:
 - Residents are currently not using their one bulky item pickup.
 - Ratepayers should not pay for another annual organic compost giveaway since it is a service already included in the current franchise agreement on page 59.
 - Ratepayer does not feel that the coupon to drop off waste at the Davis transfer station will be used.
- It is unfair that garbage collection is a required service.
- A commercial property commented that charging an escalating percentage of the regular collection fee for recycling does not make sense.

In addition, staff received thirty-two phone calls with comments and questions about the proposed rate increases. Several phone calls were regarding the rates charged to mobilehome park residents. The Proposition 218 notice listed rates for single-family customers different from those that apply to mobilehome park residents. For example, a twenty-gallon cart for a single-family home is proposed to be \$20.40 while the rate for a mobilehome park customer is proposed to be \$14.04. The lower rate is charged to customers in mobilehome parks where the park management receives one bill and each resident pays the park. The higher rate is charged for customers that receive their own bills and have their own individual accounts with WMAC. Two of the City's seven mobilehome parks have centralized billing. Staff intends to reach out to the other parks to ensure they are aware of the option to have centralized billing. Staff is also contacting individual residents/customers to inform them of the low-income discount that is available for low-income households receiving cart service for garbage. As mentioned earlier in the report, the proposed discount is \$7.74 per month.

In addition, staff received one letter with comments supporting the City's efforts to increase recycling and reduce litter.

A notice of this public hearing was published in the Daily Review on January 10, 2015.

Meetings with Chamber of Commerce:

During the development phase of the new services, in addition to contacting residential and business organizations, staff attended and made presentations at three separate Chamber of Commerce events. The first one was at the Chamber Mixer at Golden Peacock Restaurant. The other two presentations were made at workshops the Chamber convened for restaurants and food processors at City Hall in March and May of last year.

After the conclusion of negotiations, staff met with Mr. Kim Huggett, the Chamber's President & CEO, and briefed him on the proposed Franchise Agreement and the potential rate increase for commercial customers. Staff will be attending the Chamber's Government Relations Committee meeting on February 13 to present the key points of the new Franchise Agreement. However, all commercial rate payers received a copy of the Proposition 218 rate increase notice and to date, staff has receive two letters from commercial ratepayers or business owners protesting the rate increases (out of 2,500 total commercial customers).

Meeting with RHA – Southern Alameda County:

City staff met with members of the Board of the Rental Housing Owners Association of Southern Alameda County in September 2013 to discuss their comments regarding current and potential new services. Members expressed concern about the fees charged by WMAC for excess trash where the lid of the bin does not close and the amount of the rate increase. Staff also met with Board members in December 2014 to discuss their views of the October 14, 2014 City Council report. The Association followed up with a letter summarizing their comments (see Attachments Va).

Staff again met with Mr. Tom Silva, Board Member, Rental Housing Association-Southern Alameda County after the conclusion of the financial aspect of the Franchise Agreement. At the meeting, Mr. Silva highlighted the Association's concerns with WMAC, mainly the fact that WMAC has moved to a new system of charging for overflowing trash bins, defined as trash bins with lids that are not completely closed (as discussed in a RHA follow-up email, Attachment Vb). Staff has discussed these concerns with WMAC and has reached basic understanding that some measure of flexibility, i.e., if the lid is open up to six inches, will be put in place effective immediately. According to WMAC, WMAC and Mr. Silva have agreed to discuss RHA's concerns in more detail and address them during the upcoming year.

SCHEDULE

The schedule for completing this effort to approve and implement a new Franchise Agreement is summarized as below:

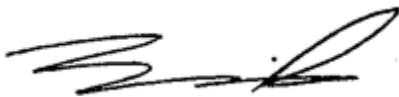
Council Authorized Initial Negotiating Period with WMAC

July 9, 2013

Council Extended Negotiating Period	November 5, 2013
RFP Issued for Consultant Services for Selecting the Franchisee	December 2013
Council Extended Negotiating Period and Authorized Contract with HF&H	March 4, 2014
Report to Council Summarizing Results of Public Outreach, Request to Extend Negotiating Period, and Request for City option for possible further extension of the current Franchise at City's option.	July 2014
Council Work Session to Receive an Update	October 14, 2014
Conclude Negotiations with WMAC	December 2014
Public Hearing and Council Action	January 20, 2015
Begin New Services	March 1, 2015

Prepared and Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Draft Ordinance Granting an Exclusive Franchise to Waste Management of Alameda County
- Attachment II Draft Resolution Authorizing the City's participation in Phase II of StopWaste's Mandatory Recycling Ordinance
- Attachment III Draft Resolution Authorizing the City Manager to Execute an Extension to the Current Memorandum of Understanding with the Oro Loma Sanitary District and WMAC
- Attachment IIIa Maps of Oro Loma Sanitary District Areas
- Attachment IV Proposed Rates and Comparison of rates with Surrounding Jurisdictions
- Attachment V Summary of Community Outreach Effort and Feedback
- Attachment Va Letter from Rental Housing Owners Association
- Attachment Vb Email from Rental Housing Owners Association

HAYWARD CITY COUNCIL

ORDINANCE NO. 15-

Introduced by Council Member _____

AN ORDINANCE GRANTING EXCLUSIVE FRANCHISE TO WASTE MANAGEMENT OF ALAMEDA COUNTY FOR SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC MATERIALS SERVICES

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

Section 1. Pursuant to the authority granted under Hayward Municipal Charter Article XV, Franchises, and Hayward Municipal Code Sections 11-1.00 et seq., the City Council hereby grants an exclusive franchise to Waste Management of Alameda County for solid waste, recyclable materials, and organic materials according to the terms and conditions set forth in the “Franchise Agreement for Solid Waste, Recyclable Materials, and Organics Materials between the City of Hayward and Waste Management of Alameda County, Inc.”, a copy of which can be reviewed in the City Clerk’s Office.

Section 2. The provisions contained herein describe and constitute all rights and obligations granted under the franchise, and supercede any prior agreements.

Section 3. The effective date of this ordinance shall be 30 days following adoption by the City Council. The franchise granted hereby shall not become effective until written acceptance thereof by Waste Management of Alameda County, Inc., shall have been filed with the City Clerk.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2015, by the following votes of member of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 15-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
OPTING INTO PHASE 2 OF THE ALAMEDA COUNTY WASTE
MANAGEMENT AUTHORITY'S ORDINANCE NO. 2012-1, REGARDING
THE IMPLEMENTATION OF ORGANICS COLLECTION AT MULTI-
FAMILY DEVELOPMENTS AND BUSINESSES AND REGULATING
RECYCLING BY BUSINESSES, MULTI-FAMILY RESIDENCES AND SELF-
HAULERS

WHEREAS, on January 25, 2012, the Alameda County Waste Management Authority (ACWMA) Board adopted Ordinance No. 2012-1 to regulate organics collection and recycling by businesses, multi-family residences and self-haulers; and

WHEREAS, on February 28, 2012, the City Council of the City of Hayward adopted Resolution No. 12-025 opting to participate in Phase 1 of said Alameda County Waste Management Authority's Ordinance No. 2012-1; and

WHEREAS, Phase 1 of the Ordinance requires all commercial customers that have weekly trash service of four cubic yards or larger to subscribe to recycling service; and

WHEREAS, Phase 2 of the Ordinance would require all commercial customers to subscribe to recycling service; and

WHEREAS, recycling service has been and will continue to be offered to all commercial customers; and

WHEREAS, Phase 2 of the Ordinance would require implementation of organics collection for all multi-family properties and for all businesses that generate significant organic waste; and

WHEREAS, implementation of organics collection for all multi-family properties will begin on March 1, 2015, and organics collection services for businesses will continue to be offered; and

WHEREAS, the Ordinance allows each municipality in Alameda County to opt out of participation in Phase 2 of said Ordinance by January 1, 2014; and

WHEREAS, on November 5, 2013, the City Council of the City of Hayward opted out of Phase 2 of Alameda County Waste Management Authority's Ordinance No. 2012-1 until negotiations for new waste and recycling services were completed and presented for consideration by the City Council; and

WHEREAS, the City of Hayward's participation in Phase 2 of the Ordinance is expected to significantly contribute to the City's ability to meet its landfill diversion goals.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby opts into Phase 2 of the Alameda County Waste Management Authority's Ordinance No. 2012-1. The City of Hayward will continue implementation of Phase 1.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

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. 15-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXTENSION TO THE CURRENT MEMORANDUM OF UNDERSTANDING WITH ORO LOMA SANITARY DISTRICT AND WASTE MANAGEMENT OF ALAMEDA COUNTY RELATED TO RESIDENTIAL RECYCLING PROGRAMS

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to execute on behalf of the City of Hayward an extension to the Memorandum of Understanding (MOU) with Oro Loma Sanitary District and Waste Management of Alameda County related to residential recycling programs in substantially the form of the MOU on file in the office of the City Clerk.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

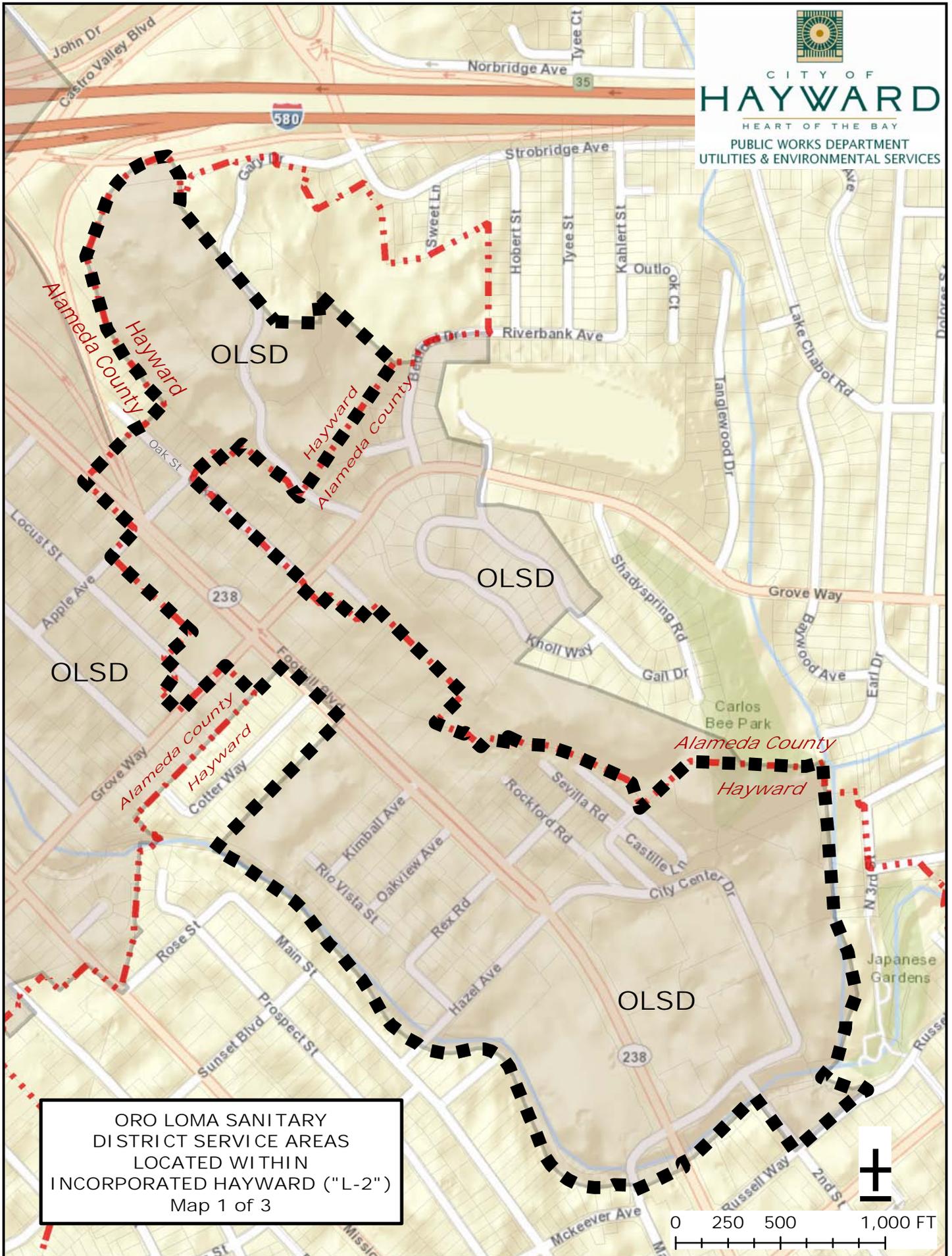
City Attorney of the City of Hayward



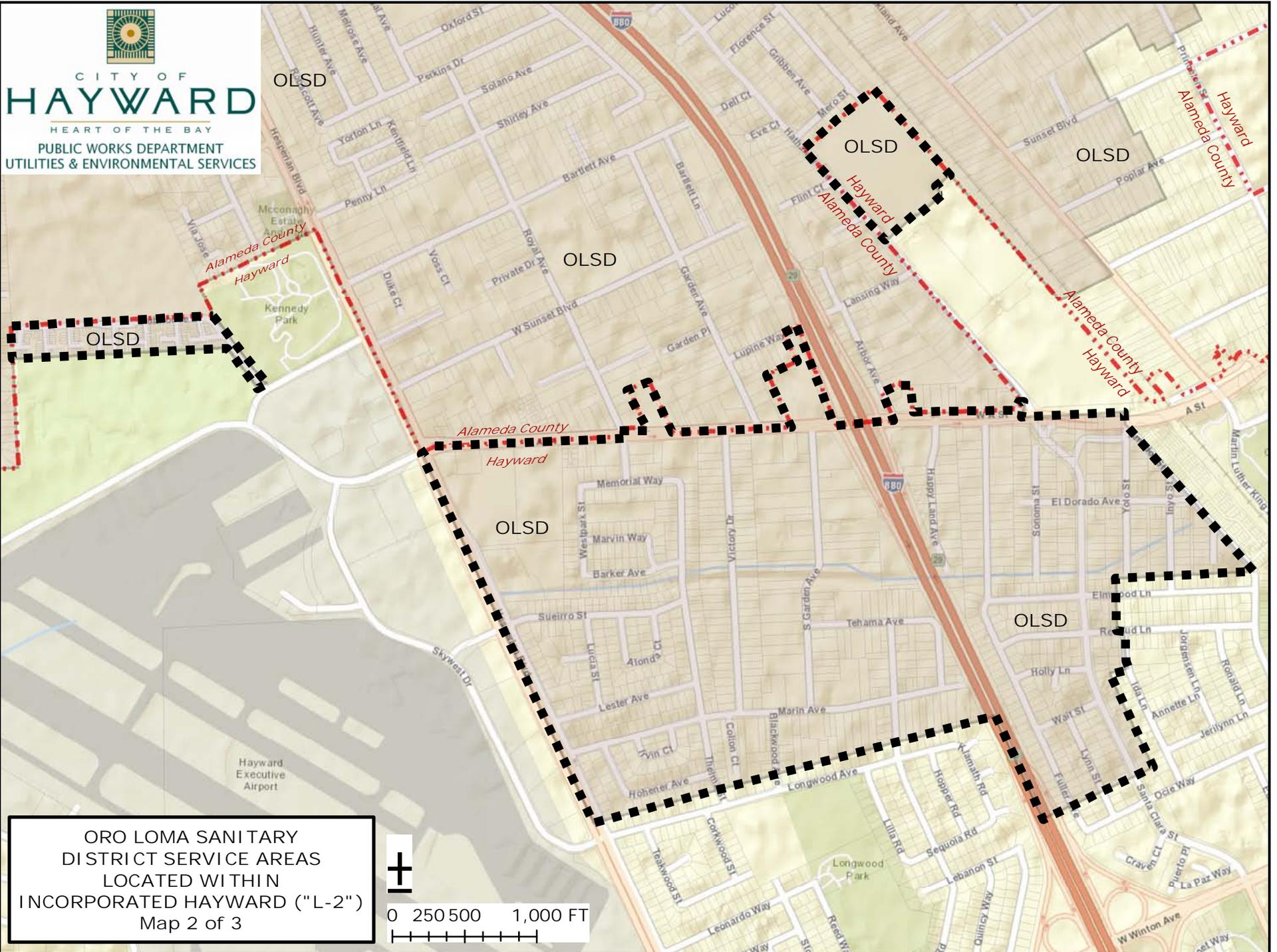
CITY OF HAYWARD

HEART OF THE BAY

PUBLIC WORKS DEPARTMENT
UTILITIES & ENVIRONMENTAL SERVICES



ORO LOMA SANITARY
DISTRICT SERVICE AREAS
LOCATED WITHIN
INCORPORATED HAYWARD ("L-2")
Map 1 of 3

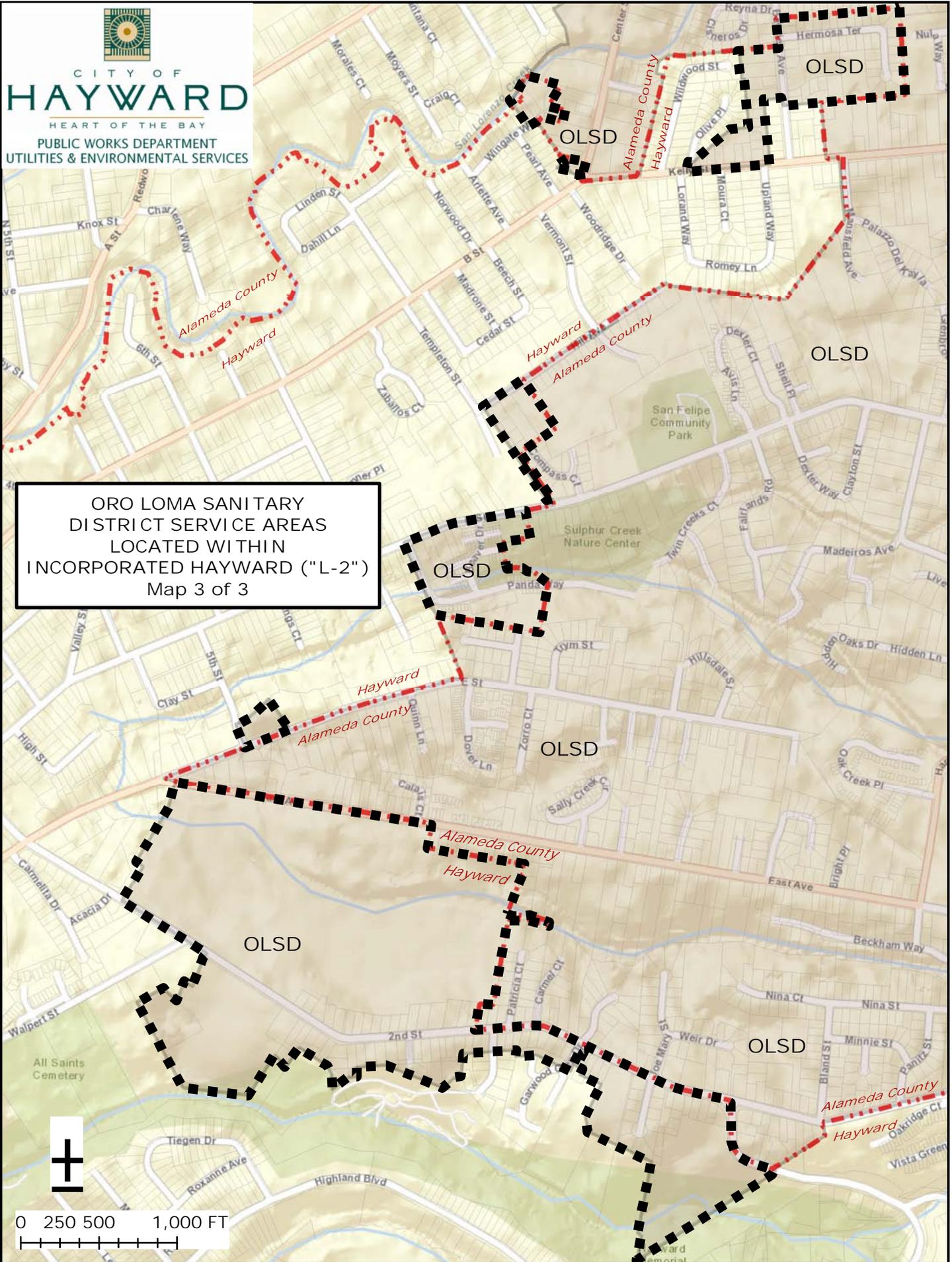


ORO LOMA SANITARY
DISTRICT SERVICE AREAS
LOCATED WITHIN
INCORPORATED HAYWARD ("L-2")
Map 2 of 3





ORO LOMA SANITARY
DISTRICT SERVICE AREAS
LOCATED WITHIN
INCORPORATED HAYWARD ("L-2")
Map 3 of 3



Examples of Rate Impact on Various Service Level Combinations and Comparisons with Surrounding Jurisdictions

Commercial

Commercial customers have many different combinations of services and container sizes and will therefore experience different overall increases in their monthly bills. The following examples are provided to show some hypothetical situations.

Table 1. Commercial Customer Examples

Example 1: Four-cubic-yard garbage bin and a two-cubic-yard recycling bin.					
	Garbage (4 cy)	Recycling (2 cy)	Organics	Total	% Change
Current	\$404.78	Included in garbage rate	NA	\$404.78	
Proposed	\$429.67	\$45.79	NA	\$475.47	17.5%

Example 2: Three-cubic-yard garbage bin, a one-cubic-yard recycling bin, and a one-cubic yard organics bin.					
	Garbage (3 cy)	Recycling (1 cy)	Organics (1 cy)	Total	% Change
Current	\$307.66	Included in garbage rate	\$59.71	\$367.37	
Proposed	\$326.58	\$25.35	\$63.38	\$415.32	13.1%

Example 3: 64-gallon cart for garbage and a 32-gallon cart for recycling.					
	Garbage (64-gal.)	Recycling (32 gal.)	Organics	Total	% Change
Current	\$38.50	Included in garbage rate	NA	\$38.50	
Proposed	\$40.87	\$4.82	NA	\$45.69	18.7%

Example 4: 64-gallon cart for garbage, no recycling service, and no organics service. (This business will be required to subscribe to recycling service. This example assumes the customer will choose the smallest recycling cart available (20 gallons).					
	Garbage (64-gal.)	Recycling (20 gal.)	Organics	Total	% Change
Current	\$38.50	NA	NA	\$38.50	
Proposed	\$40.87	\$3.00	NA	\$43.87	13.9%

Example 5: 64-gallon cart for garbage, a two-cubic-yard bin for recycling, and no organics service.					
	Garbage (64-gal.)	Recycling (2 cy.)	Organics	Total	% Change
Current	\$38.50	Included in garbage rate	NA	\$38.50	
Proposed	\$40.87	\$45.79	NA	\$86.66	125%

Example 6: 96-gallon cart for garbage, a one-cubic-yard bin for recycling, and a one-cubic yard organics bin.					
	Garbage (96-gal.)	Recycling (1 cy.)	Organics (1 cy.)	Total	% Change
Current	\$57.75	Included in garbage rate	\$59.71	\$117.46	
Proposed	\$61.30	\$25.35	\$63.38	\$150.03	27.7%

The following table lists rates paid by commercial customers in surrounding jurisdictions.

Table 2. Commercial Rate Comparison

Name of Municipality (Franchisee)	Garbage (3 cy)	Recycling (1 cy)	Organics (1 cy)	Total
Fremont (Republic)	\$195.45	\$65.21	\$116.76	\$377.42
Proposed Hayward (WMAC)	\$326.58	\$25.35	\$63.38	\$415.32
Newark (Republic)	\$309.91	\$46.85	\$87.85	\$444.61
Union City (Republic)	\$335.85	\$51.26	\$64.18	\$451.29
Oakland (eff. July 2015) (WMAC)	\$462.27	\$153.42	\$166.57	\$782.26
Castro Valley (WMAC)	\$696.78	Included in garbage rate	Included in garbage rate	\$696.78

Multi-Family Residential

The following table shows the impact of the proposed rates on a 50-unit multi-family property in Hayward that has a three-cubic-yard garbage bin, cart service for recycling, and a one-cubic yard organics bin. Such a property currently pays \$594.66 per month as detailed below. With the proposed rates, this customer would pay \$645.28, or an 8.51% increase. The following table also lists the rates paid by multi-family customers in surrounding jurisdictions.

Table 3. Multi-Family Rate Comparison (Assuming 50 units)

Name of Municipality (Franchisee)	Garbage (3 cy)	Recycling	Organics	Total
Newark (Republic)	\$309.91	\$46.85 (1 cy)	\$87.85 (1 cy)	\$444.61
Fremont (Republic)	\$197.80	\$5.83 Per D.U.	Not Offered	\$489.30
Current Hayward (WMAC)	\$307.66	\$5.74 Per D.U.	Included in garbage rate	\$594.66
Proposed Hayward (WMAC)	\$326.58	\$6.37 Per D.U.	Included in garbage rate	\$645.28
Castro Valley (WMAC)	\$696.78	Included in garbage rate	Included in garbage rate	\$696.78
Union City (Republic)	\$335.85	\$6.10 Per D.U.	\$64.18 (1 cy)	\$705.03
Oakland (eff. July 2015) (WMAC)	\$649.35	\$9.20 Per D.U.	Included in garbage rate	\$1,109.35

Summary of Community Outreach Effort and Feedback

Staff made a presentation and obtained comments from the City Council Sustainability Committee (CSC) regarding potential new services and changes to existing services. The services, described in the April 2, 2014 Council Sustainability Committee Report¹, include a second bulky item appointment for single-family residents, removal of bulky items for multi-family properties, removal of abandoned debris placed in the public right-of-way, and separate collection of organics from multi-family properties. Committee members indicated support for removing abandoned debris from the public right-of-way, implementing separate collection of organics from multi-family properties, and siting new public containers in the Downtown and along other major arterials, if possible. Members expressed some uncertainty regarding the costs and need for a second bulky item appointment for single-family households because approximately 20% of eligible households currently participate in the service annually. Some members also expressed concern regarding the costs to remove bulky items for multi-family properties, for continued use of alternative fuel vehicles (AFVs) and for an annual compost give-away event.

Staff made a similar presentation to the Planning Commission on April 10, 2014. The potential services described in the April 10, 2014 Planning Commission Report² are the same as those presented to the CSC. Commissioners indicated support for removing abandoned debris from the public right-of-way, removal of bulky items from multi-family properties, separate collection of organics from multi-family properties, and web-based services for customers. Some Commissioners also expressed interest in siting new public containers in the Downtown and in offering a second bulky item appointment for single-family residents. Several members expressed concerns regarding the costs to require continued use of AFVs.

Surveys – Surveys were prepared for single-family residents, multi-family residents, multi-family property managers and business owners. Each of the four surveys pose open-ended questions regarding the quality of the current services provided and whether they would like certain additional services. Those additional services include a second annual appointment to remove bulky items for single-family residents. Possible services listed in the surveys to multi-family residents include removal of bulky items and separate collection of organics. Multi-family property owners were also asked about these two services and whether they would like a choice of carts or a bin for recycling services. Business owners and managers were similarly asked for any suggested new services or enhancements to current services. All of the surveys solicited suggestions for additional outreach to the community.

Residents who are also multi-family property managers or business owners are encouraged to complete each of the surveys that apply to them. The surveys for single- and multi-family residents are also available in Spanish. The surveys were posted on the City's website and copies have been available in the City's Revenue Division, the Permit Center, the City Clerk's Office, the Utilities & Environmental Services office, and at both libraries. The survey can also

¹ 'Potential New and Enhanced Solid Waste Services,' April 2, 2014 City Council Sustainability Committee Meeting, Item 5; <http://www.hayward-ca.gov/CITY-GOVERNMENT/COUNCIL-STANDING-COMMITTEES/COUNCIL-SUSTAINABILITY-COMMITTEE/2014/CSC-CCSC040214full.pdf>

² 'Potential New and Enhanced Solid Waste Services,' April 10, 2014 Planning Commission Meeting, Item 1; <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2014/PCA14PDF/pca041014full.pdf>

be completed by visiting the City's home page and selecting the link 'Waste Management Survey,' or by selecting this link: <http://www.hayward-ca.gov/GREEN-HAYWARD/waste.shtm>.

Staff made presentations and provided copies of the surveys to the following community groups: two presentations to the Keep Hayward Clean and Green Task Force, the Latino Business Roundtable, and two meetings with the Rental Housing Owners' Association of Southern Alameda County. Copies of the surveys were mailed to members of the Business Improvement Association, the Hayward Area Recreation and Park District, the Rotary Club, and a wide variety of faith-based groups.

Staff hosted a table at the following events where we asked participants to complete one or more of the surveys, as applicable: the Cinco de Mayo Festival, the Asian American Heritage Festival, the Chamber of Commerce Mixer at the Golden Peacock Restaurant, the Farmers' Market on the City Hall Plaza, and the open house at the Hayward Executive Airport. The Chamber of Commerce also invited staff to speak at two workshops convened for restaurants and food processors held at City Hall in March and May.

Summarized below are the results of the surveys received:

- Single-Family Residents' Responses: A total of 75 single-family residents responded to the survey. Of that total, 45% (34 of 75) indicated an interest in a second annual bulky item appointment, while 36% (29 of 75) were not interested. The balance, 12% (16 of 75) did not respond to the question. Respondents also indicated an interest in information on the City's website, videos on the City's website and neighborhood meetings with City staff to discuss questions. Several indicated that the brochures included in the garbage bills were useful and asked that they be continued. In addition, 61% (46 of 75) indicated that the quality of the services were acceptable; the balance did not respond to the question.
- Multi-Family Residents' Responses: A total of 29 multi-family residents completed a survey. Of that total, 62% (18 of 29) indicated an interest in a bulky item appointment, 24% (7 of 29) were not, and the balance did not respond to that question. Respondents also indicated an interest in additional information on the City's website and neighborhood meetings with City staff to discuss their questions. In addition, 39% (9 of 23) indicated that the quality of the services were acceptable; the balance did not respond to the question.
- Multi-Family Property Managers' Responses: Four surveys were received from multi-family property owners or managers. None indicated an interest in implementing separate collection of organics, and one indicated interest in arranging for a bin, rather than a cart, for separate collection of recyclables. During a meeting with the Rental Housing Owners Association of Alameda County, two property managers recommended issuing a RFP to obtain competitive rates, and two explained that WMAC assesses fees to remove small amounts of excess trash. All indicated an interest in additional literature on the City's website and neighborhood meetings with City staff to discuss their

questions. Three of the four respondents to the surveys indicated that the quality of the services were acceptable. The comments by the fourth respondent have been resolved.

- Business Owner Responses: Eleven surveys were received from business owners or managers. None requested additional services or enhancements to current services. Two requested videos on the City's website regarding separate collection of recyclables and organics and others asked that the literature included in their garbage bills be continued. Two other respondents cited specific collection service requests that have been addressed. All of the businesses indicated that the quality of the services were acceptable.

Rental Housing Owners Association of Southern Alameda County: City staff met with members of the Board of the Rental Housing Owners Association of Southern Alameda County in September 2013 to discuss their comments regarding the surveys. Members expressed concern about the fees charged by WMAC for excess trash where the lid of the bin does not close and the amount of the rate increase. Staff also met with Board members in December 2014 to discuss their views of the October 14, 2014 City Council report³. The Association followed up with a letter summarizing their comments (see Attachment V-a).

In summary, during the December meeting, Board members expressed the following concerns:

1. Self-haul coupons should only require a valid Hayward account number and not require proof of Hayward residency.
2. Discontinue WMAC's practice of billing on a per-cubic-yard basis for excess trash in cases where the lid of the bin does not close. The proposed franchise agreement provides for WMAC to assess a per-cubic-yard fee when lids to trash bins do not close. City staff will continue to work with multi-family property owners to address these issues.
3. Recommend replacing the Rate Year Four rate adjustment process with an annual rate adjustment of 3% to 6%, as is proposed for Rate Years Five through Ten.

The Association also sent an email (Attachment V-b) on January 10, 2015 stating that all issues but one have been resolved. The remaining issue is that of "camera tags", which are used by WMAC to document excess material in bins and carts. Staff is actively working with WMAC and the Association to resolve this last issue.

³ See Item # 1 at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca101414full.pdf>



**Rental Housing Owners Association
of Southern Alameda County
1264 A Street, Hayward, CA 94541
510-537-0340**



December 12, 2014

VIA EMAIL

Vera Dahle-Lacaze
Solid Waste Manager
Erik Pearson, AICP
Environmental Services Manager
City of Hayward

Re: **October 14, 2014 Report**
Waste Management of Alameda County – Solid Waste Franchise

This memo is to confirm your visit with our Board Member, Ken Birchfield and Tom Silva on Tuesday, December 19, 2014.

In general, we are very pleased with the expanded services for all customers in Hayward. We really like the greatly expanded bulk pick-up services for all customers, the organics collections for multi-family, the option for bin service for recyclables in multi-family and the new commercial recycling program and the continuation of the self haul coupons for Davis Street.

We have three concerns:

- 1) **Self Haul Coupons – That Clause 4 on the back of the coupon be amended so that only proof of City of Hayward garbage service via a valid Hayward account number on the front of the tag be required to use the coupon instead of proof of Hayward residency.**
- 2) **Camera Tags from Bins on Wheels Service – This is a huge issue for sites that have bins on wheels service. Generally, our bins are picked-up three times a week on Monday's, Wednesday's and Friday's. The issue is minor overflow on Monday's due to folk's home over the weekend and an extra day between pick-ups. In addition, the bins are only partially filled on the Wednesday and Friday pick-ups. It's extremely annoying to get these nickel and dime bills for a little extra trash on Monday's when our bins go out less than full on Wednesday's and Friday's.**

We understand that this is a difficult issue for Waste Management and it will take some discussion to resolve. To begin the discussion, we suggest that Waste Management discontinue the practice for billing sites with multiple pick-ups (especially Monday, Wednesday and Friday service) for overflow on Monday's.

- 3) **Fees for Services – We understand the need for increased fees to cover expanded services and increased operating costs. However, we suggest that the City completely eliminate the fourth year rate adjustment based upon after tax ROI in favor of a simple 3% to 6% adjustment based upon by area CPI.**

Vera Dahle-Lacaze
Erik Pearson, AICP
December 12, 2014
Page Two

After tax ROI calculations are very slippery items which can be manipulated based upon Waste Management of Alameda County's internal costs for interest, taxes, amortization and depreciation.

With our proposal, Waste Management of Alameda County will receive a 10% increase in year one and a minimum of 3% through years 2-7 of the Agreement. That's a minimum increase of 28% over the life of the seven year Contract.

This will eliminate the expensive and time consuming year 4 rate review as outlined on Page 4 of the October 14, 2014 Staff Report. It will also provide all persons involved with rate certainty and allow us to forecast our garbage, recycling costs for the next 7 years.

In closing, on behalf of our members and the rate payers of Hayward, thank you for your excellent work in creating the expanded services Contract with Waste Management of Alameda County; we appreciate it!

Paul Russo, President

Requirements to use Coupon

- 1. This coupon may be redeemed for disposal of only two cubic-yards of non-hazardous trash or two cubic-yards of yard trimmings. Yard trimmings must be acceptable for recycling due to the county-wide ban on yard trimmings sent to landfill. For example, yard trimmings may include brush, tree trimmings and unpainted and untreated wood. Please call the phone number listed on the reverse for questions about acceptable materials. Residents are responsible for any additional charges due to any quantities in excess of the amounts specified.
- 2. This coupon may only be used by the customer whose name is listed on the reverse side of this coupon.
- 3. This coupon is required and must be submitted to the scale house attendant to receive free disposal of two cubic-yards of trash.
- 4. Proof of Hayward residency is also required and must be shown to the scale house attendant.
- 5. The following items will incur additional charges: Trash in excess of two cubic yards, appliances, tires, televisions, computer monitors, and other special waste items. No hazardous waste of any kind will be accepted.
- 6. Consider donating unwanted items to local charities. Recycle items as much as possible.
- 7. **No hazardous waste of any kind will be accepted.**

Hours: Monday – Friday: 7am – 5pm
 Saturday – 8am – 4pm
 Closed on Sundays

**FOR QUESTIONS CALL:
 Waste Management at (510) 537-5500**

GARBAGE SERVICE
 VIA A VALIS ACCOUNT #

LISTED ON THE FRONT
 OF THIS COUPON



WM of Alameda County (WMAC)
172 98th Avenue
Oakland, CA, 94603

EDEN REALTY
PO BOX 126
SAN LORENZO , CA 94580-0126

mossy 2/24
O' sink 30
Am

03/04/2014 Account: 064-356371 Incident: 6237903

Dear EDEN REALTY :

During our most recent service call to your location on 02/24/2014 , we noticed your waste container(s) were overfilled and overflowing. The enclosed photo shows you what we encountered.

As you can see from the photo, overfilling problems continue to occur at 27512 TAMPA AVE . As a result, a fee of \$12.79 will appear on your next Waste Management invoice.

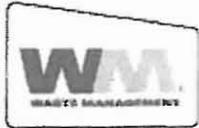
A Waste Management representative will contact you to discuss modifying your collection service program to reflect your actual volumes and avoid these charges in the future. Upgrading your service will not only save your company money, but will help avoid problems caused by overfilling, such as litter, vector problems and general unsightliness. Please contact Customer Service at (800) 701-2947 Ext: 6 with any questions or concerns.

Cordially,

Michael Sherman
(800) 701-2947 Ext: 6
02/24/2014

3 bags over full
30 cu yd
an A mossy
Remedy ? ? ?





WM of Alameda County (WMAC)
172 98th Avenue
Oakland, CA, 94603

MAYTEN MANOR APARTMENTS
PO BOX 126
SAN LORENZO , CA 94580-0126

12/03/2013 Account: 064-4320190 Incident: 6051030

Dear MAYTEN MANOR APARTMENTS :

During our most recent service call to your location on 11/18/2013 , we noticed your waste container(s) were overfilled and overflowing. The enclosed photo shows you what we encountered.

As you can see from the photo, overfilling problems continue to occur at 24000 2ND ST . As a result, a fee of \$12.79 will appear on your next Waste Management invoice.

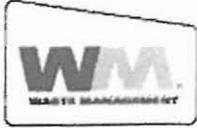
A Waste Management representative will contact you to discuss modifying your collection service program to reflect your actual volumes and avoid these charges in the future. Upgrading your service will not only save your company money, but will help avoid problems caused by overfilling, such as litter, vector problems and general unsightliness. Please contact Customer Service at (800) 701-2947 Ext: 6 with any questions or concerns.

Cordially,

Michael Sherman
(800) 701-2947 Ext: 6
11/18/2013

*Money Pickups
This site has
money - use - Frisco
Service*





WM of Alameda County (WMAC)
172 98th Avenue
Oakland, CA, 94603

THOMAS R SILVA & CO
PO BOX 126
SAN LORENZO , CA 94580-0126

11/25/2013 Account: 064-365451 Incident: 6029209

Dear THOMAS R SILVA & CO :

During our most recent service call to your location on 11/11/2013 , we noticed your waste container(s) were overfilled and overflowing. The enclosed photo shows you what we encountered.

As you can see from the photo, overfilling problems continue to occur at 326 SUNSET BLVD . As a result, a fee of \$25.58 will appear on your next Waste Management invoice.

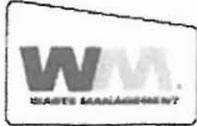
A Waste Management representative will contact you to discuss modifying your collection service program to reflect your actual volumes and avoid these charges in the future. Upgrading your service will not only save your company money, but will help avoid problems caused by overfilling, such as litter, vector problems and general unsightliness. Please contact Customer Service at (800) 701-2947 Ext: 6 with any questions or concerns.

Cordially,

Michael Sherman
(800) 701-2947 Ext: 6
11/11/2013



*Money Picked
This site has
money - was -
Friday Service*



WM of Alameda County (WMAC)
172 98th Avenue
Oakland, CA, 94603

THOMAS R SILVA & CO
PO BOX 126
SAN LORENZO , CA 94580-0126

01/15/2014 Account: 064-365451 Incident: 6131536

Dear THOMAS R SILVA & CO :

During our most recent service call to your location on 12/30/2013 , we noticed your waste container(s) were overfilled and overflowing. The enclosed photo shows you what we encountered.

As you can see from the photo, overfilling problems continue to occur at 326 SUNSET BLVD . As a result, a fee of \$25.58 will appear on your next Waste Management invoice.

A Waste Management representative will contact you to discuss modifying your collection service program to reflect your actual volumes and avoid these charges in the future. Upgrading your service will not only save your company money, but will help avoid problems caused by overfilling, such as litter, vector problems and general unsightliness. Please contact Customer Service at (510) 613-8700 with any questions or concerns.

Cordially,

WM of Alameda County (WMAC)
(510) 613-8700
12/30/2013



*Money picked
This side HAD
money - was -
found source*

Erik Pearson

From: eden realty <edenrealty@sbcglobal.net>
Sent: Saturday, January 10, 2015 8:58 AM
To: Erik Pearson; Vera Dahle-Lacaze; Alex Ameri; Fran David; Paul Russo; Vickie Desofi; Doug Smith; Ken Birchfield; Catherine Valdez; Marc Crawford; Andy Frank; Lisa Jensen; Francisco Zermeno - Forward; Al Mendall; Sara Lamnin; Marvin Peixoto; Barbara Halliday; Gregory Jones; Elisa Marquez
Subject: 1-20-15 council item: wmac franchise renewal
Attachments: SKMBT_C36014121214270.pdf

g'day everyone

for quite awhile the rho has been working with city staff on the wmac franchise renewal

the rho greatly appreciates the expanded services and our general acceptance for the new proposed rates

in this chain is a 12-12-14 email with attachments to staff ...in that email we followed up on our 12-9 visit with vera and erik which stated our three areas of concerns

that the self haul coupons only need a valid hayward city address to be useable at the davis street site

our concerns about the fourth year roi calculation process

the very annoying camera tag bill back issues

on friday 1-9-15 i met with alex ameri to discuss the matters....going forward i believe that we have consensus as follows

that the self haul coupons will be revised to only require a valid hayward address for use at davis st

that the rho is comfortable with staff's design and stewardship of the fourth year roi review process and removes our objection

that the camera tag program is a real issue..it involves a national program in which the front end loaders that service the bins on wheels garbage account have forward facing cameras and on board gps computerized routes that establish each stop on the route

the truck cameras and the routes are downloaded each nite with the tapes sent to phoenix for review and billing...this is how the camera tags are generated

local wmac has stated that its a national program and its out of their hands...we've got issues with it that are fully detailed along with some actual camera tags in the attachment

so we're down to one issue that we believe is resolvable in a reasonable manner in the next few days prior to the 1-20 council meeting

thats it for now

any questions or concerns please email or call

thanks

tom silva

Thomas R. Silva CPM
Eden Realty / Eden Rehab Corp.
POB 126
San Lorenzo, Ca 94580-0126
voice 510-537-8181
fax 510-537-8338
tom@edenrealty.org
edenrealty@sbcglobal.net
www.edenrealty.org

On Friday, December 12, 2014 1:52 PM, eden realty <edenrealty@sbcglobal.net> wrote:

g'day erik and vera

attached please find our follow up email from our tuesday 12-9 visit...in it we express our appreciation for the greatly expanded services and our general acceptance of the new proposed rates

we also stated our three concerns

that the self haul coupons only require a valid hayward account number and that proof of hayward residency will not be required

about the very annoying issues around the camera tag program for bin on wheels service and how it creates bad faith between us and wmac

and our concerns about the 4th year wmac after tax roi adjustments

we attached copys of the proposed coupon language and several camera tags

we plan on attending the 1-20-15 council meeting to voice these concerns

thank you for all your efforts in crafting a much improved garbage contract...we only have three minor points to now work thru to achieve a fully complete program that takes care of all of our concerns..we appreciate it !

respectfully

Thomas R. Silva CPM
Eden Realty / Eden Rehab Corp.
POB 126

San Lorenzo, Ca 94580-0126
voice 510-537-8181
fax 510-537-8338
tom@edenrealty.org
edenrealty@sbcglobal.net
www.edenrealty.org

DATE: January 20, 2015

TO: Mayor and City Council

FROM: Director of Development Services

SUBJECT: Introduction of an Ordinance to Amend the Hayward Plumbing Code to Allow Plastic Pipe as Allowed by the 2013 California Plumbing Code

RECOMMENDATION

That Council introduces the attached ordinance, which would align Hayward's local plumbing code with the most recent (2013) State Plumbing Code.

BACKGROUND

Out of the nearly 100 cities and towns that constitute the Bay Area, only a small handful of jurisdictions, including Hayward, prohibit the use of plastic pipe (e.g., San Leandro, County of San Mateo). Based on customer requests to use plastic and a lack of evidence to support the City's continued prohibition of this class of construction material, staff is recommending removing Hayward's amendments to the 2013 State Plumbing Code that were [adopted in December of 2013](#), and simply enforce that State Code without amendments. Such action will bring Hayward in line with almost all other jurisdictions and help provide consistency for contractors.

Plastic plumbing pipe includes materials such as: Acrylonitrile butadiene styrene (ABS), polyvinyl chloride (PVC), cross-linked polyethylene (PEX) and chlorinated polyvinyl chloride (CPVC). All of these materials are approved for use throughout the United States and are certified by national testing agencies such as IAMPPO and ASTM. The California Building Standards Commission has further approved all of these materials, as evidenced by their inclusion in the California Plumbing Code. Plastic piping is widely used as an alternative to copper and cast iron due to its light-weight, chemical resistance, durability, corrosion resistance, and ease of assembly. Plastic pipe is used for both private buildings' plumbing systems and for municipal applications, such as drinking water distribution and wastewater mains in the public right of way.

Different plastic pipe materials are designed and certified for specific and varied applications, including those for drainage, waste lines, vents, potable water supply, non-potable water supply, and underground sewage discharge. ABS pipe is approved for use in drain, waste and vent installations. For water supply lines, PVC, PEX and CPVC are all plastic piping alternatives to copper and galvanized steel.

DISCUSSION

The origin of our plumbing code amendment dates back more than thirty years when some manufacturing problems with ABS led to class action litigation between 1984 and 1990. This situation led to a loss of confidence in the product and various jurisdictions modified their plumbing codes to prohibit the use of ABS. The City of Hayward was included in this group. After 1990, manufacturing improvements resolved the problems. Currently, all forms of plastic pipe, including ABS, PVC, CPVC and PEX, are in widespread use without reported failures.

Also, based on recent updates to the California Fire Code, all new single-family and multifamily homes built in Hayward are required to be sprinkled. All of these residential sprinkler installations are plumbed with PVC. Since the existing Hayward Fire Code is not similarly amended to prohibit plastic pipe, as is the case with our local Plumbing Code, Hayward operates with a confusing contradiction: plastic is allowed in some parts of a building, but not in others. This leads to difficult conversations with the public and further justification for the recommended change.

All City departments have reviewed the use of plastic pipe and are in agreement with the recommended changes in this report. This includes Development Services (Building Inspection and Planning), Code Enforcement, Hayward Fire, Environment & Utilities, and Engineering & Transportation.

ECONOMIC IMPACT

Plastic pipe is less expensive than metal as a material and it is also less expensive from a labor standpoint with regard to installation costs. The total cost of construction will be reduced for homeowners, businesses, and developers, if the City of Hayward allows the use of plastic pipe. For example, a recent survey of local Home Depot store costs for piping is as follows: 4" x 10' cast iron pipe is \$ 101.41; and 4" x 10' ABS pipe is \$24.64.

Also, staff surveyed Standard Pacific Homes (a major residential developer with numerous projects in Hayward) to determine the impact of our ordinance on their construction costs. According to Standard Pacific's purchasing manager, Standard Pacific spends 56% more on plumbing materials to build in Hayward than a jurisdiction that does not prohibit plastic pipe. Standard Pacific also estimates a 5% labor cost premium for installing metal instead of plastic. These costs are typically passed on to new homebuyers, so the developer will not be adversely affected. For construction projects that are not for immediate sale, these costs are an additional burden that must be absorbed/carried by the project proponent.

FISCAL IMPACT

There are no fiscal impacts to the General Fund related to this proposed code amendment.

PUBLIC CONTACT

In addition to the discussions with the representative from the development community, staff notified the local plumbers union (Local 342) of this recommended change. Their representative did not oppose the recommended action and indicated he would notify their members.

NEXT STEPS

Should Council introduce the ordinance, it will be brought back to Council on January 27 for adoption. Staff will inform the development community of such change once the ordinance is introduced.

Prepared by: Steve Osborne, Supervising Plan Checker/Expediter
Dennis Zafiratos, Senior Building Plumbing-Mechanical Inspector

Reviewed by: David Rizk, AICP, Development Services Director

Approved by:



Fran David
City Manager

Attachments

Attachment I: Draft Ordinance

ORDINANCE NO. 15-___

AN ORDINANCE REPEALING ORDINANCE NO. 13-24 AND ASSOCIATED AMENDMENTS TO THE 2013 CALIFORNIA PLUMBING CODE AND ESTABLISHING A PLUMBING CODE FOR THE CITY OF HAYWARD, REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE OF PLUMBING; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES

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

Section 1. Provisions.

Ordinance No. 13-24, and all amendments thereto, is repealed and in substitution thereof, a new Plumbing Code for the City of Hayward is hereby enacted to read as follows:

PLUMBING CODE
OF THE CITY OF HAYWARD

SECTION 1.00 2013 CALIFORNIA PLUMBING CODE, ADOPTION BY REFERENCE. The *2013 California Plumbing Code*, based on the *2012 Uniform Plumbing Code*, and Appendices thereto, published by the International Association of Plumbing and Mechanical Officials, as modified by the California Building Standards Commission, is hereby adopted as the Plumbing Code of the City of Hayward.

A copy of such Plumbing Code is on file in the office of the City Clerk, to which reference is hereby made for further particulars. Reference is also made to the State's Matrix Adoption Tables, which identify local Building Official's responsibilities to enforce certain amendments.

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

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

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 20th day of January, 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 27th day of January, 2015, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward