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DATE: June 30, 2009
TO: Mayor and City Council
FROM: City Attorney
SUBJECT: Resolution to Support Legal Action by the League of California Cities to Challenge Diversion of Local Gas Taxes to the State's General Fund

RECOMMENDATION

That Council adopts the attached resolution authorizing the City Attorney to cooperate with the League of California Cities in litigation challenging the constitutionality of the State's proposed diversion of the City's share of funding from the Highway Users Tax Account, also known as the "gas tax," and authorizing the City Manager to send a copy of the resolution, with a letter from the Mayor to the Governor and State Legislators expressing the City's opposition to the proposed diversion of HUTA funds.

RECOMMENDATION

In the Governor's May Budget Revise, Governor Schwarzenegger declared his intention to borrow property tax revenues from cities, counties and special districts under Proposition 1A. On May 26, 2009, the City Council adopted a resolution unanimously opposing the borrowing of local property tax funds by the State.

In his May Budget Revise, the Governor also proposed the transfer of more than \$1 billion in local gas taxes and weight fees ("gas taxes") to the state general fund to balance the State budget. This proposed transfer of local gas taxes will severely impact the ability of the City to perform critical traffic safety-related street maintenance. Counsel for the League contends that the proposed transfer is unconstitutional, and the League has requested that local jurisdictions adopt a resolution authorizing support for the League's legal efforts to challenge the proposed diversion of the local gas tax revenue. To date, approximately 100 cities have adopted resolutions authorizing their respective city attorneys to cooperate with the League.

DISCUSSION

The Governor's current proposal, as reflected in his May Budget Revise, to shift more than \$1 billion in local gas tax revenues from cities, was passed by the Joint Budget Conference Committee at its June 11, 2009, meeting. Unlike the State borrowing proposed under

Proposition 1A, there is no provision for repayment of the diverted gas tax funds. If this diversion of funds is successful, the City's ability to perform critical traffic safety-related street maintenance, including, but not limited to, patching and street resurfacing, street lighting/traffic signal maintenance, the payment of electricity costs for street lights and signals, and sidewalk and curb ramp maintenance and repair, may be seriously compromised. Cities and counties collectively maintain 81% of the state road network. The inability to perform ongoing street maintenance is a significant public safety concern. Beyond the immediate public safety impacts, there are also environmental impacts from this proposal. Reductions in street sweeping and deteriorating road conditions may increase water pollution runoff to nearby streams, idling times for vehicles, greenhouse gas emissions and exacerbate respiratory problems for vulnerable segments of the population like children and the elderly.

Under Proposition 5 (1974) and Proposition 2 (1998), California voters imposed restrictions on the State's ability to divert from local jurisdictions their share of local gas taxes from the Highway Users Tax Account ("HUTA"). Counsel for the League has determined that the State's proposed diversion of local jurisdictions' share of HUTA revenues violates Proposition 5 and is therefore unconstitutional. The League intends to pursue litigation challenging the Governor's proposal and is requesting that local agencies adopt a resolution authorizing their city attorneys to cooperate in the League's efforts, as well as authorizing their city managers and mayors to send letters to the California State Legislature and the Governor stating adamant opposition to the proposal. Copies of recent correspondence from Mayor Sweeney (and the mayors of other local cities) to Hayward's state representatives and the Governor are attached for your reference.

FISCAL AND ECONOMIC IMPACT

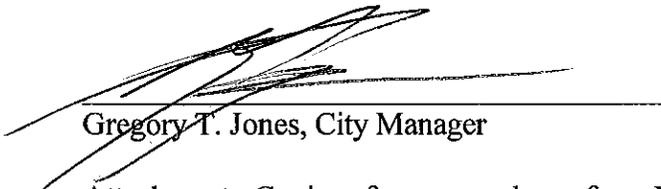
If the State's efforts are successful in diverting local jurisdictions share of HUTA revenues, the direct impact on Hayward will be approximately \$2.4 million in FY 2010 and \$1.8 million in FY 2011. Given the dramatic drop in the City's revenue sources over the last few years and the expected continuation of a flat economy, the loss of \$4.2 million would diminish our remaining reserves and further erode the ability to deliver essential services.

Approved by:



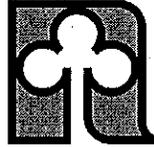
Michael S. Lawson, City Attorney

Approved by:



Gregory T. Jones, City Manager

Attachment: Copies of correspondence from Mayor Sweeney
Draft Resolution



June 23, 2009

The Honorable Ellen Corbett
California State Senate
State Capitol Building, Room 5108
Sacramento, CA 95814

Dear Senator Corbett,

Your constituent cities and Chambers of Commerce from Hayward, Pleasanton, Union City, Newark, Fremont and San Leandro **oppose** any proposal that seeks to take or borrow local property taxes, transportation funds or other revenues to balance the state budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

The State got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. It is time to end the gimmicks and face the problem directly.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the State to borrow to balance its budget.

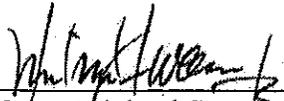
The State must find a way to resolve its budget problems without borrowing or taking local revenues. Nobody likes to make these hard decisions, but they are necessary to restore stability and voter confidence.

To be successful, our local businesses need quality infrastructure, public safety, and other City services to be maintained. Any takes from local government will negatively impact our ability to provide a healthy business environment so critical to the State's economic recovery.

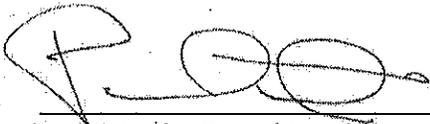
Senator Ellen Corbett
Oppose State Take of Local Revenues
June 23, 2009
Page 2

It's time for leadership. Cities are already making the tough decisions required to balance their budgets. The legislature needs to do the same. NO TAKES OF LOCAL REVENUES TO SOLVE THE STATE'S BUDGET PROBLEMS!

Sincerely,



Mayor Michael Sweeney
City of Hayward



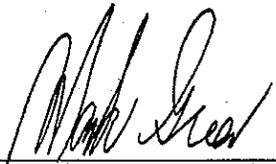
Paul Martin, Board President
Hayward Chamber of Commerce



Mayor Jennifer Hosterman
City of Pleasanton



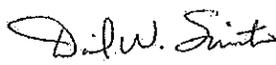
Laura Olson, President
Pleasanton Chamber of Commerce



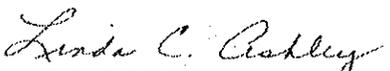
Mayor Mark Green
City of Union City



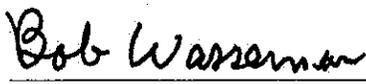
Bob Johnson, President
Union City Chamber of Commerce



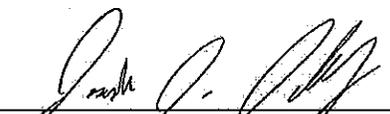
Mayor David W. Smith
City of Newark



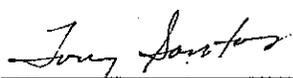
Linda Ashley, President/CEO
Newark Chamber of Commerce



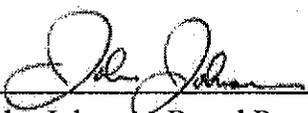
Mayor Bob Wasserman
City of Fremont



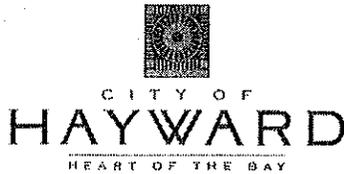
Joseph Joly, Chairman of the Board
Fremont Chamber of Commerce



Mayor Tony Santos
City of San Leandro



John Johnson, Board President
San Leandro Chamber of Commerce



June 23, 2009

The Honorable Mary Hayashi
California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

Dear Assembly Member Hayashi,

Your constituent cities and Chambers of Commerce from Hayward, Pleasanton, San Leandro and Dublin **oppose** any proposal that seeks to take or borrow local property taxes, transportation funds or other revenues to balance the state budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

The State got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. It is time to end the gimmicks and face the problem directly.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the State to borrow to balance its budget.

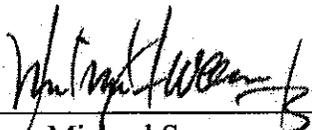
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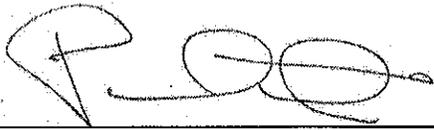
Assembly Member Mary Hayashi
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It's time for leadership. Cities are already making the tough decisions required to balance their budgets. The legislature needs to do the same. **NO TAKES OF LOCAL REVENUES TO SOLVE THE STATE'S BUDGET PROBLEMS!**

Sincerely,



Mayor Michael Sweeney
City of Hayward



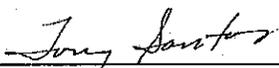
Paul Martin, Board President
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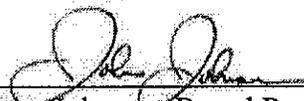
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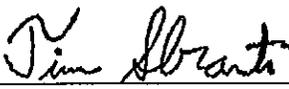
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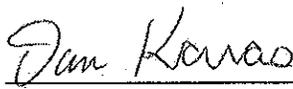
Mayor Tony Santos
City of San Leandro



John Johnson, Board President
San Leandro Chamber of Commerce



Mayor Tim Sbranti
City of Dublin



Dan Karas, Chairman
Board of Directors
Dublin Chamber of Commerce

May 26, 2009

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger,

The City of Hayward **opposes** any proposal that seeks to take or borrow local property taxes, transportation funds or other revenues to balance the state budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

The state got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. It is time to end the gimmicks and face the problem directly.

The City of Hayward, has also suffered in this economy. Our revenues are already down 15% over the past 18 months, requiring the City to cut 50 positions, furlough of employees and holiday closures, and other concessions from our employees. Most importantly, our voters passed Measure A, a Utility Users Tax, to maintain local services. Having the state come in to tap local revenues is a real blow to these efforts and absolutely unacceptable.

These were difficult decisions, but our city made them because we had no other choice. This is the type of leadership our residents expect and deserve.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the state to borrow to balance its budget.

The state must find a way to resolve its budget problems without borrowing or taking local revenues. Nobody likes to make these hard decisions, but they are necessary to restore stability and voter confidence.

It's time for leadership. Cities are already making the tough decisions required to balance their budgets. The legislature needs to do the same.

Sincerely,

Mayor Michael Sweeney

Cc: League of California Cities

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Sincerely,

Mayor Michael Sweeney

Cc: League of California Cities

June 1, 2009

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger,

The City of Hayward **strongly opposes any proposal that seeks to take or borrow local property taxes, transportation funds, gas tax or other revenues to balance the state budget.** Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. The magnitude of what we understand to be proposed takes equates to approximately \$5 million for our City alone. That is the equivalent of our losing approximately 30 police officers, or closing two of our fire stations.

The City of Hayward has been dealing with our fiscal challenges for two years. Our City Council declared a local fiscal emergency back in March, on the brink of severe fiscal hardship in the current economic climate, resulting in forced cuts to many of our essential services. The State got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. Shifting the effects of State fiscal mismanagement to the local level is unacceptable.

The City of Hayward has also suffered in this economy. Our revenues are already down 15% over the past 18 months, requiring the City to cut 50 positions, furlough employees and holiday closures of City Hall, and compensation concessions from our employees. These difficult steps were taken as responsible actions in response to our fiscal condition; you need to do the same.

On May 19 our voters passed Measure A, a Utility Users Tax, to maintain local services. Having the State come in to tap local revenues is a real blow to our community's efforts to maintain essential services and is absolutely unacceptable. Any City that has stepped forward to tax itself in these difficult financial times should certainly be protected from State takes. This is truly robbery of local revenues.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the state to borrow to balance its budget. We have heard it loud and clear from our local constituents that taking local revenues will further alienate and divide Sacramento from cities and their residents. This is the wrong direction to be heading. The state must find a way to resolve its budget problems without borrowing or taking local revenues. Nobody likes to make these hard decisions, but they are necessary to restore stability and voter confidence.

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June 1, 2009

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California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

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Sincerely,

Mayor Michael Sweeney

Cc: League of California Cities



June 8, 2009

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Dear Governor Schwarzenegger:

The City of Hayward and the Hayward Area Recreation District (HARD) **oppose** any proposal that seeks to take or borrow local property taxes, transportation funds or other revenues to balance the State budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities and special districts are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

The State got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. It is time to end the gimmicks and face the problem directly.

The City of Hayward and the Hayward Area Recreation and Park District have also suffered in this economy.

The City's revenues are already down 15% over the past 18 months, requiring the City to cut 50 positions, furlough of employees and holiday closures, and other concessions from our employees. Most importantly, our voters passed Measure A, a Utility Users Tax, to maintain local services. These were difficult decisions, but our City made them because we had no other choice. This is the type of leadership our residents expect and deserve. Having the State come in to tap local revenues is a real blow to these efforts and absolutely unacceptable.

The Hayward Area Recreation and Park District continues to suffer under the ERAF shift. In fiscal year 2008/2009, forty-three cents of every dollar or \$12 million of the District's property taxes have been transferred to the State. And through June 30, 2009 more than \$124 million dollars will have been transferred to the State over the years.

The Honorable Arnold Schwarzenegger
Governor of California
Page 2

This permanent annual shift of property tax revenue from the District continues to severely restrict the District's day-to-day maintenance and operations as well as our Capital Outlay program. The Hayward Area Recreation and Park District has reduced its budget by 10% and any additional transfer of property tax revenue will result in further reductions impacting the residents of the Hayward Area.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the State to borrow to balance its budget.

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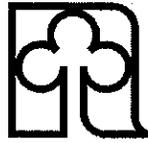
It's time for leadership. Cities and special districts are already making the tough decisions required to balance their budgets. The legislature needs to do the same.

Sincerely,

Mayor Michael Sweeney
City of Hayward

Carol A. Pereira, President
Board of Directors
Hayward Area Recreation & Park District

cc: League of California Cities
C.S.D.A.
C.A.R.P.D.



June 15, 2009

The Honorable Ellen Corbett
California State Senate
State Capitol Building, Room 5108
Sacramento, CA 95814

Dear Senator Corbett,

Your constituent cities of Hayward, Pleasanton, Union City, Newark, Fremont and San Leandro **oppose** any proposal that seeks to take or borrow city property taxes, transportation funds or other revenues to balance the state budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

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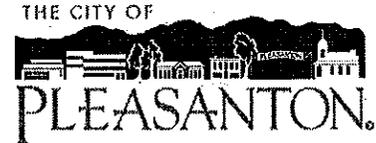
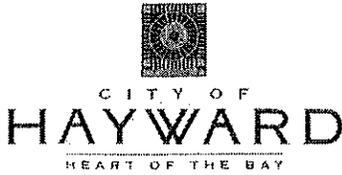
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Mayor Mark Green
City of Union City

Mayor David W. Smith
City of Newark

Mayor Bob Wasserman
City of Fremont

Mayor Tony Santos
City of San Leandro



June 15, 2009

The Honorable Mary Hayashi
California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

Dear Assembly Member Hayashi,

Your constituent cities of Hayward, Pleasanton, San Leandro and Dublin oppose any proposal that seeks to take or borrow city property taxes, transportation funds or other revenues to balance the state budget.

Borrowing local revenues is bad fiscal policy and will harm cities and cripple local services. Cities are already on the brink of severe fiscal hardship as the current economic climate has forced cuts to public safety and other essential services, employee layoffs and furloughs, and a reduction in services to the public.

The State got into these budget difficulties through a series of imprudent fiscal decisions, including overspending during years of boom revenues and not establishing a healthy reserve fund. It is time to end the gimmicks and face the problem directly.

Borrowing or taking local revenues is not what California voters want. This was made evident in 2004 when voters passed Proposition 1A with nearly 84 percent of the vote. Additionally, an October 2008 PPIC survey found that 91 percent of Californians think it is wrong for the State to borrow to balance its budget.

The State must find a way to resolve its budget problems without borrowing or taking local revenues. Nobody likes to make these hard decisions, but they are necessary to restore stability and voter confidence.

It's time for leadership. Cities are already making the tough decisions required to balance their budgets. The legislature needs to do the same. NO TAKES OF LOCAL REVENUES TO SOLVE THE STATE'S BUDGET PROBLEMS!

Sincerely,

Mayor Michael Sweeney
City of Hayward

Mayor Jennifer Hosterman
City of Pleasanton

Mayor Tony Santos
City of San Leandro

Mayor Tim Sbranti
City of Dublin



June 15, 2009

The Honorable Ellen Corbett
California State Senate
State Capitol Building, Room 5108
Sacramento, CA 95814

Dear Senator Corbett,

Your constituent cities of Hayward, Pleasanton, Union City, Newark, Fremont and San Leandro **oppose** any proposal that seeks to take or borrow city property taxes, transportation funds or other revenues to balance the state budget.

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City of Hayward

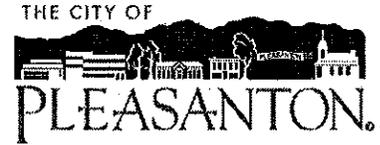
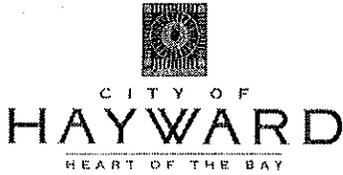
Mayor Jennifer Hosterman
City of Pleasanton

Mayor Mark Green
City of Union City

Mayor David W. Smith
City of Newark

Mayor Bob Wasserman
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Mayor Tony Santos
City of San Leandro



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City of Hayward

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City of Pleasanton

Mayor Tony Santos
City of San Leandro

Mayor Tim Sbranti
City of Dublin

HAYWARD CITY COUNCIL

MSL
6/25/09

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY ATTORNEY TO
COOPERATE WITH THE LEAGUE OF CALIFORNIA CITIES,
OTHER CITIES AND COUNTIES IN THE LITIGATION
CHALLENGING THE CONSTITUTIONALITY OF ANY
SEIZURE BY STATE GOVERNMENT OF THE CITY'S
STREET MAINTENANCE FUNDS

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused them to make painful budget cuts, including layoffs and furloughs of city workers, decreasing maintenance and operations of public facilities and reductions in direct services to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s the State of California has seized over \$10 billion of city property tax revenues statewide, now amounting to over \$900 million each year, to fund the state budget, even after deducting public safety program payments to cities by the state; and

WHEREAS, in his proposed FY 2009-2010 budget, the Governor has proposed transferring \$1 billion of local gas taxes and weight fees to the state general fund to balance the state budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing the ability of the City to maintain the City's streets, bridges, traffic signals, streetlights, sidewalks and related traffic safety facilities for the use of the motoring public; and

WHEREAS, the loss of almost all of the City's gas tax funds will seriously compromise the City's ability to perform critical traffic safety related street maintenance, including, but not limited to, drastically curtailing patching, resurfacing, street lighting/traffic signal maintenance, payment of electricity costs for street lights and signals, bridge maintenance and repair, sidewalk and curb ramp maintenance and repair, and more; and

WHEREAS, some cities report to the League of California Cities that they will be forced to eliminate part or all of their street maintenance operations while others will be forced to cut back in other areas (including public safety staffing levels) to use City general funds for basic street repair and maintenance. Furthermore, cities expect that liability damage awards will mount as basic maintenance is ignored and traffic accidents, injuries and deaths increase; and

WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of California overwhelmingly imposed restriction on the state's ability to do what the Governor has

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