

ORDINANCE NO.

ORDINANCE REPEALING AND REPLACING ARTICLE 11
OF CHAPTER 10, HISTORIC PRESERVATION ORDINANCE,
OF THE HAYWARD MUNICIPAL CODE

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

Section 1. Upon the adoption of this Ordinance, Article 11 of Chapter 10 of the Hayward Municipal Code is hereby repealed and, in substitution thereof, a new Article 11 of Chapter 10, Historic Preservation Ordinance, is hereby enacted to read as follows:

“ARTICLE 11
HISTORIC PRESERVATION ORDINANCE

Section	Subject Matter
10-11.010	PURPOSE
10-11.020	APPLICABILITY
10-11.030	DEFINITIONS
10-11.040	IDENTIFICATION OF HISTORICAL RESOURCES
10-11.050	REQUIREMENT TO OBTAIN HISTORICAL ALTERATION PERMIT AND/OR HISTORICAL RESOURCE DEMOLITION OR RELOCATION PERMIT
10-11.060	HISTORICAL ALTERATION PERMIT PROCESS
10-11.070	HISTORICAL RESOURCES DEMOLITION OR RELOCATION PERMIT PROCESS
10-11.080	HISTORICAL RESOURCES DESIGNATION CRITERIA
10-11.090	HISTORICAL RESOURCES DESIGNATION PROCESS
10-11.100	INCENTIVES FOR THE PRESERVATION OF DESIGNATED HISTORICAL RESOURCES
10-11.110	ADOPTED SURVEY LIST
10-11.120	APPEALS

10-11.130	ORDINARY MAINTENANCE AND REPAIR
10-11.140	DUTY TO KEEP IN GOOD REPAIR
10-11.150	CONDITIONS OF APPROVAL FOR DEVELOPMENT PROJECTS LOCATED WITHIN ARCHAEOLOGICALLY SENSITIVE AREAS, AND/OR WITHIN OR ADJACENT TO KNOWN ARCHAEOLOGICAL SITES
10-11.160	ENFORCEMENT; ADMINISTRATIVE CITATIONS

ARTICLE 11

HISTORIC PRESERVATION ORDINANCE

SEC. 10-11.010 PURPOSE. The purpose of this Article is to promote the public health, safety and general welfare of the inhabitants of the City by providing for the identification, protection, enhancement, perpetuation and use of historical resources, including buildings, structures, signs, objects, features, sites, historic and prehistoric archaeological sites, places, districts, designed landscapes, cultural landscapes and areas within the City that reflect special elements of the City's architectural, artistic, cultural, engineering, aesthetic, historical, political, social and other heritage. The protection of historical resources will achieve the following objectives:

- a. To safeguard the heritage of the City as embodied and reflected in such resources;
- b. To encourage public knowledge, understanding and appreciation of the City's past;
- c. To foster civic and neighborhood pride and a sense of identity based on community character and the recognition and use of historical resources;
- d. To promote the enjoyment and use of historical resources appropriate for the education and recreation of the inhabitants of the City;
- e. To preserve historic architectural styles and design preferences reflecting phases of the City's history and to encourage complementary contemporary design and construction;
- f. To enhance property values and to increase economic and financial benefits to the City and its inhabitants;
- g. To protect and enhance the City's attraction to tourists and visitors (thereby stimulating business and industry);

- h. To identify as early as possible and resolve conflicts between the preservation of the historical resources and alternative land uses;
- i. To integrate the preservation of historical resources and the extraction of relevant data from such resources into public and private land management and development processes; and
- j. To conserve and recycle valuable community resources by continuing use and maintenance of the historic built environment.

SEC. 10-11.020 APPLICABILITY. This Article shall apply to all historical resources and potentially significant historical resources within the City.

SEC. 10-11.030 DEFINITIONS. Terms used in this Article are defined as follows:

- a. "Adopted Survey List" means a list of resources (e.g., object, building, structure, site, area, place, record, or manuscript), adopted by the City of Hayward, which the City has determined to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of Hayward but which have not been officially designated on the local register of historical resources. Resources listed on the adopted survey list shall be considered historical resources, as that term is hereinafter defined.
- b. "Age" means the characteristic of being at least fifty years old.
- c. "Alteration" means exterior change or modification of character-defining features, through public or private action, of any historical resource or any potentially significant historical resource, or of any contributing resource located within an historic district, which may include, but not be limited to, exterior changes to or modification of structure, architectural details or visual characteristics, such as surface texture, grading, surface paving, new structures, cutting or removal of trees and other natural features, disturbance of archeological sites or areas and the placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, significant plantings and landscape accessories, to the extent that such would affect the exterior character-defining features of the property containing the resource.
- d. "Association" means the direct link between an important historic event or persons and a historic property for design, engineering or construction value and/or the ability to yield important information about prehistory or history.
- e. "Buildings" means structures created to shelter human activity. Historic buildings are considered in their entirety. A building that has lost its basic structural elements is usually considered a "ruin" and is a site, as that term is hereinafter defined.

- f. "Character-Defining Features" means those physical characteristics of an historical resource or potentially significant historical resource that convey its historical significance and justify its inclusion in, or eligibility for inclusion in, the national, state or local register. Character-defining features of a resource are documented by a qualified professional on a Primary Record survey form and/or a full historic evaluation and also may consist of features mutually agreed upon by a property owner and the Planning Director or designated City staff.
- g. "Design" means the combination of elements that create the form, plan, space, structure and style of a property.
- h. "Designated Historical Resource" means any historical resource that has been designated and placed on a local register of historical resources pursuant to this Article.
- i. "Evaluation" means an intensive survey to determine the historical significance of a resource. An evaluation consists of completed Department of Parks and Recreation (DPR) 523 series survey forms, including: 1) Primary Record (523A); 2) Building, Structure, Object Record (523B); and 3) any additional survey form appropriate for documentation of the subject resource.
- j. "Feeling" means a property's expression of the aesthetic or historic sense of a particular period of time and results from the presence of physical features that, taken together, convey the property's historic character.
- k. "Historical Resources" means any buildings, structures, sites, objects, historic district and archaeological resources that have been determined to have a) age; b) integrity; and c) historical significance. For the purposes of this Article and of the California Environmental Quality Act (CEQA), the term "historical resources" shall include the following:
 - (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission for listing in, the National Register or the California Register of Historical Resources.
 - (2) A resource designated in a local register of historical resources or identified as historically significant in an adopted survey list.
 - (3) Any object, building, structure, site, area, place, record, or manuscript that the City of Hayward determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California or of Hayward.
- l. "Historic Context Statement" means a document adopted by the City Council that describes historic periods and themes in Hayward's history, which is used as a tool to assist with the assessment of a property's historic significance by providing a framework against which to objectively qualify the property's relationship to larger themes and events.

- m. "Historic District" means a geographically-definable area – urban or rural, small or large – possessing a significant concentration, linkage, or continuity of sites, buildings, structures and/or objects united by past events or aesthetically by plan or physical development. An historic district may also comprise individual elements separated geographically but linked by association or history. A contributing resource within an historic district is an historical resource which contributes to the character of a historic district as described in National Register Bulletin 15.
- n. "Historical Significance" means, in national, state or local history, architecture, archaeology, engineering and culture that is present in districts, sites, buildings, structures and objects, which possess age, integrity and association with an important historical context with reference to the following:
- (1) An association with events that have made a significant contribution to the broad patterns of national, state and/or local history and cultural heritage; or
 - (2) An association with the lives of persons significant in national, state and/or local past; or
 - (3) The embodiment of the distinctive characteristics of a type, period, region, or method of construction, or that represent the work of a master or important creative individual, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
 - (4) Details that have yielded, or may be likely to yield, information important in prehistory or history.
- o. "Historic Preservation Officer" means the Planning Director, or his or her designee, when such a designation is relevant for consultation with federal agencies for the purpose of Section 106 procedures. This designation may be used for other consultations affecting community historical resources.
- p. "Integrity" means the ability of a property to convey its historical significance. Evaluation of integrity is grounded in an understanding of a property's physical features and how they relate to its historical significance. There are seven aspects or qualities that, in various combinations, define integrity: location, design, setting, materials, workmanship, feeling and association. To retain historic integrity, a property will possess several, and usually most, of the aspects. Determining which of the seven aspects are most important to a property requires knowing why, where and when the property is significant.
- q. "Interior Architectural Feature" means any portion of the interior of a public space in a publicly-owned building, or of a space in a privately-owned building, designated as an historical resource, where the interior space is generally accessible for use and viewing by the general public. The feature must meet the criteria for historical significance, as that term is defined hereinabove. Proposed changes to designated interior architectural features must follow the same procedures outlined in this Article for alteration to exterior features.

- r. "Local Register" means a list of properties officially designated as historically significant by the City of Hayward pursuant to a local ordinance or resolution adopted by the City Council.
- s. "Location" means the place where the historic property was constructed or the place where the historic event occurred.
- t. "Object" means a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by design or nature, moveable yet related to a specific setting or environment.
- u. "Potentially Significant Historical Resource" means a resource that is identified through a reconnaissance survey and/or by the City to have (a) age and (b) integrity, but historical significance has not yet been evaluated or determined. The fact that a resource is not listed in or determined to be eligible for listing in the California Register, or is not listed in a local register, does not preclude the City from determining that the resource is a potentially significant historical resource, such that further evaluation can be required to evaluate the resource for historic significance.
- v. "Preservation" means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historical resource. Work including preliminary measures to protect and stabilize the resource generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.
- w. "Qualified Historic Consultant" means a consultant that meets the Secretary of the Interior's Professional Qualification Standards.
- x. "Reconnaissance Survey" means a preliminary historic survey of a defined geographic area, which identifies resources warranting further evaluation to determine historical significance, and which may also identify geographic areas and/or properties that do not have potential historical resources and will not be subject to historic review, provided the timeframe of the reconnaissance survey remains valid for such determination. A reconnaissance survey will generally include DPR 523 Primary Record survey forms (DPR 523A) or equivalent information for those resources determined to warrant future further evaluation.
- y. "Reconstruction" means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure, or object, for the purpose of replicating its appearance at a specific period of time and in its historic location.
- z. "Rehabilitation" means the act or process of making possible a compatible use for a resource through repair, alterations and additions while preserving those portions or features which convey its historical, cultural, or architectural value.

- aa. "Restoration" means the act or process of accurately depicting the form, features and character of a resource as it appeared at a particular period in time by means of the removal of features from other periods in its history and reconstructing missing features from the restoration period.
- bb. "Setting" means the physical environment of an historical resource. Whereas location refers to the specific place where a property was built or an event occurred, setting refers to the character of the place in which the property played its historical role.
- cc. "Site" means the location of a significant event, a prehistoric or historic occupation or activity, or a building, structure or landscape, whether standing, existing, ruined or vanished, where the location itself possesses historic, cultural, or archaeological value, regardless of the value of any existing structure. A site can possess associative significance or information potential or both, and can be significant under any or all of the four criteria for historical significance identified above.
- dd. "Standards" means the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, which is the body of information that provides acceptable approaches for preserving, rehabilitating, restoring and reconstructing historical resources or potentially significant historical resources. A project that follows the Secretary's Standards is considered not to result in a significant impact to the resource under CEQA.
- ee. "Structure" means a man-made feature made of interdependent and interrelated parts in a definite pattern of organization. The term "structure" is distinguished from "buildings," which are constructed primarily for human shelter. If a structure has lost its historic configuration or pattern of organization through deterioration or demolition, it is usually considered a "ruin" and is a site, as that term is defined hereinabove.
- ff. "Substantial Adverse Change" means the demolition, destruction, relocation, or alteration of the character-defining features of an historical resource or its immediate surroundings, such that the significance of an historical resource would be materially impaired. A project that may cause a substantial adverse change to an historical resource is a project that may have a significant effect on the environment under CEQA.
- gg. "Unique Archaeological Resource" means an archaeological artifact, object or site, about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:
 - (1) The resource contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.
 - (2) The resource has a special and particular quality, such as being the oldest of its type or the best available example of its type.

- (3) The resource is directly associated with a scientifically recognized important prehistoric or historic event or person.

hh. "Workmanship" means the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory.

SEC. 10-11.040 IDENTIFICATION OF HISTORICAL RESOURCES.

- a. The City's 2009 Reconnaissance Survey excludes certain properties from further historic evaluation and identifies those properties requiring a full evaluation, as part of future development proposals, to determine whether a property is an historical resource.
- b. The City of Hayward may periodically update its 2009 Reconnaissance Survey and/or survey additional properties located within the City limits, for the purposes of identifying those properties or geographic areas that are determined not to be or contain potentially significant historical resources, as well as identifying those properties or areas that may contain potentially significant historical resources and will require additional evaluation in order to make determinations of age, integrity and/or significance.
- c. The City of Hayward may require that applicants for development projects and building permits retain qualified historic consultants to prepare evaluations to be used by the City to determine whether a property or site is an historical resource or a potentially significant historical resource, as part of development review and/or environmental review processes. The City may require a peer review of any evaluation report submitted directly by an applicant.
- d. Reconnaissance surveys and evaluations shall use the adopted Hayward Historic Context Statement as a tool for understanding whether and why the property has historical significance.
- e. The City of Hayward shall maintain a comprehensive record of reconnaissance surveys, evaluations and historic reports completed for properties located within the City limits, including those records completed as part of the 2009 Reconnaissance Survey and those records submitted by individual applicants.
- f. The City of Hayward shall maintain a local register of designated historical resources. The local register shall include only those resources formally designated as historical resources in accordance with the processes set forth in this Article. The City of Hayward shall also maintain an adopted survey list identifying resources considered to be historically significant to Hayward but not officially designated on the local register.
- g. The City of Hayward may publish or adopt archaeological sensitivity maps and/or may request the assistance of the Northwest Information Center, the area's historical resources information system located at Sonoma State University, for information about known archaeological sites, or about potential historic or prehistoric resources that may be determined to be significant or unique.

SEC. 10-11.050 REQUIREMENT TO OBTAIN HISTORICAL ALTERATION PERMIT AND/OR HISTORICAL RESOURCE DEMOLITION OR RELOCATION PERMIT.

Development projects and building permit applications involving structures or buildings at least 50 years in age, or located within an historic district, shall include the following steps in the development review process to determine if an historical alteration permit and/or historical resource demolition or relocation permit is required. Building permit applications involving only interior improvements are not subject to the provisions of this Article, unless the building interior is specifically listed, or has the potential to be listed, on the local register as a designated historical resource.

- a. City staff shall consult the comprehensive record of reconnaissance surveys and evaluations on file with the Planning Division to determine whether the subject resource has been previously reviewed, and if so, the status of the resource (i.e., historical resource, potentially significant historical resource, not a significant resource, or requires evaluation).
- b. If the subject resource has not been previously reviewed, or if the Planning Director determines the existing reconnaissance survey and/or evaluation is no longer valid due to the age of the survey or analysis (more than five years old), or as a result of substantial change to the physical condition of the resource or its setting, the applicant, at his or her own expense, may be required to provide an evaluation. Evaluations shall be prepared by a qualified historic consultant and shall use the California Register Criteria for Evaluation and the adopted Hayward Historic Context Statement to determine historical significance.
- c. Resources that are surveyed, evaluated and determined not to have historical significance shall require no further historic review.
- d. Resources that are surveyed, evaluated and determined to be an historical resource or a potentially significant historical resource shall be subject to CEQA review and the discretionary permit requirements established by this Article for any proposed alteration, demolition or relocation of the resource.
- e. The Planning Director may waive the requirement for a discretionary alteration permit either of the following apply: (1) the resource is located in a geographic area that has been determined by a current, valid reconnaissance survey, or other evaluation conducted by the City or applicant, not to be or contain potentially significant historical resources; or (2) the nature of work is minor and incidental; will not adversely affect the external appearance of the character-defining features of existing significant improvements, buildings and structures on the site; and the proposed project or building permit application is consistent with the Secretary of the Interior's Standards.

SEC. 10-11.060 HISTORICAL ALTERATION PERMIT PROCESS.

- a. Unless waived by the Planning Director pursuant to subsection 10-11.050(e), it shall be unlawful for any person to alter or modify character-defining features of a potentially significant historical resource or an historical resource, a designated historical resource, a resource listed on the City's adopted survey list, or a resource that lies within an historic district, without first obtaining an historical alteration permit as outlined below. Neither the Planning Director nor the Building Official shall grant any permit to carry out such work without the approval of an historical alteration permit.
- b. If an historical alteration permit is required pursuant to Section 10-11.050, the following procedures will be followed in processing the permit application:
 - (1) Historical alteration permit applications shall be submitted to the Planning Division for review and approval. Applications shall be accompanied by materials as required by the Planning Director and reasonably necessary for the proper review of the project, including but not limited to, information regarding the age and construction of a building or structure and building permit records.
 - (2) The Planning Director or designated staff shall determine whether the application will be processed as a "minor" or "major" historical alteration permit.
 - (i) "Minor" historical alteration permits shall apply to alterations with a valuation of less than \$10,000, or as determined to be minor by the Planning Director.
 - (ii) "Major" historical alteration permits shall apply to alterations with a valuation of \$10,000 or greater, unless the proposed alteration is determined to be minor by the Planning Director.
- c. City staff will review applications for compliance with the Secretary of the Interior's Standards and may require that the applicant deposit funds for the City to retain the services of a qualified historic consultant, if necessary.
- d. Environmental review of an historical alteration permit application will be required as follows:
 - (1) If the proposed alteration or modification is in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the potential impact on historical resources shall be considered less than significant and the project exempt from CEQA, unless other factors are identified which could cause other potentially significant environmental impacts.
 - (2) If the proposed alteration or modification is not in compliance with the Secretary of the Interior's Standards, then CEQA review will be required.
- e. Historical alteration permit applications (both minor and major) require the review and approval of the Planning Director, or designated staff, except as provided below:

(1) Any application involving preparation of an initial study, negative declaration or environmental impact report shall be referred to the Planning Commission for approval at a duly noticed public hearing.

(2) The Planning Director may also require that an historical alteration permit application be reviewed and approved by the Planning Commission, at his/her discretion.

f. As part of the review process, the Planning Director or Planning Commission may impose conditions on a project to bring the proposed work into compliance with the Secretary of the Interior's standards.

g. The Planning Director's or Planning Commission's decision to approve, conditionally approve or deny an historical alteration permit may be appealed in accordance with the provisions of this Article.

h. Reconstruction of potentially significant historical resources and historical resources shall comply with the Secretary of the Interior's Standards and require an historical alteration permit as described above. If all of the conditions of reconstruction as defined in this Article and by the Standards for Reconstruction cannot be met, then reconstruction should not be undertaken until CEQA analysis is completed. Reconstruction, though not encouraged, may be a viable option.

SEC. 10-11.070 HISTORICAL RESOURCES DEMOLITION OR RELOCATION PERMIT PROCESS.

a. It shall be unlawful for any person to tear down, demolish, remove or relocate an historical resource, a potentially significant historical resource, a designated historical resource, a resource that has been listed on the City's adopted survey list, or a resource that lies within an historic district, without first obtaining an historical resource demolition or relocation permit as outlined below. Neither the Planning Director nor the Building Official shall grant any permit to carry out such work without the prior approval of an historical resources demolition or relocation permit by the Planning Commission.

b. If an historical resource demolition or relocation permit is required pursuant to Section 10-11.050, the following procedures will be followed in processing the permit application:

(1) Applications for an historical resource demolition or relocation permit shall be submitted to the Planning Division for review and consideration by the Planning Commission. Applications shall be accompanied by materials as required by the Planning Director and reasonably necessary for the proper review of the project, including but not limited to information regarding the age and construction of a building or structure and building permit records.

(2) City staff will review applications for compliance with the Secretary of the Interior's Standards and may require that the applicant deposit funds for the City to retain the services of a qualified historic consultant, if necessary.

- (3) Environmental review of an historical resource demolition or relocation permit application will be conducted as follows:
 - (i) If the proposed demolition or relocation is in compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the potential impact on historical resources shall be considered less than significant and the project exempt from CEQA, unless other factors are identified associated with the proposed project that could cause potentially significant environmental impacts.
 - (ii) If the proposed demolition or relocation is not in compliance with the Secretary of the Interior's Standards, then the project is not exempt and CEQA review will be required.
- (4) Notice of public hearing for the Planning Commission's consideration of an historical resource demolition or relocation permit application shall be provided in the manner prescribed in Government Code Sections 65090 and 65091, or any successor statute thereto.
- (5) The Planning Commission shall complete its review and shall render its decision after the conclusion of a public hearing on the application. In reviewing permits sought to wholly or partially relocate or demolish an historical resource, a potentially significant historical resource, or resources within an historical resource site or historic district, the Planning Commission may approve, conditionally approve or disapprove the issuance of the permit or permits. The Planning Commission may condition approval of the permit to bring the proposed work into compliance with the Secretary of the Interior's Standards.
- (6) The Planning Commission's decision to approve or deny an historical resource demolition or relocation permit may be appealed to the City Council in accordance with the provisions of this Article.
- (7) In the case of a proposal to relocate a designated historical structure listed on the National Register of Historic Places, the applicant must first obtain written approval from the Keeper of the National Register prior to relocation to ensure that the resource will retain its National Register status.
- (8) In the case of a proposal to relocate a designated historical structure that is not listed on the National Register of Historic Places but is a locally designated historical resource, the Planning Director shall obtain sufficient information to ensure the new location substantially recreates the original location in terms of siting, setback, ordinal orientation and all other features that marked the original location, in order to retain its local register status.

SEC. 10-11.080 HISTORICAL RESOURCES DESIGNATION CRITERIA. For the purposes of this Article, an object, building, structure, site, area, district, unique archaeological resource, place, record, or manuscript may be classified a designated historical resource and placed on the local register by the Planning Commission pursuant to Section 10-11.090, if the resource is determined through survey and documentation to be an "Historical Resource" as defined in this Article.

SEC. 10-11.090 HISTORICAL RESOURCES DESIGNATION PROCESS. Historical resources and historic districts shall be designated and placed on the local register by the Planning Commission in the following manner:

- a. The City of Hayward or any property owner may request the designation of an historical resource or a potentially significant historical resource or the designation of an historic district by submitting an application for such designation to the Planning Division. The Planning Director, Planning Commission or City Council may also initiate such proceedings on their own motion.
- b. The Planning Director will conduct a study of the proposed designation and make a preliminary determination based on such documentation as may be required, as to the appropriateness for designation. If the Planning Director determines the application merits consideration, the Planning Commission shall conduct a public hearing to consider designation of the historical resource or historic district.
- c. No building alteration, demolition or relocation permit for any improvement, building or structure proposed for designation or located within a historic district that is proposed for designation shall be issued while the application for designation, or any appeal related thereto, is pending.
- d. Notice of the date, place, time and purpose of public hearings to consider designation of historical resources and historic districts shall be given in the manner prescribed in Government Code Sections 65090 and 65091, or any successor statute thereto.
- e. At the conclusion of the public hearing for the designation of a proposed historical resource or historic district, the Planning Commission shall approve in whole or in part, or disapprove in whole or in part, the application for designation of the resource as an historical resource on the local register.
- f. The Planning Commission's decision to approve, conditionally approve or deny the formal designation of an historical resource or historic district may be appealed in accordance with the provisions of this Article.

SEC. 10-11.100 INCENTIVES FOR THE PRESERVATION OF DESIGNATED HISTORICAL RESOURCES.

- a. Nothing in this Article shall prevent the City Council from waiving or reducing any processing fees for permits or other procedures for an owner of a designated historical resource undertaking work on the resource. The Planning Director is authorized to accelerate the processing of any required applications involving a designated historical resource.

- b. Nothing in this Article shall prevent the City of Hayward from establishing a funding program and guidelines for use by owners of a designated historical resource, as defined in this Article. Funding subsidies may be available for an owner undertaking work on an historical resource who is prevented by economic constraints from completing work in compliance with the Secretary of the Interior's Standards. The Planning Director may develop an application for requested subsidies. Evaluation criteria could include the significance of the historical resource, owner need and necessity for the work to be undertaken. All work undertaken shall meet the Secretary of the Interior's Standards for the Treatment of Historic Properties. Emergency measures to ensure the stability of a damaged designated historical resource shall be an allowable cost.
- c. Nothing in this Article shall prevent the City of Hayward from adopting the provisions of the Mills Act, adopted in 1972 by the State of California and amended in 1984, to allow an owner of a designated historical resource to have the property tax amount abated based on the provisions of the Act. The owner and the City shall enter into an agreement which defines the actions to be taken by the owner to ensure the restoration, protection and continued compatible use of the property.
- d. Nothing in this Article shall prevent the City of Hayward from adopting the provisions of the Marks Historical Rehabilitation Act. Under the provisions of this Act, the City of Hayward may issue tax-exempt revenue bonds for the purpose of financing the historical rehabilitation of buildings with significance to the City of Hayward, the State of California, or the United States.
- e. Nothing in this Article shall prevent the City of Hayward from participating in the development of an historic easement for a designated historical resource, including cultural/historic landscapes and all other historical resource types. The purpose of the easement is to protect the City's historical resources for the benefit of the community by allowing the owner to obtain a tax credit for the restoration, protection, or continued compatible use of the historical resource. The value of the revised deed restrictions may be held by the City or appropriate historical society or preservation organization with the expertise to oversee the enforcement of the easement for the current owner and any subsequent property owner.
- f. Historical resources and designated historical resources shall be eligible to use the California Historical Building Code, which can allow for alternate methods of meeting building code requirements.

SEC. 10-11.110 ADOPTED SURVEY LIST. Historical resources may be placed on the adopted survey list by the City Council in the following manner:

- a. The City of Hayward or any property owner may request the inclusion of an historical resource or potentially significant historical resource on the adopted survey list by submitting an application to the Planning Director. The Planning Commission or City Council may also initiate such proceedings on their own motion.

- b. The Planning Director will conduct a study of the proposed application and make a preliminary determination, based on such documentation as may be required, as to the appropriateness of the resource for inclusion on the adopted survey list and shall forward such analysis and recommendation to the Planning Commission and City Council for consideration at a public hearing.
- c. No alteration, demolition or relocation permits shall be issued for the subject resource while an application to include the resource on the adopted survey list, or any appeal related thereto, is pending.
- d. Notice of the date, place, time and purpose of public hearings to consider inclusion of resources onto the adopted survey list shall be given in the manner prescribed in Government Code Sections 65090 and 65091, or any successor statute thereto.

SEC. 10-11.120 APPEALS.

a. The following actions by the Planning Commission may be appealed by an interested party to the City Council:

- (1) A determination that an object, site or structure be placed on the local register as a designated historical resource or historic district or not be placed on the local register as a designated historical resource or historic district;
- (2) A determination that an object site or structure be placed on the adopted survey list or not placed on the adopted survey list;
- (3) The Planning Commission's decision to approve, conditionally approve or deny an historic alteration permit, an historical resource demolition permit or an historical resource relocation permit; and
- (4) Any item acted on by the Planning Commission on appeal or referral from the Planning Director.

b. The following actions by the Planning Director may be appealed by an interested party to the Planning Commission:

- (1) The Director's decision to approve, conditionally approve or deny an historic alteration permit for a potentially historical resource or an historical resource or site.

c. In the event that the applicant, any interested person or any member of the City Council is aggrieved by a decision of the Planning Commission or Planning Director, the aggrieved party may, within ten days of an action by the Planning Commission or fifteen days of an action by the Planning Director, appeal in writing to the appropriate body as outlined above. Notice of appeal shall be in the manner prescribed in Section 10-1.2820 of the City's Zoning Ordinance. The appellate body may affirm, modify or reverse the original decision. Action by the appellate body shall be final, unless there is a further appeal to the City Council, in which case, the City Council action shall be final.

SEC. 10-11.130 ORDINARY MAINTENANCE AND REPAIR. Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature, or interior feature identified as a resource, in or on any property covered by this Article that does

not involve a change in design, material or external appearance thereof; nor does this Article prevent the construction, reconstruction, alteration, restoration, demolition or relocation of any such feature when the Building Official certifies to the Planning Director that such action is required for the public safety due to an unsafe or dangerous condition which cannot be rectified through the use of the California Historical Building Code.

SEC. 10-11.140 DUTY TO KEEP IN GOOD REPAIR. The owner, occupant or other person in actual charge of a historical resource, or an improvement, building or structure in an historic district shall keep in good repair all of the exterior portions of such improvement, building or structure as necessary to prevent deterioration and decay of any exterior architectural feature.

SEC. 10-11.150 CONDITIONS OF APPROVAL FOR DEVELOPMENT PROJECTS LOCATED WITHIN ARCHAEOLOGICALLY SENSITIVE AREAS, AND/OR WITHIN OR ADJACENT TO KNOWN ARCHAEOLOGICAL SITES. Proposals for the development or redevelopment of a site identified as archaeologically sensitive by any archaeological sensitivity map adopted by the City shall be subject to the following review process and conditions of project approval:

- a. City staff will consult with the Northwest Information Center for information about whether the project is located within or adjacent to a known archaeological site, and if it is determined that it is so located, then a historical alteration permit shall be required for the project. CEQA review of the project shall consider potentially significant impacts on archaeological resources and identify appropriate mitigation measures to be imposed as conditions of approval, in addition to the conditions identified below.
- b. If the project is not located within or adjacent to a known archaeological site, then the project applicant has the option to either have an archaeological survey be completed for the site to determine what, if any, conditions of approval will be required as mitigation measures or agree to comply with the following conditions of approval, which shall be conclusively deemed to reduce potentially significant impacts on archaeological resources to a less-than-significant level. No archaeological resources report is required as part of any CEQA review of the project, provided the applicant accepts the following conditions and incorporates them into the project:
 - (1) An archaeologist shall be present on-site to monitor all ground-disturbing activities. Where historical or archaeological artifacts are found, work in areas where remains or artifacts are found will be restricted or stopped until proper protocols are met, as described below:
 - (i) Work at the location of the find will halt immediately within thirty feet of the find. If an archaeologist is not present at the time of the discovery, the applicant shall contact an archaeologist for evaluation of the find to determine whether it qualifies as a unique archaeological resource as defined hereinabove.
 - (ii) If the find is determined not to be a unique archaeological resource, construction can continue. The archaeologist will prepare a brief informal memorandum/letter that describes and assesses the significance of the resource, including a discussion of the methods used to determine significance for the find.

(iii) If the find appears to be significant and to qualify as a unique archaeological resource, the archaeologist will determine if the resource can be avoided and will detail avoidance procedures in a formal memorandum/letter.

(iv) If the resource cannot be avoided, the archaeologist shall develop an action plan to avoid or minimize impacts. The field crew shall not proceed until the action plan is approved by the Planning Director. The action plan shall be in conformance with California Public Resources Code 21083.2.

(2) In addition to the conditions listed above, all development projects located within an archaeological sensitivity area and/or containing known archaeological resources on-site shall also be subject to the following measures as conditions of project approval:

(i) This project may adversely impact undocumented human remains or result in the discovery of significant historic or archaeological materials. The following policies and procedures for treatment and disposition of inadvertently discovered human remains or archaeological materials shall apply.

a. If human remains are encountered, they shall be treated with dignity and respect as due to them. Information about such a discovery shall be held in confidence by all project personnel and shared only on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.

b. Remains shall not be held by human hands. Surgical gloves shall be worn if remains need to be handled.

c. Surgical masks shall also be worn to minimize exposure to pathogens that may be associated with the remains.

(ii) In the event that known or suspected Native American remains are encountered or significant historic or archaeological materials are discovered, ground-disturbing activities shall be immediately stopped. Examples of significant historic or archaeological materials include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials and historic structure remains, such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the exclusion zone as defined below,

(iii) An "exclusion zone" where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area, plus a reasonable buffer zone, by the contractor foreman or authorized representative, or party who made the discovery and initiated these protocols, or if on site at the time of discovery, by the monitoring archaeologist (typically 25 to 50 feet for single burial or archaeological find).

(iv) The exclusion zone shall be secured (e.g., 24-hour surveillance) as directed by City or Alameda County representatives, if considered prudent to avoid further disturbances.

(v) The contractor foreman or authorized representative, or party who made the discovery and initiated these protocols shall be responsible for immediately contacting by telephone the parties listed below to report the find and initiate the consultation process for treatment and disposition:

- a. The City of Hayward Planning Director;
- b. The contractor's point(s) of contact;
- c. The Coroner of the County of Alameda (if human remains found);
- d. The Native American Heritage Commission (NAHC) in Sacramento;
- and
- e. The Yrgin band of Ohlones.

(vi) The Coroner shall examine the remains after being notified of the discovery. If the remains are Native American, the Coroner shall notify the NAHC within 24 hours.

(vii) The NAHC shall be responsible for identifying and immediately notifying the Most Likely Descendant (MLD) from the Yrgin band of Ohlones. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)

(viii) Within 24 hours of notification by the NAHC, the MLD will be granted permission to inspect the discovery site.

(ix) Within 24 hours of notification by the NAHC, the MLD may recommend to the City's Planning Director the recommended means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses or DNA analyses recommended by the Amah Mutsun Tribal Band may be considered and carried out.

(x) If the MLD recommendation is rejected by the City, the parties shall attempt to mediate the disagreement with the NAHC. If mediation fails then the remains and all associated grave offerings shall be reburied with appropriate dignity on the property in a location not subject to further subsurface disturbance.

SEC. 10-11.160 ENFORCEMENT; ADMINISTRATIVE CITATIONS.

a. The City Manager, or his or her designee, shall have the authority to enforce the provisions of this Article.

b. Any person who violates a provision of this Article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. In addition to all other remedies or penalties provided by law, a violation of any of the sections contained in this Article is punishable by administrative penalties as set forth in Chapter 1, Article 7 of the Hayward Municipal Code. Any person subject to administrative penalties pursuant to this Article shall have the right to request an administrative hearing in accordance with Hayward Municipal Code 1-7.07 through 1-7.10, inclusive. The administrative penalties imposed by this Article do not preclude other potential civil actions or criminal prosecution under any other provision of law

c. In addition to any of the foregoing remedies, the City Attorney may maintain an action for injunctive relief to restrain or enjoin or to cause correction or removal of any violation of this Article.

d. Any person who demolishes, alters, relocates or constructs a building or structure in violation of this Article shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the City Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.”

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 upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the day of _____, 2010, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2010, 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