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California Business Properties Association

April 26, 2011

VIA EMAIL

Mayor Michael Sweeny
And Member of the City Council
City of Hayward
777 B Street
Hayward, CA 94541

Re: Interim Moratorium Ordinance Requiring Supermarkets of 20,000 Square Feet or More or Large Retail Stores Containing at least 10,000 Square Feet or Ten Percent of Area Devoted to Sale of Grocery or Non-Taxable Items

Dear Mayor Sweeney and Members of the City Council:

On February 1, 2011, the Hayward City Council directed the City Manager to review a request by the United Food and Commercial Workers Union, Local 5, to review a draft ordinance dealing with large stores that have grocery components. The Interim Ordinance before you not only proposes restrictions on large stores with grocery components, but on standard 20,000 square foot or larger supermarkets as well. We are writing on behalf of our member companies to express concern regarding this direction and to urge the City Council to fully consider the potential impacts that an ordinance imposing more restrictions on businesses may have on the City.

Hayward, like many California and Bay Area cities, has been hurt by the current economic downturn. Across California, businesses of all sizes have been closing their doors and leaving cities with thousands of square feet of vacant retail and commercial space. It seems counter-intuitive that in the current economic climate the City would

seek to consider adding more regulations and delays on businesses willing to enter into the Hayward retail market and stymie the process of retailers who have already chosen the locate within the City of Hayward.

We believe that the Interim Ordinance presented sends the wrong message to the business community about the economic opportunities in Hayward. It is our belief that instead of considering ordinances that would discourage the development or re-tenanting of vacant space, the City should consider ways to encourage retailers and developers to locate in Hayward. We also believe that the City Council and the people of Hayward should be given the opportunity to more fully hear the impacts the types of regulation under consideration could have on development and re-tenanting of vacant space in the City. A moratorium on development while these discussions take place could cause businesses considering Hayward to locate elsewhere without time for the City to consider the full impacts of any proposed restrictions.

Encouraging the Reuse of Existing Buildings

The purpose of the Hayward Zoning Ordinance is to achieve a pattern and distribution of land uses which retain and enhance established residential neighborhoods, commercial and industrial districts, regional-serving uses, and recreational amenities. Restricting development in commercial and industrial districts, and limiting the availability of regional-serving uses such as supermarkets runs counter to the purpose of the Zoning Ordinance.

Not only does a restriction on supermarket uses prevent enhancement of established districts, but it prevents infill and reuse of areas at their prevailing scale and character; does not allow for expansion of development into vacant and underutilized lands within environmental and infrastructure constraints; or provide a high quality of life in an attractive and secure environment for Hayward's residents and businesses. All of these are counter to the stated purposes of the Zoning Ordinance.

Vacant retail buildings pose a dilemma for every community. Vacant buildings can attract crime and can fall into disrepair. This does not enhance the Hayward community. Further, vacant buildings harm surrounding businesses, especially those business that are in shopping centers anchored by these larger buildings. While there is a remote, yet speculative, potential that businesses may be marginally harmed by new grocery uses, imposing a moratorium on development while further analysis is conducted will tangibly and irreparably harm existing businesses. Vacant boxes will not draw customers to shopping centers and smaller tenants will not experience the same level of customer traffic and notoriety. Furthermore, without any potential of these vacant buildings being retenanted in the immediate future, these smaller businesses will also lose customers and have to also shut their doors. This would

result in even more economic harm as entire shopping centers would be left vacant and undesirable.

Restricting supermarkets that seek to utilize existing buildings also goes against the City's desire to encourage infill development. Staff specifically mentions a proposed supermarket in the existing Circuit City building. That project would infill an existing vacant building without changing the scale or character of the area. Such infill development is also environmentally friendly, as retailers could utilize an existing building and associated infrastructure and would not need to use vacant land and new construction to create additional impacts.

Desirable infill development is not without its own expense. The cost to renovate an existing building may equal or exceed the cost to build a new store or building. To encourage retailers to reuse existing space, cities need to incentivize retailers. Timing, and the ability to open quickly, is a huge incentive. The proposed moratorium goes in the opposite direction and does not help the City of Hayward lure new retail into the community.

We believe that incentivizing retailers to reuse existing buildings in Hayward will help fill Hayward's vacant buildings and revitalize existing shopping centers. This will help avoid potential blight and degradation of existing buildings and shopping centers. Many cities throughout the State and the Bay Area are competing for new retail revenue, and the City of Hayward should carefully consider any new regulations that it adopts and the potential impact that they could have on future new development and the reuse of existing buildings. An urgency ordinance is not the best way to consider these impacts.

<u>The Proposed Ordinance Casts a Wider Net than Necessary</u>

Under the proposed Ordinance, retail property owners with vacant boxes would not be able to encourage any development of grocery uses while the moratorium remained in place. The proposed Ordinance, however, does not merely affect retailers seeking to establish grocery uses. "Supermarket" is defined as any establishment engaged in the retail sale of food, beverages, drugs, variety items and similar goods. This definition is very broad and may impact other, and possibly unintended, retailers.

The face of retail shopping is changing and many retailers are "channel blurring" or selling multiple types of merchandise in a single store. Pharmacies, general merchandisers, and even hardware stores are selling more than just one type of goods. These uses may sell beverages or variety items at their locations. This Ordinance

would restrict their development.

"Channel blurring" allows businesses to keep up with changing market conditions, which is essential in today's economy. Restricting grocery uses runs counter to this philosophy and limits business flexibility. Discouraging channel blurring discourages new retail formats from entering the marketplace. Innovation and flexibility should be applauded, not discouraged, as additional opportunities could be created in the long run.

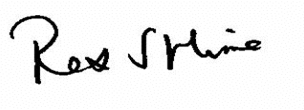
The Interim Moratorium Will Not be of Limited Duration

The City of Hayward has expressed concern with the current economic recession and its negative impact on the commercial property market in Hayward. Because of the current economic trend, Staff has recommended that the City further assess the desirability of approving new supermarkets, especially in areas served by existing markets. To make such an assessment, however, Staff needs additional time to analyze the potential impacts of new uses in Hayward and determine if modifications to the Zoning Ordinance are appropriate.

It is estimated that it will take approximately three to six months, with a cost of approximately $20,000 from the General Fund to fully research and analyze the impacts associated with supermarket uses. The proposed Interim Urgency Ordinance would establish a 45 day moratorium on the approval of land use entitlements and building permits, but this could be extended for an additional 10 months and 15 days to allow time for a more thorough analysis. Thus, there can be a moratorium on supermarket uses for up to one year. Retailers seeking to encourage supermarket development in their centers would be left with vacant boxes for up to a year, which harms both the retailers and the Hayward community at large. Further, the analysis will cost the City an additional $20,000, which can be burdensome in an already economically challenging climate.

We believe that the direction given to staff on February 1, 2011, the addition of standard size supermarkets to the analysis of larger format stores, and the proposed Interim Urgency Ordinance regarding the regulation of new grocery uses sends the wrong message to the retail and business community and could result in significant impacts to the City. In light of the $20,000 additional cost for analysis, we also do not believe that it is necessary in today's business climate and we recommend that the City not adopt the Interim Urgency Ordinance or move forward in considering changes to the current Hayward Zoning Ordinance.

Very truly yours,



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