



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

OCTOBER 24, 2013

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CITY OF HAYWARD
777 B STREET, HAYWARD, CA 94541-5007
(510) 583-4205 / www.hayward-ca.gov
LIVE BROADCAST – LOCAL CABLE CHANNEL 15

AGENDA
SPECIAL HAYWARD PLANNING COMMISSION MEETING
THURSDAY, OCTOBER 24, 2013 , AT 7:00 PM
COUNCIL CHAMBERS

MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair 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 for organization. Speakers are expected to honor the allotted time.

ROLL CALL

SALUTE TO FLAG

PUBLIC COMMENT: (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission 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 Commission 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 for further action).

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

WORK SESSION:

1. General Plan Update - Presentation of Draft Policy Document

[Staff Report](#)

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters
3. Commissioners' Announcements, Referrals



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

APPROVAL OF MINUTES

4. [October 3, 2013](#)

ADJOURNMENT

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which 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.

NOTE: Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

DATE: October 24, 2013
TO: Planning Commission
FROM: Sara Buizer, AICP, Senior Planner
SUBJECT: General Plan Update - Presentation of Draft Policy Document

RECOMMENDATION

That the Planning Commission reviews and comments on this report and the draft General Plan Policy Document.

SUMMARY

This work session is to provide the Planning Commission the opportunity to provide initial feedback on the [draft policy document](#) including the goals, policies and implementation programs of the updated General Plan.

This work session will focus on the Implementation Programs, as goals and policies were reviewed at separate work sessions held in June and July. However, in reviewing programs, it may be necessary to revisit the goals and policies. The draft policy document, provided under separate cover, reflects and incorporates both City staff and General Plan Task Force input received.

Goal, policy and implementation program development for the various elements in the updated General Plan relies on the key findings/information from the background reports, existing General Plan policies and strategies, community outreach, and the Vision and Guiding Principles (which entailed significant public input).

Based on the compressed schedule for preparation of the Hayward General Plan Update, the Draft Environmental Impact Report (DEIR) is being prepared simultaneously. In order to assess the programmatic impacts associated with the project, the analysis is relying on goals, policies and programs as presented. Any changes to goals, policies and programs that may require revisions to the DEIR analysis will necessitate an analysis of impacts on the overall project schedule.

BACKGROUND

The Hayward 2040 General Plan project was authorized by City Council and initiated in July of 2012. To date, there have been eight previous work sessions/meetings before the City Council

and/or Planning Commission and nine previous community meetings. Additionally, input on the General Plan project has been received via the City's Hayward 2040 online tool at Hayward2040.org.

In June and July, joint City Council/Planning Commission work sessions were held to present draft goals and policies associated with the draft elements. The review of goals and policies resulted in much discussion about "how" the City plans to achieve the various direction outlined in the draft goals and policies. The Implementation Programs are included in the document to address this.

Information on past meetings and the General Plan Update project and process, including the draft General Plan document, can be found on the Hayward 2040 General Plan webpage on the City's [website](#).

DISCUSSION

This work session focuses on the draft Implementation Programs associated with the draft General Plan. Draft goals and policies associated with nine draft General Plan Elements (Land Use and Community Character, Mobility, Economic Development, Community Safety, Natural Resources, Hazards, Education and Lifelong Learning, Community Health and Quality of Life, and Public Facilities) were presented during joint work sessions held in June and July 2013. The draft policy document was presented to the General Plan Update Task Force for their input on September 10 and September 26, 2013. A summary of the Task Force feedback is provided later in this report.

Staff is requesting that the Planning Commission reviews the draft policy document, with a focus on the draft implementation programs, and provides feedback and direction to staff. The implementation programs are organized by draft element. For each draft program, the policies that the program is designed to implement are listed, the responsible and supporting City department(s) are identified, a potential funding source is listed, and a timeframe is established for implementation. One of the key elements that is missing from this analysis is the extent to which the Implementation Programs can be accomplished with existing staffing levels and resources or whether the programs will require a reevaluation of workload priorities. As the organization is still facing diminished resource levels, this conversation will need to be integrated with the upcoming Council priority discussion and the FY2015-2017 budget preparation process.

Staff offers the following questions to guide review and discussion:

- Is the implementation program needed?
- Is the timeframe for implementation correctly identified?
- Should the timeframe for any programs be modified?
- Are there any programs that should be added?

[Part Four of the draft Policy Document](#) contains the Implementation Programs. There are thirty-six Implementation Programs that have been identified for completion in the 2014-2016 timeframe, i.e. the near-term. Page 4-2 of the draft Policy Document identifies nineteen of the thirty-six policies that staff has determined are most aligned with the current City Council priorities of Safe, Clean and Green. Staff offers these as a starting point for the work session discussion.

General Plan Format – To allow for better monitoring and implementation of General Plan goals and policies, the updated General Plan will have a new layout similar to the 2010 Housing Element and will contain goals, policies, and implementation programs. The format will be similar to the City of Sacramento’s recently updated General Plan¹. The new format will include goals that have a clear focus or end toward which effort will be directed, policies that will be clear and feasible, and implementation programs with metrics consistent with Council and Commission’s desire to measure program outcomes. The difference between a policy and an implementation program is that a program must have an end product, whereas a policy may be a guiding statement or general direction. The final product will be an interactive web-based General Plan that will be easy to navigate and will be searchable, allowing decision-makers and other users to quickly locate relevant information.

Climate Action Plan Integration – As has been discussed previously, the Hayward Climate Action Plan will be integrated into the General Plan Update. Policies and implementation programs that are directly related to the Climate Action Plan or sustainability issues will be identified by a globe icon (🌐). The City Council Sustainability Committee reviewed Climate Action Plan Actions at a meeting on July 10. In response to comments received at the July 10 meeting, the Residential Energy Conservation Ordinance (RECO) and the Commercial Energy Conservation Ordinance (CECO) have been removed from the list of programs related to the Climate Action Plan (CAP). The RECO and CECO, which were identified in the 2009 CAP, could, in some cases, have required expensive energy efficiency improvements in existing buildings. However, given that approximately 35 percent of Hayward’s GHG emissions are from building energy use and because most of the buildings that will exist in 2050 are already built, energy efficiency in existing buildings must be addressed in order to meet long term GHG reduction goals. To address this need, staff included an Energy Performance Audit and Disclosure (EPAD) ordinance (see Implementation Programs NR-9 and NR-10). The intent of the EPAD is to require disclosure of energy efficiency information for existing buildings so that such information may allow market forces to lead to increases in energy efficiency. Over time, energy efficiency improvements that are determined to be affordable and cost-effective may be required as part of the ordinance.

Council Sustainability Committee - The Council Sustainability Committee reviewed the draft General Plan policies and programs related to the Climate Action Plan at their meeting on October 2, 2013. Since this meeting occurred after the draft policy document was provided for the Planning Commission’s review, the Committee’s modifications to goals, policies or programs will be included prior to the release of the public review draft policy document later this year. The primary discussion at this meeting, however, was related to Natural Resources Programs 9 and 10. The Committee recommended that changes be made to the language of both these programs. The Committee was supportive of disclosure of energy information, but were not supportive of language related to requiring improvements. Below are the suggested revisions to Programs NR-9 and NR-10.

Program NR-9 Residential Energy Performance Audit and Disclosure Ordinance. The City shall adopt a Residential Energy Performance Audit and Disclosure (EPAD-R) Ordinance for

¹ City of Sacramento General Plan at <http://www.sacgp.org/index.html>

detached single-family homes and multi-family homes. The Residential EPAD Ordinance shall require energy performance disclosures at determined trigger points or thresholds. After disclosure requirements are in effect for at least two to three years, the City may consider requirements for cost-effective and improved improvements in energy efficiency and energy conservation in residential buildings. ~~The EPAD's required efficiency improvements shall be those that are determined to be affordable and cost-effective.~~ [Source: *New Program; revised Residential Energy Conservation Ordinance (RECO); Climate Action Plan*] (RDR)

Program NR-10 Commercial Energy Performance Audit and Disclosure Ordinance. The City shall adopt a Commercial Energy Performance Audit and Disclosure (EPAD-C) Ordinance for ~~detached single-family homes and multi-family homes~~ commercial buildings. The ~~Commercial EPAD~~ Commercial EPAD Ordinance shall require energy performance disclosures at determined trigger points or thresholds. After disclosure requirements are in effect for at least two to three years, the City may consider requirements for cost-effective and improved improvements in energy efficiency and energy conservation in commercial buildings. ~~The CPAD's required efficiency improvements shall be those that are determined to be affordable and cost-effective.~~ [Source: *New Program; revised Commercial Energy Conservation Ordinance (CECO); Climate Action Plan*] (RDR)

General Plan Update Task Force – The General Plan Update Task Force met on September 12th and 26th to review the draft policy document. The Task Force was supportive of the draft policy document. The Task Force felt the document was more lively than the existing document with the photos and diagrams to help illustrate or explain various topics. They seemed supportive of Program LU-1, which outlines the Zoning Ordinance amendments required to realize the General Plan's Vision. They had some concerns over the implementation programs that require the City to review and update plans every five years. There was a suggestion to accelerate the timeframe on a number of programs to be competitive with surrounding cities. The proposed timeframes are based on existing resources but will need to be reevaluated in the context of the upcoming Council priorities process and the FY2015-2017 budget process. However, Council can recommend items that are higher priority and may warrant a reevaluation of the proposed timeframes.

FISCAL IMPACT

The fiscal impacts associated with the General Plan Update were provided in the September 25, 2012 City Council agenda report. Below is a table showing the approved General Plan Update budget and the portion that has been spent and portion remaining as of mid-September, 2013.

Budget for General Plan Update 2012-2014 (as adopted on 9/25/2012)			
	Approved Budget	Spent	Remaining
City Staff Time	\$475,000	\$127,293	\$347,707
Jason Jones (consulting project manager)	\$266,800	\$179,600	\$87,200
Public Engagement Activities/Tools	\$10,000	\$8,000	\$2,000
Mintier Harnish/MIG	\$1,157,840	\$715,314	\$442,526

Miscellaneous Costs (outreach materials)	\$10,000	\$2,677	\$7,323
Subtotal	\$1,919,640		\$896,400
10% Contingency	\$191,964		\$191,964
Grand Total	\$2,111,604	\$1,032,883	\$1,078,721

PUBLIC CONTACT

Ongoing updates have been provided on the City's web site and on Hayward2040.org. The City has been providing updates on the City's Facebook and Twitter accounts as well encouraging participation on the Hayward2040.org site. In addition, staff attended the Greater Hayward Democratic Club on September 18, 2013 and the Hayward Nonprofit Alliance meeting on September 19, 2013 to provide information about the General Plan Update.

NEXT STEPS

Following input from the Planning Commission and City Council, who reviewed the draft policy document this past Tuesday, October 22, the draft policy document will be updated. The public review draft General Plan is scheduled to be released in the late fall followed by release of the program-level Environmental Impact Report. Based on the compressed schedule for preparation of the Hayward General Plan Update, the Draft Environmental Impact Report (DEIR) is being prepared simultaneously. In order to assess the programmatic impacts associated with the project, the analysis is relying on goals, policies and programs as presented. Any changes to goals, policies and programs that may require revisions to the DEIR analysis will necessitate an analysis of impacts on the overall project schedule.

Prepared by: Sara Buizer, AICP, Senior Planner

Approved by:



David Rizk, AICP
Development Services Director

Attachments:

Attachment I Draft Policy Document (sent under separate cover)



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, October 3, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

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

ROLL CALL

Present: COMMISSIONERS: Loché, Trivedi, McDermott, Lamnin, Márquez, Lavelle
CHAIRPERSON: Faria
Absent: COMMISSIONER: None
CHAIRPERSON: None

Commissioner Márquez led in the Pledge of Allegiance.

Staff Members Present: Conneely, Emura, Irizarry, Madhukansh-Singh, Rizk

General Public Present: 1

PUBLIC COMMENTS

None

PUBLIC HEARING

1. Conditional Use Permit No. PL-2013-0115 – Review of Operations of an Existing Billiard Parlor (Chalk It Up, UP-90-59) and Request to Modify Conditions of Approval (PL-2010-0046) to Allow Minors on Weekends, to Allow “Happy Hours,” to Allow the Sale of Beer by the Pitcher and Bucket, and to Modify Existing Security Requirements. The proposed Project is Categorically Exempt from Environmental Review in Accordance with the California Environmental Quality Act (CEQA) Guidelines, Section 15301(e)(2), Existing Facilities – Noam Garfinkel (Applicant)/ Raj Chabra (Owner). The Property is Located at 22546 Foothill Boulevard, between A and B Streets, in the Central City-Commercial (CC-C) Zoning Sub-district.

Associate Planner Carl Emura provided a synopsis of the staff report. He stated that staff and the Hayward Police Department (HPD) support allowing minors 18 years and older on Fridays and Saturdays, which would allow for a college-age venue on the weekends. Associate Planner Emura indicated staff’s recommendations included conditions that minors be limited to the six billiards tables closest to the bar/check in counter, that all minors receive a wristband, and all individuals receiving beer should have their hands stamped. Associate Planner Emura also indicated that the City’s General Plan Land Use Strategies for the Mission/Foothill Corridor encouraged the location of university-oriented retail and entertainment uses with the community. He further indicated that staff and HPD do not support the allowance of happy hours, the sale of

beer by pitcher or buckets, or allowing the reduction of security personnel without HPD approval, and that the applicant explore other non-alcoholic promotional means to increase business. He mentioned that during the public noticing period, staff received a comment from the Hayward Coalition for Healthy Youth that opposed the lessening of the conditions. Staff also received an email supporting the allowance of beer sales by the pitcher and the happy hour drink specials, but the email did not support the reduction of security personnel without approval from HPD.

Commissioner Márquez asked staff to clarify if the language in the staff report referencing minors meant individuals under the age of twenty-one or minors under the age of eighteen.

Assistant City Attorney Conneely confirmed that the language addressing minors made reference to individuals between eighteen to twenty-one years of age.

Commissioner Márquez asked staff if the establishment was consistent with Americans with Disabilities Act (ADA) requirements.

Associate Planner Emura stated that the establishment currently does not have an elevator nor are there plans to put one in place in the future.

Detective Irizarry indicated for Commissioner Márquez that the HPD checked the CCTV security system through the internet as it was necessary. She mentioned that one of the purposes of utilizing this security system was for officer safety reasons as the establishment was a two-story building. Detective Irizarry confirmed that the establishment did not have any noted ABC violations.

Commissioner Lamnin suggested that the requirement should be to have adults of legal drinking age wear wristbands opposed to those who were underage wear wristbands.

Associate Planner Emura noted that the concern in having adults of legal drinking age wear wristbands was that it would prove to be difficult to monitor the minors. He stated that staff at Chalk It Up could easily distinguish between adults of drinking age and those that were underage if the underage group was required to wear the wristbands. He pointed out that the idea was to have the underage group within eye contact of the establishment's staff, which is why they would be restricted to the six billiard tables closest to the bar.

Commissioner Lamnin expressed concern that individuals belonging to the underage group could easily remove their wristbands while walking downstairs to the basement, which was the main floor of the billiards hall.

Detective Irizarry stated that the establishment would have two security guards to help monitor all patrons visiting the billiards hall; one would be located at the main entrance and the second security guard would be in the basement.

Associate Planner Emura clarified for Commissioner Lamnin that the current condition was that the establishment had to have two security guards; however, the applicant was requesting to have discretion in being able to reduce the number of security guards to one, without HPD approval.



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He stressed the importance of identifying individuals below the legal drinking age as they enter the establishment and this could be best accomplished by requiring that they wear wristbands. He noted that the establishment's staff would have to check the IDs of each individual in order to verify who was underage and would thus have to wear a wristband.

Assistant City Attorney Conneely responded to Commissioner Lamnin's question by stating that the happy hour trial program only applied to full service sit-down restaurants in Hayward.

Associate Planner Emura clarified for Commissioner Lamnin that there was no expiration date for the conditional use permit.

Commissioner McDermott shared the same concern as Commissioner Lamnin regarding the wristband requirement. She pointed out that the staff report indicated that the applicant was granted approval by HPD to reduce the number of security guards down to one security guard due to a decline in business.

Associate Planner Emura noted that the applicant's initial business plan was to attract an older clientele to his business, consisting of individuals above the age of twenty-one. He indicated that the applicant lost a lot of his clientele because of the age restriction on Friday and Saturday nights. He stated that by requesting a change in the conditions of approval, the applicant was hoping to be able to attract more college-aged individuals to his establishment. He noted that the billiards hall was the perfect type of entertainment venue for college-aged students and that under the current condition, college-aged students below twenty-one years old were unable to go to the establishment on Fridays and Saturdays.

Commissioner McDermott stated that other businesses, in addition to Chalk It Up, were impacted by the construction on Foothill Boulevard, which contributed to a decline in business. She was hopeful that business at the formerly impacted establishments would show improvement, now that construction on Foothill Boulevard was completed.

Commissioner Trivedi was favorable to having a wristband policy, but he indicated that he agreed with Commissioners Lamnin and McDermott in requiring adults of legal drinking age to wear the wristbands in order to be able to be served alcohol.

Associate Planner Emura suggested that the conditions of approval could be modified to require both individuals of legal drinking age and underage individuals to wear wristbands; there would be a distinction made between the two age groups by having wristbands of two different colors. He emphasized that it was important for Chalk It Up staff to be able to easily identify who the underage individuals were among the patrons.

Associate Planner Emura confirmed for Commissioner Trivedi that the main entrance to the establishment was on Foothill Boulevard; patrons of the billiards hall who have parked their

vehicles in the parking lot to the rear of the establishment would have to walk around the building to access the entrance.

Commissioner Trivedi noted that he would later address his question to the applicant as to whether the CCTV Security System monitored the parking lot.

Associate Planner Emura stated that as patrons arrive at the billiards hall, groups consisting of underage individuals would be assigned to the area with six tables reserved for underage groups.

Commissioner Loché agreed that those of legal drinking age should wear wristbands. He asked staff why Chalk It Up could not have a happy hour even though they were already an alcohol serving establishment.

Detective Irizarry responded that the primary function of the establishment was to operate as a billiards hall and being that it was not a full service restaurant nor was it a bar, it would not qualify as an establishment that could have a happy hour.

Noam Garfinkel, the business owner of Chalk It Up, confirmed for Commissioner Loché that a majority of the business sales were from the billiards hall and not from the sale of alcohol.

Commissioner Lavelle asked staff how the current provisions prevented an adult of legal drinking age from purchasing an alcoholic beverage and handing this to an underage individual to consume.

Associate Planner Emura commented that by requiring individuals younger than the legal drinking age to wear a wristband, Chalk It Up staff could ensure that individuals wearing a wristband were not consuming alcoholic beverages.

Development Services Director Rizk added that the enforcement and oversight of ensuring that underage individuals were not drinking alcohol rested upon the establishment's staff and security guards.

Commissioner Lavelle asked staff if there was any discussion about segregating the six billiards tables that would be designated for underage groups from the bar and/or drinking area.

Associate Planner Emura replied that this was not discussed by staff and he noted that the Planning Commission could include this as a proposed condition of approval.

In response to Commissioner Lavelle's question, Associate Planner Emura stated that no comments were received from patrons of the business or California State University East Bay (CSUEB) students in support of the proposed modifications to the conditional use permit. He indicated that the planning notices were mailed to the surrounding neighborhood and businesses within 300 feet of the area.

Commissioner Trivedi asked staff if there was a city-wide policy addressing the sale of alcohol by pitcher or buckets or if there were other establishments in Hayward that sold alcohol by the pitcher or in buckets. Staff responded that they did not have knowledge of such a policy.



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Commissioner Márquez referenced Attachment III, condition number 40 of the staff report, asking staff if employees would be able to serve alcohol within six months of their hire date if they had not completed the Department of Alcoholic Beverage Control's LEAD Training.

Associate Planner Emura responded that in the conditions of approval, employees were required to take the LEAD Training within six months of hire; however, he noted that staff could modify the current condition of approval to state that employees may not serve alcohol until they have completed the training.

Chair Faria asked staff if the establishment was required to check the digital security on a regular basis. She commented that the fact that the CCTV security system was not functioning went unnoticed by the establishment in the past. She indicated that there should be a mechanism in place requiring the establishment to check the functionality of the digital security system on a daily basis.

Associate Planner Emura responded that currently there was no condition requiring that the establishment check the digital security cameras periodically; however, he indicated that the Planning Commission could include a condition of approval to require this.

Chair Faria pointed out that Condition of Approval No. 29 permitted the establishment to sell alcohol from 10:00 a.m. to 1:00 a.m. She asked staff why the business was allowed to sell alcohol so early, even though the establishment did not open for business until 6:00 p.m.

Associate Planner Emura responded to Chair Faria by stating that the said hours in Condition of Approval No. 29 were to allow the establishment flexibility in what time it opened; he noted that at one point, the business opened at 1:00 p.m.

Chair Faria mentioned that the Planning Commission had modified the hours of the sale of alcohol to 11:00 a.m. for the banquet hall, which is to be operated by the Hayward Area Historical Society.

Chair Faria opened the public hearing at 7:40 p.m.

Noam Garfinkel, business owner of Chalk It Up, spoke about the establishment's plans to make the first floor space compliant with ADA requirements. He indicated that the first floor set up will be similar to that of the basement as it will have billiards tables and it may have a minibar and/or mini-kitchen. Mr. Garfinkel stated that the envisioned set up would help to satisfy the ADA requirements while circumventing the costs of installing an elevator.

Mr. Garfinkel agreed with the recommendation to require that all patrons wear wristbands. He said that after checking identification cards, staff could issue wristbands of different colors to individuals who were of legal drinking age and to those who were underage.

Mr. Garfinkel said that his initial request was to remove Condition of Approval No. 31 which prohibited minors under the age of 18 from entering the billiard parlor on Fridays and Saturdays. He indicated that he would like individuals of all ages to be permitted at his establishment on Fridays and Saturdays, similar to how all age groups are permitted during Sundays through Thursdays. He shared that the loss of business at his establishment was not only due to the construction on Foothill Boulevard, but also due to dramatic reduction in patrons visiting the business due to the age restrictions. Mr. Garfinkel said that some of his customers come in mixed groups consisting of high school and college-aged individuals. He indicated that if someone among the group did not meet the age requirement to enter the billiards hall, then the entire group might decide to leave.

Mr. Garfinkel noted that the security camera located in the parking lot to the rear of his establishment was functioning properly. He added that the earliest he anticipated opening for business in the future was either at 3:00 p.m. or 4:00 p.m. He mentioned that the business would not be serving alcohol in the morning at 10:00 a.m., as was indicated in the conditions of approval and that he would be amenable to changing the provision on the hours of alcohol sales. He shared that he will look into other ways of promoting his establishment, commenting that the happy hour would have been another effective way to draw in customers.

In response to Commissioner Loché's question, Mr. Garfinkel said that approximately 50% of his business sales result from the weekend. He added that his customer base has reduced by 50% due to the current condition prohibiting minors at the billiards hall on Fridays and Saturdays. He mentioned that alcohol sales have slightly boosted the revenue earnings at Chalk It Up, notably on weekdays.

Commissioner Lavelle asked the applicant how the business will help prevent individuals of legal drinking age from handing a drink to someone who is underage.

Mr. Garfinkel stated that his staff will undergo the Department of Alcoholic Beverage Control's LEAD training for this purpose. He noted that he learned through the training that if an ABC agent found that a violation has occurred, then both the business and the employee may be cited. Mr. Garfinkel pointed out that although the establishment was large in space, the customers will be spread out throughout the billiards hall. He added that staff was aware of which tables were considered risk tables and need to be closely monitored, in regards to alcohol service. He stated that six billiards tables at his establishment were reserved for groups of individuals that have a mixed-age range, consisting of both minors and individuals meeting the legal drinking age. Mr. Garfinkel stressed that the importance of having a reserved section for minors was to make it visible to staff who and where the minors in the building were.

Commissioner Lavelle suggested that the applicant consider having sports-related promotions at his establishment in order to help boost business.

Commissioner Márquez asked the applicant what type of food and snacks the business sold. Mr. Garfinkel responded that the business currently had a light variety of food items consisting of five types of sandwiches, mixed nuts, chips, and soft drinks.



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He shared that among his renovation plans for the first floor was to build a kitchen that could potentially be rented out and that could operate like a full service restaurant, offering more food items.

In response to Commissioner Márquez's question, Mr. Garfinkel responded that he would be open to promoting his business to students of Chabot College and CSUEB by organizing a student night, and such related events.

Commissioner Márquez asked the applicant to clarify what his intent was regarding to what age group that he would like to open his establishment.

Mr. Garfinkel replied that he would like permission from the Planning Commission to remove the current age restriction on Fridays and Saturdays in order to allow all age groups to be able to enter his establishment.

Associate Planner Emura clarified for Commissioner McDermott that the applicant's original intent was to allow individuals eighteen years and older and to not make it a family-oriented billiards hall. He shared an image of what the interior of the establishment looked like and pointed out that the appearance and layout of the facility were consistent with Mr. Garfinkel's original intent of capturing a college-aged customer base. Associate Planner Emura indicated that the establishment's previous age requirement for Fridays and Saturdays was twenty-one years old and above; the proposed change to the age requirement would change this to eighteen years old and above, keeping Mr. Garfinkel in line with his marketing plan of catering to college-aged individuals and older.

Commissioner McDermott stressed to the applicant the importance of having the digital security system be operational. She recommended that the applicant be required through the inclusion of a condition of approval to maintain a daily log to ensure that the security system was functioning.

Associate Planner Emura responded to Commissioner Trivedi's question that Fridays and Saturdays tended to be busier at the establishment. He noted that by changing the age requirement to eighteen years and older on those days, this would give college-aged individuals another option for an entertainment venue in the downtown.

The applicant confirmed for Commissioner Trivedi that the parking lot CCTV security system also had the capability to be viewed by HPD.

Commissioner Trivedi asked the applicant to elaborate on how individuals would be assigned to the six billiards tables designated for individuals younger than twenty-years of age.

Mr. Garfinkel indicated that staff would control the assignment of underage groups to the six reserved tables. He stated that if there were more underage individuals than the six reserved

tables could hold, then the applicant would implement a waiting system for additional underage or mixed groups. He stated that there will be a total of two staff members serving patrons.

Commissioner Lamnin asked the applicant if the build out of the street level floor of the establishment as well as the addition of another security guard was depended upon the business returning back to its previous standards in terms of business gains.

Mr. Garfinkel indicated that the renovation of the street level floor would eventually occur and the time-frame for this would be two years. His plan was to make the first level mirror the basement level facility, with the possible addition of a mini-kitchen and/or minibar. He responded to Commissioner Lamnin's question that his staff and security personnel helped to ensure that the surrounding area was safe by walking around inside the facility. Mr. Garfinkel noted that the parking lot to the rear of the establishment was shared by other businesses as well. He added that monitoring the parking lot would be discretionary on the part of the security guard as the establishment had limited staff. He indicated that the current ratio of staff to the number of customers that they have was a reasonable amount.

Detective Irizarry commented that if business were to pick up at the establishment, she could work with the applicant in determining if there was a need to have an additional security guard in the future.

Mr. Garfinkel clarified for Commissioner McDermott that groups with individuals of mixed ages, consisting of those old enough to legally consume alcohol and also those who were underage, would be assigned to one of the six reserved tables; these groups would then be monitored by staff.

Chair Faria closed the public hearing at 8:16 p.m.

Commissioner McDermott made a motion to approve the conditional use permit as recommended by staff, with the following two amendments: (1) the applicant would be required to maintain a daily log ensuring functionality of the CCTV security system and (2) that wristbands of two different colors would be given to customers who were twenty-one years of age and older and also to individuals who were younger than twenty-one years.

Commissioner Loché expressed that he agreed with the monitoring of the CCTV security cameras to ensure that they were operational; however, he stated that logging this on a daily basis seemed excessive to him. He supported the establishment having a happy hour Monday through Thursday that could help the business bring in customers, in order to help bolster sales on weekdays.

Staff confirmed for Commissioner Loché that by requiring all customers to wear one of two colors of wristbands, dependent on their age, this would eliminate the need to have hand stamps. Commissioner Lamnin seconded the motion and offered some text amendments. She supported the inclusion of a condition requiring the daily monitoring of the CCTV security systems. She indicated that she was opposed to allowing buckets of beer to be sold and also opposed the inclusion of a happy hour provision in the conditional use permit. Commissioner Lamnin offered the amendment that Condition of Approval No. 31 be removed from the conditional use permit;



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thereby allowing patrons under the age of twenty-one in the establishment on Fridays and Saturdays. She offered that Condition of Approval No. 32 be modified to read that “When **patrons under the age of twenty-one** are allowed into the billiard parlor wristbands shall be given to persons under twenty-on. Minors shall only be allowed to utilize the six billiard tables in the rear half of the billiard parlor closest to the bar. For individuals purchasing beer, their age shall be verified and **a different colored wristband will be applied**. The security guard and staff shall make regular rounds (minimum every 30 minutes) to ensure that anybody drinking alcohol has **an appropriate colored wristband**. In addition, beer may not be purchased for another individual to drink.”

Commissioner Lamnin stated that she appreciated the comments about the billiards hall not being a family friendly environment; however, she emphasized the need for youth environments in Hayward. She shared that in touring the facility she felt that the billiards hall did have ample space that could be used by younger kids.

Commissioner Trivedi expressed his support for the motion and added a friendly amendment that Condition of Approval No. 40 be modified to require that employees complete the Department of Alcoholic Beverage Control’s LEAD Training before they could serve alcohol at the establishment.

Assistant City Attorney Conneely clarified for Commissioner Trivedi that Condition of Approval No. 40 applied only to employees engaged in the serving of alcohol therefore this condition would not apply to the security guards as they would not be serving alcohol.

Development Services Director Rizk noted that if the business was in violation of the conditional use permit, then this item could be brought back to the Planning Commission for reevaluation.

Commissioner Márquez supported the motion and she indicated that the establishment should not have an age restriction. She shared that the goal was to make downtown Hayward a destination spot for the community and commented that Hayward currently has limited opportunities for younger individuals in terms of entertainment options. She suggested that the Planning Commission include a one-year review of the conditional use permit.

Detective Irizarry confirmed for Commissioner Trivedi that the HPD would have the final determination in the number of security to be required at the establishment.

Development Services Director Rizk stated that the Planning Commission could add a condition requiring that the conditional use permit for Chalk It Up be reviewed sometime in the future. He reminded the Commissioners that the applicant would have to bear the cost of reevaluating the conditional use permit and this would cost approximately \$2,000 to \$3,000.

Commissioner Loché was concerned about removing the age requirement at the establishment for Fridays and Saturdays and offered a friendly amendment to require a review of the conditional use permit in one year.

Commissioner Lamnin indicated that as the seconder of the motion, she cannot put the financial burden on the business to have to pay this fee.

Commissioner McDermott expressed that this fee was too expensive and that she was comfortable with reviewing the conditional use permit if there were violations to the permit.

Commissioner Lavelle pointed out that the reason why the cost of the review was expensive was because of the costs associated with sending notices to the public about the public hearing. She emphasized that the business has to ensure strict enforcement that only individuals meeting the legal drinking age requirement are the ones consuming alcohol at the establishment. Commissioner Lavelle suggested that the applicant consider different marketing strategies to draw in more customers to the business. She commented that the improvements made to the front exterior of the business were beautiful.

Commissioner McDermott clarified for Commissioner Lavelle that the log that will be maintained to ensure that the digital security system was working properly, should be available to HPD upon request as a way to confirm that the establishment was complying with this condition.

Commissioner Loché was concerned that there were many changes proposed to be made to the conditional use permit and he felt that the Planning Commission should require a one-year review through the inclusion of a condition of approval.

AYES: Commissioners Trivedi, McDermott, Lamnin, Márquez, Lavelle
Chair Faria
NOES: Loché
ABSENT: None
ABSTAINED: None

COMMISSION REPORTS:

2. Oral Report on Planning and Zoning Matters

Development Services Director Rizk shared that the next Planning Commission will be held on October 17, 2013 and will review a proposed text amendment at Southland Mall for a health club as well as a project proposed by Integral Communities at the former Mervyns site. He stated that there will be a Special Work Session held on October 24, 2013 regarding the General Plan Update and the implementation programs. He indicated that on November 7, 2013, the Planning Commission will review a text amendment about internet gaming as well as zoning ordinance amendments related to the housing element and the review process regarding transitional and supportive housing.

3. Commissioners' Announcements, Referrals



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Commissioner Lamnin stated that she received a request from a Hayward resident asking staff to look into an incident of a mechanic performing car repair work on Pompano Avenue on city streets. She commented that there may be some illegal activity occurring here and that there was a lot of litter on the street resulting from the car repair work.

Development Services Director Rizk indicated that staff would look into this.

Commissioner Trivedi announced that the Mariachi Festival will be held on the City Hall Plaza at 4:00 p.m. on October 11, 2013 and that the Downtown Hayward Restaurant Walk will be held from 5:00 p.m. to 6:00 p.m. on October 17, 2013.

Commissioner Loché shared that there will be a documentary titled “Gasland” that will be shown at the Castro Valley Library on October 15, 2013.

APPROVAL OF MINUTES

4. None

ADJOURNMENT

Chair Faria adjourned the meeting at 8:48 p.m.

APPROVED:

Dianne McDermott, Secretary
Planning Commission

ATTEST:

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