



CITY OF
HAYWARD
HEART OF THE BAY

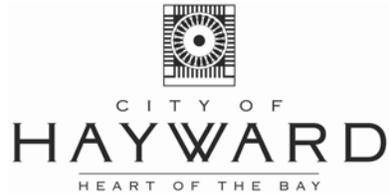
CITY COUNCIL AGENDA
SEPTEMBER 24, 2013

MAYOR MICHAEL SWEENEY
MAYOR PRO TEMPORE MARK SALINAS
COUNCIL MEMBER BARBARA HALLIDAY
COUNCIL MEMBER FRANCISCO ZERMEÑO
COUNCIL MEMBER MARVIN PEIXOTO
COUNCIL MEMBER GREG JONES
COUNCIL MEMBER AL MENDALL

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CITY COUNCIL MEETING FOR SEPTEMBER 24, 2013
777 B STREET, HAYWARD, CA 94541
WWW.HAYWARD-CA.GOV

CITY COUNCIL MEETING
Council Chambers – 7:00 PM

CALL TO ORDER Pledge of Allegiance Council Member Halliday

ROLL CALL

PUBLIC COMMENTS

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

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

WORK SESSION (60-Minute Limit)

1. Fire Station Health Center
[Staff Report](#)
-

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

CONSENT

2. Approval of Minutes of the Special City Council Meeting on September 10, 2013
[Draft Minutes](#)
3. Resignation of Ms. Allison McManus from the Community Services Commission
[Staff Report](#)
[Attachment I Resolution](#)
[Attachment II Letter](#)
4. Transit Connector (Shuttle) Feasibility Study – Authorization to Accept Federal Transportation Planning Grant, Appropriation of Funds and Authorizing the City Manager to Execute the Agreement
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5. Transportation for Clean Air (TFCA) Funds - A Street Corridor Controller Replacement and Signal Timing Project
[Staff Report](#)
[Attachment I](#)
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[Attachment III](#)
6. Park In-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Sorendale Kitchen Renovation Project
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[Attachment IV Park In-Lieu Zone Map](#)
7. Approval of Participation in the Abandoned Vehicle Abatement Authority
[Staff Report](#)
[Attachment I Resolution](#)

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-



PUBLIC HEARING

8. Proposed Revisions Related to Hayward's Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward (Report from Development Services Director Rizk and Police Chief Urban)

[Staff Report](#)

[Att I Draft Ord re Alcohol Regs \(red-lined\)](#)

[Att II Draft Ord re Alcohol Regs \(clean\)](#)

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[Att IV Draft Ord re CC-C and CG Zoning Provisions](#)

[Att V Draft Ord re Cabarets and Dances](#)

[Att VI Draft Reso re: Neg Dec and Ordinances](#)

[Att VII Draft Reso re Fees](#)

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[Att IX January 24, 2012 Joint Work Session Minutes](#)

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[Att XIII December 13, 2012 Work Session Minutes](#)

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[Att XVII City Council Resolution 06-005](#)

[Att XVIII Over-Concentrated Areas Map](#)

[Att XIX Locations of ABC Establishments Map](#)

[Att XX List of Hayward ABC Licensees](#)

[Att XXI Communications Received for September 5, 2013 Hearing](#)

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT

NEXT MEETING, 7:00 PM, TUESDAY, OCTOBER 1, 2013

PUBLIC COMMENT RULES: *The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*



PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

***Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ***

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Please visit us on:





CITY OF
HAYWARD
HEART OF THE BAY

DATE: September 24, 2013
TO: Mayor and City Council
FROM: Fire Chief
SUBJECT: Fire Station Health Center

Staff will present information at tonight's Council meeting regarding the proposed Fire Station Health Center concept. Fire Department and Public Works staff have been working with an architect on proposed designs and site plans for a remodeled Fire Station 7 (on Huntwood) that would incorporate a community health center model. These plans will be presented to the Council at this meeting.

The County Public Health Department has been promoting the community health center model as a way to prevent unnecessary visits to County emergency rooms, thereby helping to relieve emergency rooms of current overcrowded conditions. Staff from the County Health Department will also attend the work session to address any questions regarding the health center model.

Prepared by: Garrett Contreras, Fire Chief

Approved by:

Fran David, City Manager



**MINUTES OF THE SPECIAL CITY COUNCIL MEETING
OF THE CITY OF HAYWARD
Room 2B
777 B Street, Hayward, CA 94541
Tuesday, September 10, 2013, 6:00 p.m.**

MEETING

The Special City Council meeting was called to order by Mayor Sweeney at 6:00 p.m., followed by the Pledge of Allegiance led by Council Member Zermeño.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Jones, Halliday, Peixoto, Salinas,
Mendall
MAYOR Sweeney
Absent: None

CLOSED SESSION ANNOUNCEMENT

City Attorney Lawson noted the Council met with labor negotiators pursuant to Government Code 54957.6 regarding all groups; and he indicated there was no reportable action.

PUBLIC COMMENTS

There were no public comments.

COUNCIL ACTION

1. Appeal of Cheryl Butler-Adams Regarding Continuation as a Member of the Personnel Commission

Staff report submitted by City Manager David and City Clerk Lens, dated September 10, 2013, was filed.

City Manager David provided an overview of the report. Ms. Butler-Adams did not attend the meeting.

Discussion among the Council and City staff ensued. City Clerk Lens noted that her office was in receipt of Ms. Butler-Adams' Ethics Training certificate; however, the certificate was non-compliant with the two-hour training requirement.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 6:12 p.m.

Council Member Halliday offered a motion to sustain the Council's recommendation to declare Ms. Butler-Adams' seat vacant and to deny the appeal. Council Member Jones seconded the motion on the floor. Ms. Butler-Adams' seat would be declared vacant and filled as part of the September 17,

2013 Council action to appoint members to the City’s Boards, Commissions, Committees, and Task Force.

It was moved by Council Member Halliday, seconded by Council Member Jones, and unanimously carried, to deny the appeal.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Council Member Zermeño welcomed students from Hayward High School who were in attendance at the special meeting and he invited one student to say a few words.

Council Member Halliday noted the meeting was a special short meeting for an appeal of a Commissioner and she invited students from Hayward High School to attend regular meetings of the Council.

ADJOURNMENT

Mayor Sweeney adjourned the meeting at 6:15 p.m.

APPROVED:

Michael Sweeney, Mayor City of Hayward

ATTEST:

Miriam Lens, City Clerk, City of Hayward

DATE: September 24, 2013
TO: Mayor and City Council
FROM: City Clerk
SUBJECT: Resignation of Ms. Allison McManus from the Community Services Commission

RECOMMENDATION

That the City Council accepts the resignation of Ms. Allison McManus from the Community Services Commission.

BACKGROUND

Ms. Allison McManus was appointed to the Citizens Advisory Commission on September 14, 2010. On October 20, 2011, the Citizens Advisory Commission and Human Services Commission merged to form the Community Services Commission. Ms. McManus submitted the attached resignation letter (Attachment II). Her resignation is effective September 19, 2013; and her vacated position will be filled as part of the annual appointment process for the City's Appointed Officials to Boards and Commissions.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Resolution Accepting the Resignation
- Attachment II Resignation Letter

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION ACCEPTING THE WRITTEN RESIGNATION OF ALLISON MCMANUS FROM THE COMMUNITY SERVICES COMMISSION

WHEREAS, Ms. Allison McManus was appointed to the Citizens Advisory Commission on September 14, 2010; and on October 20, 2011, the Citizens Advisory Commission and Human Services Commission merged to form the Community Services Commission; and

WHEREAS, Ms. Allison McManus submitted her resignation on August 20, 2013, effective September 19, 2013.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Council hereby accepts the resignation of Ms. Allison McManus; and commends her for her civic service to the City.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____ City Clerk of the City of Hayward

APPROVED AS TO FORM: _____ City Attorney of the City of Hayward

August 20, 2013

City of Hayward
Attn: Miriam Lens, City Clerk
777 B Street
Hayward, CA 94541

Dear Ms. Lens:

It is with much regret that I resign my position as a Commissioner of the Community Services Commission, effective September 19, 2013. I will be moving out of the city of Hayward and therefore won't be able to serve on the commission.

It has been a wonderful experience serving on the Community Services Commission. I've met so many awesome people during my term, ranging from city staff, elected officials, non-profits and residents of Hayward. The commission does excellent work in the community and it has been a joy and honor to serve.

Thank you for allowing me the opportunity to serve the city.

Sincerely,

A handwritten signature in cursive script that reads "Allison McManus".

Allison McManus



DATE: September 24, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Engineering & Transportation

SUBJECT: Transit Connector (Shuttle) Feasibility Study – Authorization to Accept Federal Transportation Planning Grant, Appropriation of Funds and Authorizing the City Manager to Execute the Agreement

RECOMMENDATION

That Council adopts the attached resolutions:

1. Accepting the grant award of \$177,000 from the California Department of Transportation (Caltrans) for a Transit Connector (Shuttle) Feasibility Study;
2. Authorizing the City Manager to execute an agreement with Caltrans to undertake the Study; and
3. Appropriating \$198,000 (grant funds and matching funds) for this project in the Street System Improvements Fund.

BACKGROUND

Over the past several years, staff has received a number of complaints from employers in the industrial area regarding the frequency and adequacy of public transit services from downtown to their businesses. The most frequent complaint concerns the fact that service is not direct, is infrequent, and does not act as an incentive for employees to take public transit as an alternative to driving. This, in turn, hampers the City's ability to attain the goals in its Climate Action Plan relative to greenhouse gas emission reductions and the Economic Development Strategic Plan related to attracting and retaining key industrial employers.

These issues, coupled with the fact that public transit service has not kept up with the demand for such service due to budget cuts, has led many public and private agencies to look at other options for providing transit services. Consequently, shuttles are being evaluated as one means of filling in existing gaps in transit services. In response to the concerns expressed by Industrial Area businesses, City staff applied for and was successful in receiving a Caltrans planning grant to conduct a Transit Connector (Shuttle) Feasibility Study. The Shuttle Study will look at the potential for shuttle services to supplement the existing public transit service in Hayward, and to fill in any service gaps in order to address unmet transit needs.

DISCUSSION

The proposed project will assess the feasibility of implementing a transit connector service in the City's industrial employment areas. As noted above, concerns have been expressed that these areas are currently under served by the existing public transit services in the City. The City plans to hire a consultant to complete the scope of work as outlined in the grant application. The scope includes three main parts:

- 1) Assessing the potential demand for shuttle service, including the level of ridership that could be expected and employer attitudes toward possibly helping to fund a portion of the service. This will be accomplished through outreach to employers, an employee survey, and transit modeling.
- 2) Completing a peer review of similar services in comparable cities, such as the Emery Go-Round and the San Leandro Links.
- 3) Using the information gathered and developing operational alternatives, including service configurations as well as financial and institutional alternatives such as oversight, administration and funding of a potential service if it is shown to be feasible.

The final report will recommend a feasible alternative(s) and provide an implementation process and timeline. To ensure the approach examines the interconnectedness of the City, the consultant selected to complete the study will also be asked to consider other areas in the City that may benefit from a transit connector service, such as South Hayward residential neighborhoods and the California State University campus.

The next step in the process will be the preparation of a request for proposals (RFP) to be released to qualified consultants. It is anticipated that the RFP will be released later this Fall.

ECONOMIC IMPACT

If the results of the study show that there is a need for additional transit services, there will be the potential for a significant economic benefit for those who do not have automobiles since the provision of additional transportation options to and from jobs will mean more job accessibility to those that live and work in Hayward. The possible addition of shuttle services between the industrial area and other public transit options will provide added incentives for employers to locate and/or remain in Hayward.

FISCAL IMPACT

The City has been approved for a total of \$177,000 through the Federal Transportation Grant Program. Since the City is required to provide an 11.47% match for this project (approximately \$21,000), staff recommends that Council appropriate a total of \$198,000 for the project in the Street System Improvements Fund.

PUBLIC CONTACT

On June 6, the Southern Alameda County Air Resource Team held a workshop in Hayward for public agencies to learn about region-wide efforts to provide shuttle services to complement existing public transit services. There are a number of shuttle services in the Bay Area region, both public and private, that provide additional and complementary transit services. Although the large majority of these involve work-related transit trips, there are some services, such as the Oakland Broadway Shuttle, that provide other kinds of trips. In addition, California State University, Hayward campus recently extended shuttle services into downtown Hayward so that its students, faculty and employees can take advantage of shopping and dining opportunities. The workshop concluded that there is a role to play for shuttle services to address transit needs that existing public transit agencies cannot or are unwilling to fill. The Southern Alameda County Air Quality Team is looking at a follow-up workshop in early 2014. This workshop will provide an additional opportunity for public outreach. A major component of the study will be public outreach to employers and employees of the industrial area.

SCHEDULE

The tentative schedule for this project is as follows:

Project Kick-off Meeting with Caltrans	October 2013
RFP to Select Consultants	November 2013
Employer/Employee Surveys	February 2014 – June 2014
Draft Report	October 2014
Final Report	February 2015

Prepared by: Don Frascinella, Transportation Manager

Recommended by: Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments

- Attachment I: Resolution – Acceptance of Grant Award and Authorization for the City Manager to Execute Agreement
- Attachment II: Resolution – Appropriation of Funds

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION OF THE HAYWARD CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) PERTAINING TO A FUND TRANSFER AGREEMENT OF FEDERAL TRANSPORTATION GRANT MONIES TO BE UTILIZED FOR A TRANSIT CONNECTOR (SHUTTLE) FEASIBILITY STUDY, PROJECT 05269

WHEREAS, the City Council of the City of Hayward is eligible to receive Federal and/or State funding for certain transportation planning related plans, through the California Department of Transportation; and

WHEREAS, a fund transfer agreement is needed to be executed with the California Department of Transportation before such funds can be claimed through the Transportation Planning Grant Programs; and

WHEREAS, the City of Hayward wishes to delegate authorization to execute these agreements and any extensions thereto;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to execute all Fund Transfer Agreements and any amendments thereto with the California Department of Transportation, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AMENDING RESOLUTION 13-105, AS AMENDED, THE BUDGET RESOLUTION FOR CAPITAL IMPROVEMENT PROJECTS FOR FISCAL YEAR 2014, RELATING TO AN APPROPRIATION OF FUNDS FROM THE STREET SYSTEM IMPROVEMENTS FUND (FUND 450) TO THE TRANSIT CONNECTOR (SHUTTLE) FEASIBILITY STUDY, PROJECT 05269

BE IT RESOLVED by the City Council of the City of Hayward that Resolution 13-105, as amended, the Budget Resolution for Capital Projects for Fiscal Year 2014, is hereby amended by approving an additional appropriation of \$198,000 from the Street System Improvements Fund (Fund 450) to the Transit Connector (Shuttle) Feasibility Study, Project 05269.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



DATE: September 24, 2013

TO: Mayor and City Council

FROM: Director of Public Works – Engineering & Transportation

SUBJECT: Transportation for Clean Air (TFCA) Funds - A Street Corridor Controller Replacement and Signal Timing Project

RECOMMENDATION

That Council adopts the attached resolutions:

1. Authorizing the City Manager to execute a Transportation Fund for Clean Air fund transfer agreement with the Alameda County Transportation Commission;
2. Authorizing the City Manager to execute an amendment to the professional services agreement with Stantec Consulting Services, Inc.;
3. Appropriating \$190,000 for this project in the Transportation System Improvement Fund; and
4. Approving purchases of traffic signal controllers and wireless radios from Western Pacific in an amount not-to-exceed \$140,000.

BACKGROUND

On July 25, 2013, the City received approval for Transportation for Clean Air (TFCA) grant funding in the amount of \$190,000 from the Bay Area Air Quality Management District (BAAQMD), through the Alameda County Transportation Commission (CTC) for the A Street Corridor Controller Replacement and Signal Timing Project. The City previously received TFCA grant funding totaling approximately \$800,000 to upgrade all the signal controllers and re-time signals along Hesperian Boulevard, Winton Avenue, Tennyson Road and Clawiter Road corridors; all of the upgrades are expected to be completed by the end of FY 2014. The A Street project is the next phase in this effort to upgrade and integrate traffic signals along major corridors into the City's Traffic Management Center (TMC).

DISCUSSION

The current TFCA grant provides funding to upgrade signal controllers at ten intersections along A Street, from Hesperian Boulevard to Mission Boulevard (with the exception of the one intersection controlled and maintained by Caltrans at A Street and Interstate 880) and to provide improved signal interconnect along the corridor to enable communication with the TMC at City Hall. The project will also install two pan-tilt-zoom cameras along this corridor at two intersections: A Street

at Hesperian Boulevard and A Street at Hathaway Street. These cameras allow for a 360 degree view of an intersection and enable the traffic conditions on all legs of the intersection to be monitored from TMC. Furthermore, the project will synchronize signal operation between signals maintained by the City and the one signal maintained by Caltrans (A Street and I-880) along the A Street corridor.

Once the required upgrades are complete, timing for all ten intersections on the A Street corridor will be optimized and coordinated to reduce traffic congestion, thereby improving traffic flow, reducing fuel consumption, and ultimately reducing greenhouse gas emissions, which is also consistent with the goals of the City’s Climate Action Plan. See Attachment II for a map of the project limits.

The existing Econolite controllers used by the City are outdated and no longer compatible with the new technology that is being utilized along the upgraded corridors. As with the Route 238 Corridor Improvement Project, City staff is transitioning to Naztec controllers, which provide a more dynamic means of traffic management and which will be installed as a part of this project. Because there is only one provider of the Naztec controllers, staff recommends Council approval of a sole-source contract with Western Pacific to purchase the controllers.

Additional Services and Amendment to Professional Services Agreement – The City previously executed an agreement with Stantec Consulting Services, Inc. to prepare the successful TFCA application for this project for \$8,150. Stantec’s scope of work included a description of the improvements needed in the A Street corridor project to achieve the estimated clean air benefits. Because of Stantec’s familiarity with the project and how it relates to the other corridors in the City, staff recommends that Council authorizes the City Manager to amend the existing agreement with Stantec to provide the necessary design services and conduct the required one-year post project signal timing and evaluation. The additional cost for these tasks is not-to-exceed \$35,000. Therefore, the total amount of the amended agreement will be \$43,150.

FISCAL AND ECONOMIC IMPACT

The following is the estimated total cost of the Project:

Construction (including Purchase of Equipment)	\$140,000
Design Services – Consultant	43,150
Construction Administration and Inspection (City)	6,850
Total:	<u>\$190,000</u>

As noted earlier, the City has been approved a total of \$190,000 through the TFCA grant program and will not involve the use of City funds. The total project cost of \$190,000 will be appropriated out of the Transportation System Improvement Fund.

PUBLIC CONTACT

The Alameda CTC Board approved the City’s application at a public meeting on July 25, 2013. Prior to construction of the project, public notices will be sent to businesses and residents that may be impacted by the construction work.

SCHEDULE

Award Contracts	September 2013
Begin Design	November 2013
Begin Construction	December 2013
Complete Construction	February 2014

Prepared by: Don Frascinella, Transportation Manager

Recommended by: Morad Fakhrai, Director of Public Works – Engineering & Transportation

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Resolution – Execution of Agreement
- Attachment II: Resolution – Appropriation of Funds
- Attachment III: Project Location Map

HAYWARD CITY COUNCIL

Resolution No. _____

Introduced by Councilmember _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A TRANSPORTATION FUND FOR CLEAN AIR FUND TRANSFER AGREEMENT, APPROVING AN AMENDMENT TO THE PREVIOUSLY APPROVED PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES, INC, FOR TRAFFIC SIGNAL TIMING DESIGN SERVICES, AND APPROVING PURCHASE ORDERS FOR TRAFFIC SIGNAL CONTROLLERS AND WIRELESS RADIOS FOR THE "A" STREET CORRIDOR CONTROLLER REPLACEMENT AND SIGNAL TIMING PROJECT, PROJECT NO. 05706

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized to execute a Transportation Fund for Clean Air fund (TFCA) transfer agreement with the Alameda County Transportation Commission, in a form to be approved by the City Attorney; and

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to execute an amendment of \$35,000 to the professional services agreement with Stantec Consulting Services, Inc., for traffic signal timing design services; and

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is authorized and directed to proceed with a sole source purchase of Naztec Traffic Controllers and wireless radios from Western Pacific Inc. in an amount not to exceed \$140,000.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-_____

Introduced by Council Member _____

RESOLUTION AMENDING RESOLUTION 13-105, AS AMENDED, THE BUDGET RESOLUTION FOR CAPITAL IMPROVEMENT PROJECTS FOR FISCAL YEAR 2014, RELATING TO AN APPROPRIATION OF FUNDS FROM THE TRANSPORTATION SYSTEM IMPROVEMENT FUND (FUND 460) TO THE "A" STREET CORRIDOR CONTROLLER REPLACEMENT AND SIGNAL TIMING PROJECT, PROJECT NO. 05706

BE IT RESOLVED by the City Council of the City of Hayward that Resolution 13-105, as amended, the Budget Resolution for Capital Projects for Fiscal Year 2014, is hereby amended by approving an appropriation of \$190,000 from the Transportation System Improvement Fund (Fund 460) to the A Street Corridor Controller Replacement and Signal Timing Project, Project No. 05706.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

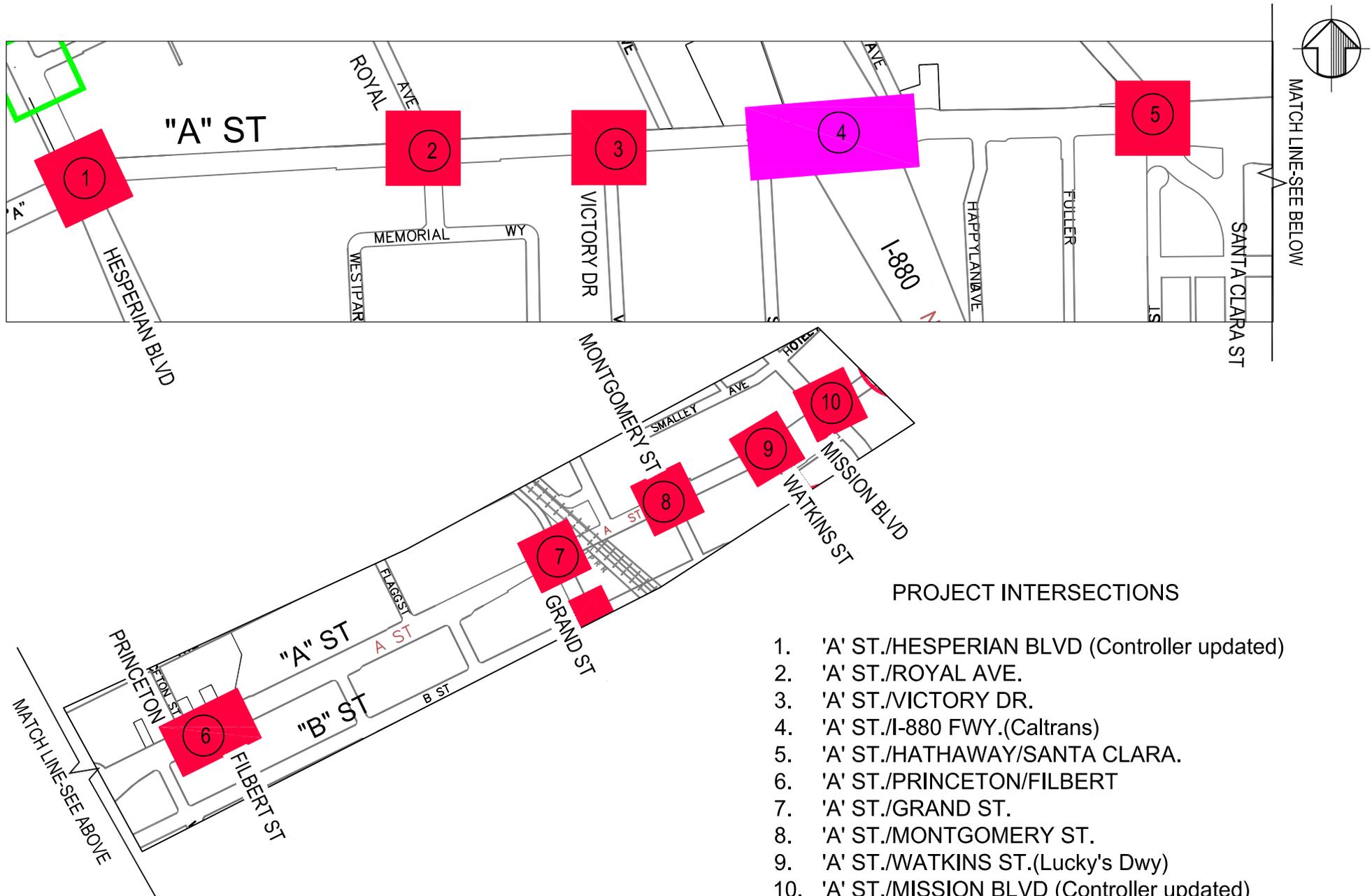
ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

A STREET CORRIDOR CONTROLLER REPLACEMENT AND SIGNAL TIMING PROJECT



DATE: September 24, 2013

TO: Mayor and City Council

FROM: Director of Development Services

SUBJECT: Park In-Lieu Fee Appropriation to the Hayward Area Recreation and Park District for the Sorensdale Kitchen Renovation Project

RECOMMENDATION

That Council approves a request from Hayward Area Recreation District (HARD) for a second “in progress” reimbursement payment of \$205,200 from the Park In-lieu account for Zone C to the Sorensdale Recreation Center Kitchen Renovation Project, which was designed to bring the facility into compliance with the Americans with Disabilities Act (ADA).

BACKGROUND

The City of Hayward requires all subdivisions and other development of land for residential purposes to dedicate public parkland and/or pay in-lieu fees to provide for public park and recreational facilities. Under both California law (the “Quimby Act”) and the City’s ordinance, collected park-in-lieu fees may be used to acquire land for developing new parks or to rehabilitate existing parks in the park dedication zone in which the development project is located. Reimbursements from multiple zones may be made for district-wide parks and facilities.

DISCUSSION

Sorensdale Recreation Center is located at 275 Goodwin Street and has provided special-needs programs to its patrons for over thirty years. The center provides opportunities for people with intellectual disabilities to learn and practice recreational, educational, daily living, and community skill activities. Program activities include functional literacy, functional math, computer skills, communication skills, personal health skills, physical fitness, gardening, woodworking, arts and crafts, performing arts, and music. Life skills learned in the classroom are also practiced in the community.

The existing kitchen at the Sorensdale Recreation Center was built in 1954, and renovation of the kitchen was required to bring the facility into compliance with Americans with Disabilities Act (ADA) and current Health Department codes. The kitchen renovation project also included renovation of the dishwashing room and food storage areas as well as construction of a new trash enclosure and an ADA-accessible path of travel. In February of 2013, HARD provided an estimated

renovation project cost of \$800,000 to the City. Staff confirms that there are sufficient funds in the Zone C account for this project (see table below).

Park In-Lieu Funds

	Zone A	Zone B	Zone C	Zone D	Zone E
Available funds	\$1,118,458.26	\$354.41	\$1,393,133.29	\$53,287.75	\$76,442.43
Earmarked appropriation for Greenwood Park Expansion	-\$1,091,598.70				
Sorensdale Kitchen ADA Project			-\$205,200.00		
Remaining balance after the Appropriation	\$26,860.56	\$354.41	\$1,187,933.29	\$53,287.75	\$76,442.43

An initial progress reimbursement payment of \$122,556.95 for the kitchen renovation project was approved by the City Council on July 30, 2013 and the payment was made to HARD from the in-lieu account for Zone C. The remaining balance of the original \$800,000 project budget following this first payment was \$677,443.05. HARD now seeks a second reimbursement payment of \$205,200. HARD has provided staff with a detailed itemized list of those expenses. As noted in the subsequent table, the Zone C account has sufficient funds to reimburse HARD for its incurred costs for the project, and therefore, staff recommends approval of the proposed use of the park-in-lieu funds for this project.

Council has recently expressed a desire to target Park In-lieu fees for park expansion and open space acquisition, and staff is working with staff from HARD to facilitate that goal. However, given that HARD provided notification of this project in February, there are sufficient funds in the account, and this is an allowable expenditure under the Quimby Act regulations, staff recommends approval of this and future reimbursements for the Sorensdale Kitchen project.

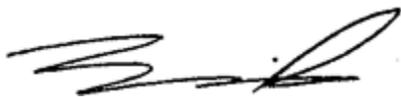
FISCAL IMPACT

Since the funds needed for this project will be disbursed from the in-lieu park fee accounts, as is their intended purpose, no fiscal impacts to the City’s General Fund are anticipated.

Prepared by: Michelle Koo, RLA ASLA, Landscape Architect

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



 Fran David, City Manager

Attachments:

- Attachment I Draft Resolution

Attachment II Location Map
Attachment III Letter of Reimbursement Request from HARD for Sorensdale
Kitchen ADA Project, dated August 8, 2013
Attachment IV Park In-Lieu Zone Map

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION APPROVING REQUEST OF HAYWARD AREA RECREATION AND PARK DISTRICT FOR REIMBURSEMENT USING PARK DEDICATION IN-LIEU FEES ASSOCIATED WITH THE SORENSDALE RECREATION CENTER KITCHEN PROJECT FOR THE PURPOSE OF COMPLYING WITH AMERICANS WITH DISABILITIES ACT (ADA)

BE IT RESOLVED that the City Council of the City of Hayward does hereby approve the request of Hayward Area Recreation and Park District for appropriation of park dedication in-lieu fees in the amount of \$205,200, a second progress reimbursement payment, for the Sorensdale Recreation Center Americans with Disabilities Act (ADA) Compliant-Kitchen Renovation Project:

- 1. Sorensdale Recreation Center ADA Compliant-Kitchen Renovation Project –
In Lieu Zone C – \$205,200.00

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

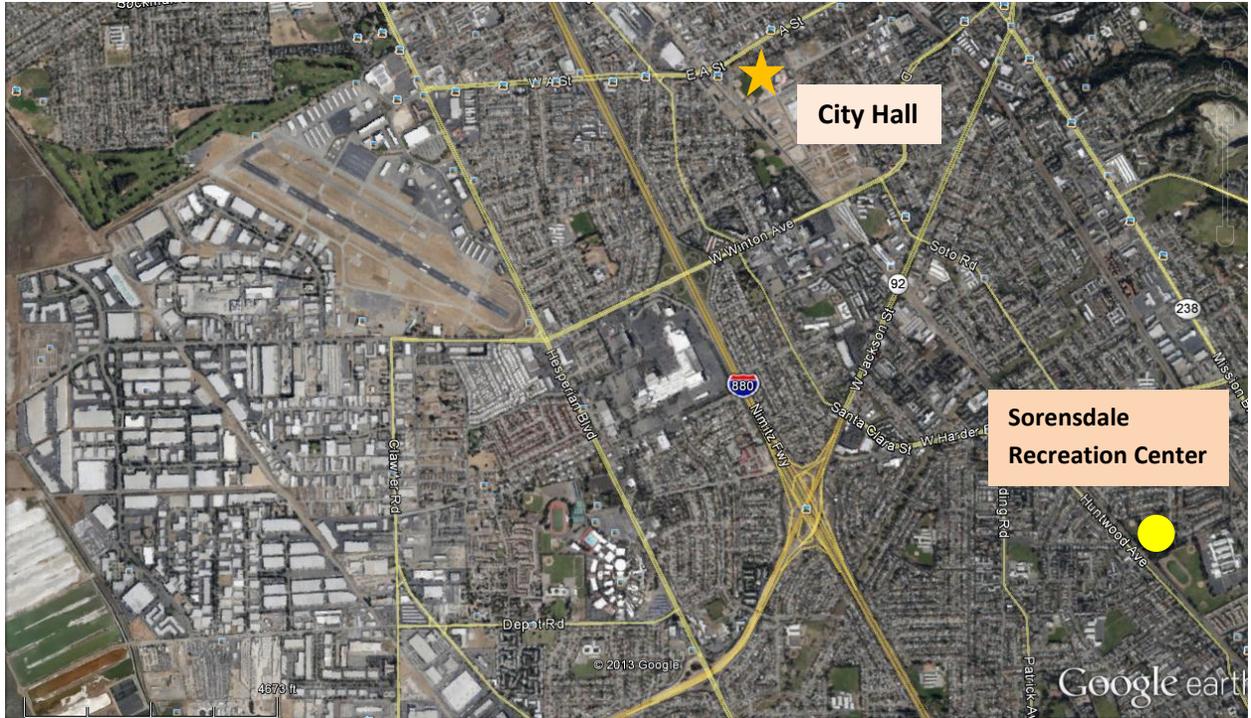
ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

 **Location Map**



September 24, 2013

HAYWARD AREA RECREATION AND PARK DISTRICT

1099 'E' Street, Hayward, California 94541-5299 • Telephone (510) 881-6700 FAX (510) 888-5758



August 8, 2013

Kelly McAdoo
 Assistant City Manager
 City of Hayward
 777 "B" Street
 Hayward, CA 94541

RECEIVED

AUG 12 2013

PLANNING DIVISION

RE: Sorensdale Kitchen ADA Project Request for Funds

Dear Ms. McAdoo:

The Hayward Area Recreation and Park District (HARD) submitted a request on April 10, 2013 to spend in-lieu funds for the Sorensdale Kitchen ADA Project to completely renovate the kitchen. The work is currently in progress. The upgraded kitchen will provide greater accessibility and will meet the new Health Department codes. The estimated cost for this project was \$800,000.

The District submitted the first progress payment request of \$122,556.95 in June 2013. The Park District is now seeking the second progress payment of **\$205,200** from the Hayward Zone C account. If you have any questions, please call me at (510) 881-6716 or email me at lepl@haywardrec.org.

Sincerely,

Larry Lepore
Superintendent of Parks

090602 Hayward In-Lieu

BOARD OF
DIRECTORS

Louis M. Andrade
 Paul W. Hodges Jr.
 Minane Jameson
 Carol A. Pereira
 Dennis M. Waespi

GENERAL MANAGER
 John Gouveia



Hayward Area Recreation and Park District

1099 "E" Street, Hayward, CA 94541

(510) 881-6700

INVOICE NO. 14-05

**TO: Kelly McAdoo
Assistant City Manager
City of Hayward
777 'B' Street
Hayward, CA 94541**

DATE: Aug. 8, 2013

**REQUESTED BY: Karl Zabel
Operations &
Development
Supervisor**

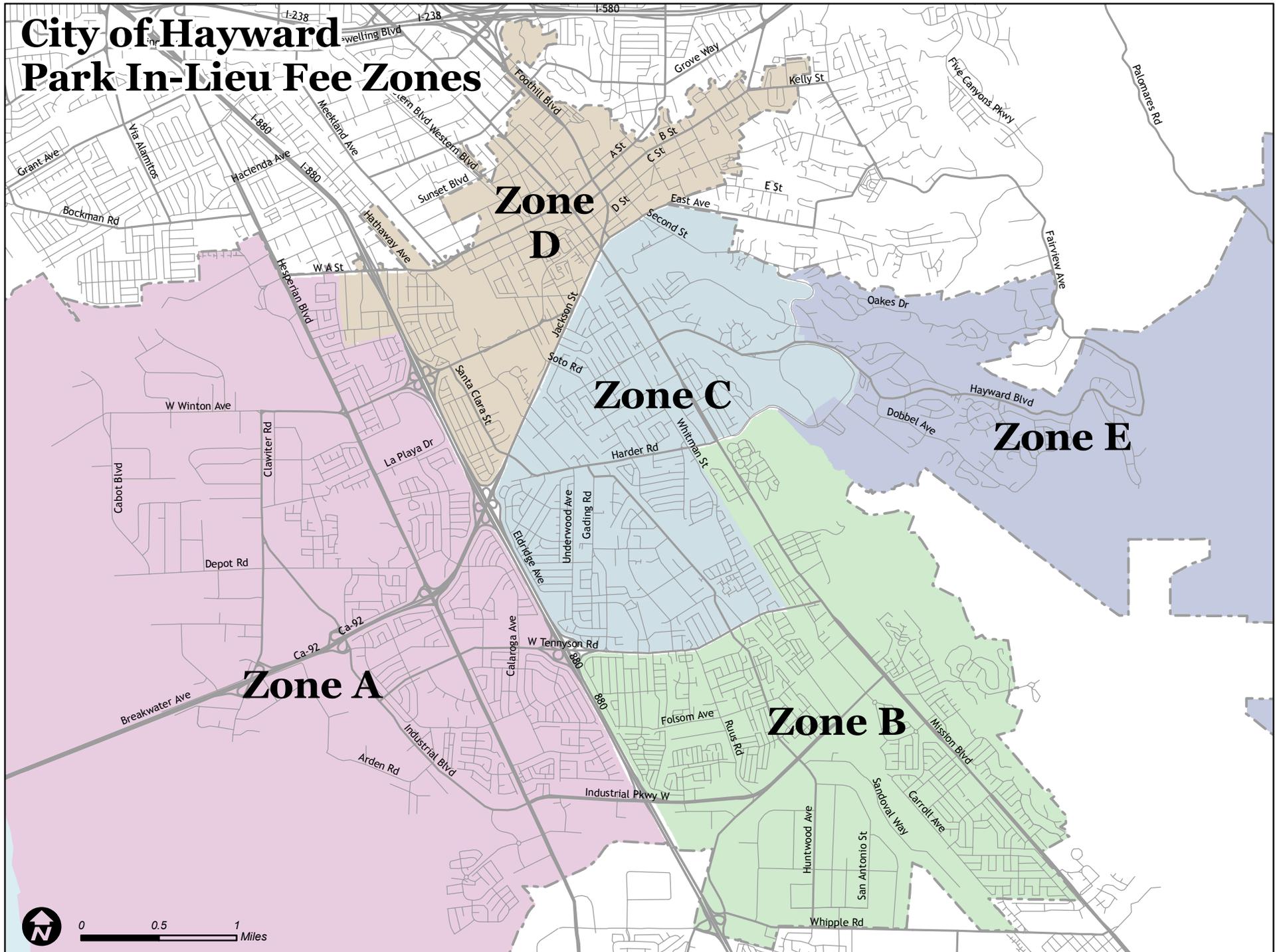
DESCRIPTION	AMOUNT
Second Progress payment for Sorensdale Kitchen Project	\$205,200.00
See Attachment	
DUE UPON RECEIPT	\$205,200.00
	DATE PAID:
	RECEIPT #:
	AMOUNT PAID:
	TOTAL BALANCE:

REMIT PAYMENT TO:
H.A.R.D. Accounting Department, 1099 'E' Street, Hayward, CA 94541

4-021B-SORENSDALE KITCHEN UPGRADE

Asset ID	Suf	Asset Description	Acquisition Date	Acquisition Cost	Extended Description
4-121	21	4-121B/R2388-PROF SVCS	9/20/2012	\$33,440.00	GUTIERREZ/ASSOCIATES
4-121	22	4-121B HEALTH DEPT. PLAN REVIEW	10/31/2012	\$1,150.00	K. ZABEL CC OCT 2012
4-121	23	4-121B PLAN REVISION	10/31/2012	\$625.00	GUTIERREZ/ASSOCIATES
4-121	24	4-121B KITCHEN PERMIT-CITY OF HAYWARD	12/31/2012	\$2,879.08	K.ZABEL DEC 2012 CC
4-121	25	4-121B/TEST MATERIALS	1/3/2013	\$162.00	FORENSIC ANALYTICAL
4-121	26	4-121B/TEST MATERIALS	1/17/2013	\$144.00	FORENSIC ANALYTICAL
4-121	27	4-121B/K. ZABEL FEB13 CC	2/28/2013	\$6,843.87	CITY OF HAYWARD
4-121	28	4-121B/R2388 PROF SVCS	3/28/2013	\$5,000.00	GUTIERREZ & ASSOCIATES
4-121	29	4-121B/R2459 PROGRESS PYMNT	4/11/2013	\$51,300.00	B SIDE INC.
4-121	30	4-121B EMERGNCY SERVICE CALL	4/25/2013	\$125.00	FIRE PROTECTION SPECIALIST
4-121	31	4-121B/LABOR & SERVICE TRIP	4/25/2013	\$218.00	STANLEY CONVERGENT & SECURITY
4-121	32	4-121B/R2459-PROGRESS PYMNT	5/9/2013	\$69,825.00	B SIDE INC.
4-121	33	4-121B/R2459-PROGRESS PYMNT	5/30/2013	\$47,025.00	B SIDE INC.
4-121	34	4-121B/R2429-HAZARDOUS ABTEMNT	6/6/2013	\$3,820.00	SYNERGY ENTERPRISE
4-121	35	4-121B/R2459-PROGRESS PYMNT	6/27/2013	\$65,550.00	B SIDE INC.
4-121	36	4-121B/R2459-PROGRESS PYMNT	7/31/2013	\$61,750.00	B SIDE INC.
4-121	37	4-121B/R2459-PROGRESS PYMNT	8/8/2013	\$77,900.00	B SIDE INC.
				\$427,756.95	

City of Hayward Park In-Lieu Fee Zones



DATE: September 24, 2013
TO: Mayor and City Council
FROM: Chief of Police
SUBJECT: Approval of Participation in the Abandoned Vehicle Abatement Authority

RECOMMENDATION

That Council adopts the attached resolution continuing the City's participation in Alameda County's Abandoned Vehicle Abatement (AVA) Authority.

BACKGROUND

In 1990, the State enacted legislation allowing the creation of county-based abandoned vehicle service authorities. In 1993, the Alameda County AVA Authority was formed. This action imposed a one dollar annual fee on vehicles registered in the County.

Agencies electing to participate in the Authority are reimbursed using a simple formula which considers the total number of abatement actions claimed against the actual funds available. All Alameda County cities *except* Albany and Emeryville are participants. Over twenty years, the Authority has reimbursed \$22.8 million for over 363,000 abatements. Since 2002, 17,306 abandoned vehicles have been abated in Hayward at no cost to the City.

DISCUSSION

The California Vehicle Code {sec. 9250.7} requires AVA authorities to renew the program fee every ten years. This requires approval by resolution of the Board of Supervisors and cities comprising a majority of the population of Alameda County.

As a continuous member of the Authority, Hayward approved resolutions in 1993 and 2003. Continued participation requires approval of the attached resolution.

ECONOMIC IMPACT

Approval of the resolution will continue the subsidized removal of abandoned vehicles from our neighborhoods.

FISCAL IMPACT

Actual AVA reimbursements include:

FY 2009/10 - \$102,446

FY 2010/11 - \$120,301

FY 2011/12 - \$113,771

Fiscal Year 2012/13 has not yet received a 4th quarter payment, but staff estimates the total annual reimbursement at \$100,000. The annual reimbursement covers approximately 80-90% of the current costs of providing these services by HPD.

NEXT STEPS

Should Council approve this resolution, the City will continue being reimbursed for removing abandoned vehicles from Hayward neighborhoods.

If not approved, the City will assume the full cost of any future abandoned vehicle abatement actions.

Prepared by: Chad Olthoff, Traffic Sergeant

Recommended by: Diane E. Urban, Chief of Police

Approved by:



Fran David, City Manager

Attachment I: Resolution

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE EXTENSION OF THE ABANDONED VEHICLE ABATEMENT PROGRAM UNTIL MAY 2023

WHEREAS, the Alameda County Abandoned Vehicle Abatement Authority (AVA) was formed in 1993 and the City of Hayward is an active member; and

WHEREAS, the Alameda County Abandoned Vehicle Abatement Program is set to expire May 31, 2013; and

WHEREAS, new legislation allows for the extension of the Program with the approval of the County and a majority of the cities comprising a majority of the population of the incorporated areas; and

WHEREAS, it is desirable to the City of Hayward to have the program continue; and

NOW THEREFORE, BE IT RESOLVED, that the City of Hayward supports the extension of the Alameda County Abandoned Vehicle Abatement Program until May 31, 2023.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DATE: September 24, 2013

TO: Mayor and City Council

FROM: Director of Development Services
Chief of Police

SUBJECT: Proposed Revisions Related to Hayward’s Alcoholic Beverage Outlet Regulations, Proposed New Regulations for Cabarets and Dances to Replace Hayward’s Public Dance Provisions, and Related Amendments to Zoning Ordinance Definitions and the CC-C and CG Zoning Districts; Proposed New Fees - (Text Amendment Application No. PL-2013-0175 TA); Adoption of Negative Declaration; Applicant: City of Hayward

RECOMMENDATION

As recommended by the Planning Commission and staff, that the City Council:

- a. Adopts the attached resolution (Attachment VI) approving a Negative Declaration/Initial Study and adopting findings in support of the proposed ordinances (Attachment VIII);
- b. Adopts the attached resolution (Attachment VII) approving revisions to the Fiscal Year 2014 Master Fee Schedule;
- c. Introduces the attached ordinance (Attachment II) related to revisions to Hayward’s Alcoholic Beverage Outlet Regulations (Hayward Municipal Code Sections 10-1.2750 *et seq.*);
- d. Introduces the attached ordinance (Attachment III) associated with revisions to Zoning Ordinance definitions (Hayward Municipal Code Section 10-1.3500);
- e. Introduces the attached ordinance (Attachment IV) associated with revisions to the General Commercial (CG) and Central City-Commercial (CC-C) Zoning District regulations (Hayward Municipal Code Sections 10-1.1000 *et seq.* and 10-1.1520 *et seq.*); and
- f. Introduces the attached ordinance (Attachment V) related to new regulations for Cabarets and Dances (Chapter 6, Article 2 of the Hayward Municipal Code).

SUMMARY

Staff from the Development Services Department, Police Department, and City Attorney’s Office have developed recommended Code revisions in response to City Council direction that “well managed and responsible establishments should be given maximum flexibility to operate successfully and poorly managed businesses should be shut down.” Specifically, staff is recommending new provisions for the Alcoholic Beverage Outlet regulations (Attachments I {red-lined version} and II {clean version}) and Zoning Ordinance definitions (Attachment III), found in Chapter 10, Article 1 of the Hayward Municipal Code.

Planning Commission and staff are also recommending revisions to the General Commercial (CG) and Central City-Commercial (CC-C) Zoning Districts' regulations to allow new uses (cabarets, distilleries, and breweries) as conditional uses and new wine shops as administrative uses in these two zoning districts. Also, Planning Commission and staff are recommending that new regulations be established for live entertainment and dancing activity at establishments (Attachment V), which will replace the current Public Dance provisions found in Chapter 6, Article 2 of the Hayward Municipal Code.

Finally, staff is recommending that new fees (Attachment VII) be established to help ensure cost recovery associated with alcohol-serving establishments.

A list of all California Department of Alcohol Beverage Control (ABC) licensees in Hayward (207 total) is included as Attachment XX to this report.

BACKGROUND

Concerns have been expressed by the public and Council Members in the past as to whether the current regulations: (1) encourage restaurants and other desirable retail and entertainment establishments in target areas of the City, particularly Downtown; (2) provide adequate guidance regarding approval of alcohol-serving establishments that have the potential to generate negative impacts and usurp scarce public safety resources; and/or (3) provide law enforcement with the necessary tools to take effective action against problematic locations selling alcohol. In addition, concerns have been expressed that some of the standards and regulations are not business-friendly for full-service restaurants and may prevent those restaurants from reaching maximum business potential.

In response to these concerns, staff has been working on developing recommend revisions to the city's regulations for the last year and a half. The objectives below were presented to and supported by the City Council and Planning Commission in December of 2012:

1. Amend regulations in order to better promote and attract desirable dining and entertainment businesses, especially full-service restaurants, entertainment venues, and boutique specialty shops in the Downtown and other target areas.
2. Ensure future alcohol-serving uses will be operated in a safe and responsible manner and contribute positively to the Hayward community.
3. Develop more aggressive ways to proactively and immediately shut down undesirable businesses serving alcohol that result in large or frequent events that demand significant responses from, and allocation of resources by, the Hayward Police Department.
4. Provide a funding structure to support City staff activity associated with enforcement of City regulations associated with alcoholic beverage establishments.

There have been several meetings held over the last year and a half related to this project. As indicated by City Council during its meetings on January 24 and June 19 of 2012 (see discussion below), the City's Alcoholic Beverage Outlet Regulations in the Zoning Ordinance need to be revised. The various meetings are summarized below; and the associated staff reports with attachments are available at the hyperlinks provided below, with minutes from the meetings attached to this report.

Various Meetings –

A [January 24, 2012 Joint City Council and Planning Commission Work Session](#) was held to discuss the need to revise the City's alcoholic beverage outlet regulations and associated policy framework; with most of the discussion related to happy hours for full-service restaurants (see meeting minutes, Attachment IX).

A [June 19, 2012 City Council Meeting](#) resulted in the Council establishing a six-month Trial Program through December 26, 2012 to allow happy hours from 4:00 to 9:00 pm and live or recorded music until midnight at full-service restaurants (see meeting minutes, Attachment X). Over half of all ABC licensed establishments in Hayward are considered restaurants, though some would not meet standards required to be considered "full-service" restaurants (see later discussion).

A [December 4, 2012 City Council Meeting](#) extended the Trial Program allowing happy hours and music for full-service restaurants to June 26, 2013 (see meeting minutes, Attachment XI).

A [December 4, 2012 City Council Work Session](#) was held to discuss initial recommendations to revise the City's alcoholic beverage outlet regulations (see meeting minutes, Attachment XII). Council members generally expressed support for proposed "deemed approved" and "summary suspension" provisions, for continuing to allow happy hours and music at full-service restaurants, and for new regulations that would more effectively address how to shut down problematic establishments. Some concerns were expressed with allowing certain more desirable new alcohol-serving establishments to operate with an administrative, versus conditional, use permit.

A December 11, 2012 Community Meeting was held in Council Chambers to share information and receive input from the public. Approximately twenty-five members of the public attended the meeting and staff sent out over 200 notices for the meeting to all ABC licensees and other interested parties. Some attendees commented that deemed approved performance standards should apply to all establishments that serve alcohol, including full-service restaurants and grocery stores; some expressed concern that restaurants were allowed to morph into bars and nightclubs where serving food was not the establishments' primary purpose; and some expressed concerns with allowing certain uses to only obtain an administrative use permit to operate.

A [December 13, 2012 Planning Commission Work Session](#) was held to discuss initial recommendations to comprehensively revise the City's alcoholic beverage outlet regulations (see meeting minutes, Attachment XIII). As the minutes reflect, public comments and suggestions included: having deemed approved operating standards apply to all alcohol-serving establishments; developing provisions to not allow restaurants to morph into night clubs and bars; limiting exposure of youth to alcohol; thoughtfully addressing impacts of not having a public hearing for certain uses

(administrative use permit); and ensuring cost recovery. Several speakers addressed the concern that businesses with ABC licenses to operate as a restaurant actually operate as a night club or bar, where food was not served/provided at all times the business was open or the required minimum sixty percent non-alcohol sales threshold was not met. The importance of ABC and the City providing sufficient oversight, inspections, and enforcement was acknowledged, as was the limited resources of each agency.

A [June 18, 2013 City Council Meeting](#) was held when Council again extended the Trial Program for Full-Service Restaurants until December 26, 2013 (see meeting minutes, Attachment XIV).

A July 29, 2013 Community Meeting occurred to share information and receive feedback on recommended revisions to the alcoholic beverage outlet regulations, Zoning Ordinance definitions, new cabaret and dance provisions, and related new fees. Approximately 6 public members attended the meeting and staff received the following comments (staff's responses to each comment are shown after each comment):

- Regarding the definition of “Critical Incident” and the related critical incident response fee, a public member recommended that clarity be provided so that such an incident only be considered to have occurred if the response by Hayward Police Department is actually needed.
 - Staff believes the definition already responds to the concern, given the language in the definition that states, “...results in a crime of violence or large, unruly gathering *necessitating* a police response of five (5) or more officers...” Therefore, no change is proposed to be made.
- Provide revised definitions to better distinguish between a nightclub and a cabaret.
 - Staff believes the definitions already adequately distinguish between cabarets and night clubs/bars. Generally, a night club exists primarily to serve alcohol and may or may not include live entertainment. A cabaret exists primarily to provide live entertainment and may or may not entail alcohol sales.
- Provide a better term than “cabaret”.
 - Dictionary.com defines “cabaret” as 1) a restaurant providing food, drink, music, a dance floor, and often a floor show; 2) a café that serves food and drink and offers entertainment often of an improvisatory, satirical, and topical nature; 3) a floor show consisting of such entertainment: *The cover charge includes dinner and a cabaret*; 4) a form of theatrical entertainment, consisting mainly of political satire in the form of skits, songs, and improvisations: *an actress whose credits include cabaret, TV, and dinner theater*; and 5) a decoratively painted porcelain coffee or tea service with tray, produced especially in the 18th century. Also, the City of Emeryville and other cities use the term “cabaret” in their recently adopted regulations. No changes are proposed in response.”
- Revise the performance standards for all alcoholic beverage sales establishments, including those with “Deemed Approved” status, primarily related to standards (a) through (c). Some attendees felt the standards should be more specific and less vague, others wanted a better distinction between violent and nonviolent crimes, and others wanted the standards to remain as proposed.
 - Staff, including Hayward Police Department and City Attorney’s Office staff, recommends that no changes be made to the standards. The standards are taken

from Oakland's provisions, which have withstood legal challenges. Staff feels there is benefit in having flexibility in the application of the standards. Also, guidance is provided by proposed Section 10-1.2770(d) of the regulations related to enforcement of the "Deemed Approved" standards, which indicate the following may be considered: length of time violation(s) have existed, nature and impact of violations on the community, and reasonable steps the ABC licensee has taken to remedy the violation(s). Therefore, no changes are proposed.

- An attendee felt an ABC licensee or operator of an establishment should not be responsible for repaying the City for costs incurred responding to a "critical incident," and that the person(s) responsible for such incident should pay such fees/reimbursement costs. Discussion ensued at the meeting, which involved some attendees stating that an operator/licensee did have a duty and responsibility for preventing such incidents, while others did not.
 - In recognition of the responsibility by non-licensees for such incidents, staff has added the bolded words in the following sentence to Section 10-1.2766 of the proposed regulations: "In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the **party responsible for such incident and/or the** licensee of any alcoholic beverage sales establishment,...."

September 5, 2013 Planning Commission Meeting (see draft meeting minutes, Attachment XV) –
The Planning Commission supported staff's recommendations (6:0:1), with the recommended revisions noted below. Staff's response to each recommended revision is identified below in parenthesis.

- Modify the language by adding "karaoke" to the definition of cabaret (Section 6-2.11 of Attachment III and Attachment V reflect such change);
- Replace language in Section 6-2.25 from "video tape recordings" to "video recordings" (Attachment IV reflects such change);
- Remove the word "immoral" from Section 6-2.27 (Attachment V reflects such change);
- Improve the methodology of noticing to the affected businesses by sending colored postcard notices and sending notices in Spanish and English (staff sent an additional notice (Attachment XVI) to all 207 ABC licensees and other interested parties on September 16);
- Re-evaluate the Alcoholic Beverage Outlets Fees (staff still supports the fees as proposed – see later discussion under Fiscal Impacts section);
- Grant exceptions for cabarets in the downtown area (Staff's recommendations already allow the possibility for new cabarets to be established in the Downtown, provided they are approved with conditional use permits. Only new bars and liquor stores would be prohibited in the Downtown.); and
- Include transparency in the appeals process and give recourse to establishments that are shut down (such due process provisions are included in the recommendations, as noted in Sections 10-1.2765 and 10-1.2766 through 10-1.2771 of Attachments I and II regarding alcohol regulations and in Section 6-2.19 of Attachment IV regarding cabaret/dance provisions).

The Commissioners were surprised that there were not more objections/concerns raised about the proposed new fees at the September 5 meeting. Some Commissioners recommended that staff consider recommending revised fees that result in higher fees for poorly managed establishments and lower fees for well-run establishments. State law requires that jurisdictions establish fees based on a reasonable forecast of the costs to implement a regulatory program, which staff has endeavored to do with the proposed fees.

Staff has identified two different levels of alcohol-serving businesses and has recommended fees based on the anticipated number of inspections needed to ensure that the establishments in each level comply with the regulations. The City has adopted regulatory fees for various inspection and enforcement programs based on similar analyses. The fees to administer this program are estimated to recover the actual costs to the City of the compliance and inspection activities that staff will undertake to ensure that all alcoholic beverage outlets operate responsibly. (See later discussion under “Fiscal Impact”). In addition, the fines for violations will likely fall more heavily on poorly managed establishments if they have a higher frequency and critical nature of violations.

City Policies - Existing policies and strategies from the Hayward General Plan seek to strike a balance between promoting economic growth and business choices for the public, while minimizing impacts to quality of life in residential and retail neighborhoods. For example, the Economic Development Chapter of the General Plan contains the following strategies:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict is to “establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.”

Along with the fiscal reality of limited resources, such policy direction provides a framework within which to consider revisions to the City’s Alcoholic Beverage Outlets regulations.

California Department of Alcohol Beverage Control - The California Department of Alcohol Beverage Control (ABC) has sole authority related to licensing alcohol sales. ABC issues a variety of licenses related to alcohol service. Two of the most common types of licenses issued by ABC for on-site sale of alcohol are Type 47 and Type 48 licenses. Type 47 licenses (On-Sale General for Bona Fide Public Eating Places) are typically associated with restaurants and require more than 50% of sales at an establishment to be related to non-alcohol sales. Generally, ABC defines such establishments as places that allow minors during business hours and which serve meals, and also sell beer, wine and distilled spirits. Type 48 licenses (On-Sale General for Public Premises) are typically associated with a bar or nightclub and entail the sale of beer, wine, and distilled spirits for consumption on the premise where sold. Minors are not allowed to enter or remain and food service is not required. Attachment XX shows the number of establishments in Hayward for each ABC license type.

According to ABC staff, the State Board of Equalization (BoE) taxes alcohol sales, and monitors restaurant receipts. If there is more than fifty percent alcohol sales (in violation of the standard ABC Type 41 or 47 license for a restaurant), then the State BoE contacts ABC, which then opens up an investigation. The Hayward Police Department is contacted when an establishment is under investigation by ABC. Typically, due to limited resources, Hayward Police Department does not check receipts, but will work with ABC if complaints are received about an establishment. The proposed new regulations and fees provide funding and provisions to allow Hayward Police Department to conduct more compliance checks at alcohol-serving establishments to enhance the BoE monitoring that will continue.

History of City’s Alcoholic Beverage Outlet Regulations – The City’s original Alcoholic Beverage Outlet regulations were adopted in 1993, and the stated purpose of those regulations was to stem the proliferation of establishments selling alcoholic beverages within the City, with the notion that they present problems that adversely impact residents, businesses, property owners, visitors, and workers of Hayward. The regulations were intended to address problems associated with establishments engaged in the sales of alcoholic beverages by restricting their locations in relation to one another and to their proximity to facilities primarily devoted to use by children and families with children. Such regulations entailed establishing a requirement for conditional use permits for new establishments engaged in the sale of alcoholic beverages, where conditions could be established to prevent the undesirable impacts on the community. Several changes to the original regulations were made, particularly related to the Downtown.

The City last comprehensively revised its alcoholic beverage outlet regulations in 2006. According to the administrative record, the City Council then was interested in (1) pursuing changes to the regulations that focused on the Downtown, liquor stores, and bars; (2) the extent of alcoholic

beverages permitted to be sold by physical volume (e.g., cubic feet) rather than percentage of floor area; and (3) re-examining the relevance of the current separation requirements between establishments involved in the sale of alcoholic beverages.

DISCUSSION

Staff has been working on developing comprehensive revisions to the City's alcoholic beverage outlets ordinance and related regulations since the City Council in late September of 2011, when adopting the South Hayward BART Form-Based Code, directed staff to develop such revisions. Staff has reviewed the alcoholic beverage regulations from various cities, including the cities of Emeryville, Fremont, Pleasanton, San Francisco, San José, San Diego, Ventura, and Walnut Creek. Following is a discussion and staff's analysis in support of recommendations for revisions.

Overview of Proposed Revisions to Alcoholic Beverage Outlet Regulations and Zoning Ordinance Definitions (Attachments II and III) – Staff is recommending that the alcoholic beverage regulations be moved to a new stand-alone section (10-1.2750 et seq.) of the Zoning Ordinance. The purpose of the current regulations, which is not proposed to be changed, is stated at the beginning of the regulations: “to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.”

As summarized in the following discussion, staff is recommending new provisions for the Alcoholic Beverage Outlet regulations, including:

- Revised definitions for alcoholic beverage sales establishment and full-service restaurants (to allow happy hours and live or recorded music at restaurants); and new definitions for cabarets (see below), critical incidents, and wine shops;
- Eight new performance standards applicable to all alcohol beverage sales establishments, including full-service restaurants and grocery stores that sell alcohol, similar to the “Deemed Approved” standards (see below);
- Enhanced noticing requirements for use permits for alcoholic beverage establishments, increasing the noticing requirement from a 300 to a 500-foot radius from the address of the intended establishment ;
- Codification of City Council Resolution No. 06-005, which prevents the City from issuing a letter of public convenience or necessity for any proposed new liquor store or bar in any Census tract that has an undue overconcentration of off-sale establishments, as determined by ABC;
- New “Summary Suspension” provisions that allow the Chief of Police, after consultation with the City Attorney and with the authorization of the City Manager, to shut down an alcoholic beverage establishment for up to thirty days if there is an urgent need to protect the public from serious bodily injury or death, or a condition that represents an imminent threat to the public health, safety, or welfare;
- New regulations that allow the City to charge a responsible party and/or ABC licensee for the actual costs incurred to respond to a critical incident (“critical incident response fee”);
- New “Deemed Approved” provisions applicable to nonconforming uses operating without a use permit that establish eight basic performance standards, notification provisions, and enforcement procedures for such establishments; and
- Enhanced remedies to address violators, including establishing new fees (see below).

New alcohol-serving establishments in Hayward are required to operate via a conditional use permit approved by the Planning Commission (or City Council upon appeal) via a noticed public hearing. As reflected in Section 10-1.2754 of Attachment II, exceptions to such requirement include “full-service” restaurants (see subsequent discussion); retail stores having at least 10,000 square feet of floor area and which devote not more than five percent of such area to alcohol sales, display, and storage; and special event functions, such as neighborhood or community festivals (provided other required permits and licenses are obtained for such events). If establishments operating under a use permit become problematic or operate in conflict with their use permit conditions, the City can revoke such use permits and seek to shut down such establishments.

However, many establishments within Hayward have existed for years before the current regulations requiring a conditional use permit (called nonconforming uses). Hayward Police Department staff has indicated that alcohol-serving establishments that are the most problematic and entail high calls for service are nonconforming uses/businesses. Of the 207 existing ABC licensed establishments in Hayward, 26 operate via use permits, 24 are considered exempt from needing a use permit due to them being larger stores that devote less than five percent of their floor area to alcohol, and 92 businesses operate as restaurants (per their ABC license types) without conditional use permits. Since ABC’s definition of a restaurant/eating establishment differs from Hayward’s definition of a “full-service” restaurant, not all ABC-licensed restaurants comply with the City’s standards to be considered “full-service” restaurants. This difference is due primarily to the minimum threshold required for non-alcohol sales: >50% for ABC and ≥60% for Hayward). However, assuming all restaurants in Hayward were “full-service” restaurants, of the 207 ABC-licensed establishments in Hayward, sixty-five establishments would be considered nonconforming; meaning, they would need a use permit if they were proposed to open today.

Page 9 of the attached regulations (Attachment II, Section 10-1.2761) provides direction regarding nonconforming uses (also see related discussion regarding deemed approved provisions). Consistent with state law, those provisions indicate such businesses may operate without a use permit, unless a change to their liquor license occurs or there is a substantial change in the mode or character of operation of an establishment. Such change could include an expansion in the area devoted to alcohol sales/consumption or a pattern of conduct occurs in violation of other laws or regulations. If such occurs, a conditional use permit would be required for such establishments to continue to operate.

Full Service Restaurants (Section 10-1.2751(i) - page 4 of Attachment II) – These provisions define a “full service restaurant” and identify operating standards. Generally, such restaurants, which staff is recommending now include delicatessens, are allowed to serve alcohol without benefit of a conditional use permit, but are required to provide meal service at all times when they are open. In the past, such restaurants *were* prohibited from providing live or recorded entertainment, including music, except for background music as approved by the Chief of Police. However, consistent with a trial program that has existed since June of 2012, the proposed revisions would allow reduced price alcohol sales (happy hours) at full-service restaurants from 4:00 to 9:00 pm, provided reduced price appetizers and non-alcoholic drinks are offered, and would allow live or recorded music until midnight, provided such music is in compliance with the City’s noise standards. During the trial program, staff has received input from restaurant operators and Chamber

of Commerce members indicating that such program has helped existing restaurants be more competitive and successful (up to thirty percent increase in sales). Hayward Police Department staff has reported no noticeable increase in crime or calls for service at restaurants since the initiation of the program. Staff is not recommending that late night happy hours be allowed, given those hours typically occur after mealtime and could encourage over-drinking.

Such provisions will help retain and attract new full-service restaurants, which a recent leakage analysis conducted in early 2013 for the City's Economic Development Strategic Plan showed that Hayward is underserved with such restaurants.

Performance standards (Section 10-1.2752 - page 5 of Attachment II) – These eight basic operating standards will be required of all alcohol selling/serving establishments, including full-service restaurants, grocery stores, etc. The standards require that establishments not represent an adverse effect or jeopardize or endanger persons in the surrounding areas; not violate any federal, state, or local provisions (specifically including those of ABC and including not selling alcohol to minors); not create a public nuisance or adversely affect the livability of abutting properties and the surrounding neighborhood; and that employees that will serve or sell alcohol attend and complete a training class on responsible beverage service within ninety days of employment (employees of larger grocery stores excluded).

Public Convenience and Necessity (Section 10-1.2763 – pages 9 and 10 of Attachment II) – Although not previously recommended, but reflective of comments received in the past from the public, City Council Members and Planning Commissioners, staff is recommending that provisions be added that would preclude letters of public convenience and necessity from being issued to ABC for proposed new liquor stores or bars in certain areas of Hayward. Such letters are required by ABC in order for ABC to issue licenses to establishments in over-concentrated areas. The areas subject to such requirement include Census tracts in Hayward that, per ABC, have an undue or over concentration of off-sale establishments¹. Essentially, these recommended provisions would preclude the City from processing and approving conditional use permits for new liquor stores or bars in such areas of the City. Attachment XVIII is a map that shows areas of the City where there is an overconcentration of off-sale establishments (blue and purple areas on the map, including the Downtown area). These new provisions would codify the policy established by City Council Resolution 06-005 (Attachment XVII).

¹ Business and Professions Code Section 23958.4:

(a) For purposes of Section **23958**, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

New “Summary Suspension” provisions (Section 10-1.2765 - pages 10 to 13 of Attachment II) - These regulations would allow the Chief of Police or his/her designee, after consultation with the City Attorney and approval of the City Manager (or their designees) to shut down an establishment for up to thirty days if it is determined by the Chief, City Manager, and City Attorney, or their representatives, that there is an “imminent threat to public health, safety or welfare requiring immediate emergency action.” The procedures would allow the City to informally try to have the responsible party eliminate the imminent threat. However, should such informal action not result in elimination of the imminent threat, the City can issue a written notice of summary suspension of the establishment’s City-issued license or permit to operate. An aggrieved party may appeal the summary suspension by submitting an appeal in writing to the Chief of Police, requesting a hearing before the City Manager, Chief of Police, and City Attorney (or their designees, collectively known as the “Summary Suspension Reviewing Officials”) within three business days of receiving a written notice of summary suspension.

An administrative hearing to review the appeal shall be held within five business days of receipt of the written appeal. The appellant will be given opportunity at the hearing to provide evidence that “either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected.” A decision by the Reviewing Officials shall be issued within twenty-four hours of the hearing and in writing within three business days after the hearing. The decision of the Reviewing Officials is appealable to the Planning Commission, and the Planning Commission’s decision is appealable to the City Council, whose decision is final. The appellant shall be responsible for paying for the costs of hearings.

In summary, these provisions provide specific legal authority for the City to respond quickly and affirmatively in situations where an imminent threat to public health and safety exists, while also providing due process for involved persons/parties.

Critical Incident Response Fee (Section 10-1.2766 - page 13 of Attachment II) – These provisions require that an ABC licensee and/or person(s) responsible for such incidents reimburse the City for the actual costs of emergency response personnel, including but not limited to personnel, equipment, and mutual aid response costs, incurred in responding to such incidents. A critical incident is defined as an incident that results in “a crime of violence or large, unruly gathering necessitating a police response of five (5) or more police officers.” Crimes of violence “include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon.” Such fees are due in full within thirty days of the City providing affected parties an itemized bill associated with the critical incident.

These provisions will allow responsible parties/licensees to reimburse the City for costs incurred in responding to such serious incidents, versus the general Hayward taxpayer paying for those costs via the City’s General Fund.

“Deemed Approved” provisions (Sections 10-1.2767 through 10-1.2771 - pages 13 through 16 of Attachment II) – These regulations would establish basic performance standards for nonconforming establishments that operate without use permits. Such standards are similar to those standards required of all establishments, including conforming uses and large grocery stores and full-service restaurants. If approved, the provisions would require the City staff to send notice via certified mail to all operators

of nonconforming establishments informing them of their “Deemed Approved” status, including sending them the operating standards, and indicating they are required to operate in compliance with such standards and pay an annual fee (\$280 or \$1,120 recommended for Fiscal Year 2014).

The new provisions also establish procedures and a process for enforcing the “Deemed Approved” provisions. When the City Manager or his/her designee determines that an establishment is being operated in violation of the performance standards, a notice via certified mail will be sent to the establishment’s operator, identifying the violation(s) of the standards, action to be taken to correct or eliminate the violation(s), and a timeframe in which to do so. The notice shall also indicate that the “Deemed Approved” status may be revoked or shall provide notice of a Planning Commission public hearing.

If a hearing is held before the Planning Commission, the Commission, after making findings that the establishment’s operation constitutes a public nuisance, may impose conditions as it deems appropriate to ensure compliance with the performance standards and to “protect the public health, safety and general welfare.” If the Commission determines the “Deemed Approved” status is to be revoked, it must find that imposition of additional conditions is not feasible. The Planning Commission’s action would be appealable to the City Council. Establishments who have their “Deemed Approved” status revoked shall be required to cease operations immediately after such revocation; and if they wish to resume, to seek further operations through the Conditional Use Permit process.

In summary, these provisions would ensure all nonconforming establishments (at least sixty-five of them in Hayward) operate and comply with basic public nuisance standards.

Miscellaneous Revisions –

- Revised “Liquor Store” definition (Attachment III) – Defines liquor stores as an establishment primarily involving the sale of alcohol where beer, wine or distilled spirits are sold for off-sale consumption and where more than five percent of the floor area of the establishment is devoted to the sale, display, or storage of beer, wine or distilled spirits.
- New “Wine Shop” definition (Attachment III) – Defines such uses as those existing primarily for the sale of wine and operated by a certified sommelier or oenologist (allowed as administrative uses in the General Commercial and Central City-Commercial zoning districts). Staff is recommending such provision to attract such shops to Hayward. An example of such an attractive use is “Doc’s Wine Shop,” which opened a few months ago on Foothill Boulevard in the downtown area.

An Administrative Use Permit (AUP) is typically approved by staff and requires the same findings to be made as required for Conditional Use Permits (CUP), and entails the imposition of conditions to ensure such findings can be made. An initial notice for a wine shop would be sent to owners and residents within 500 feet of a proposed new wine shop, and staff has the ability to refer an AUP application to the Planning Commission for a public hearing. Staff would typically do so if the initial notice resulted in large number of protests from

surrounding residents and property owners. Finally, a decision by staff to approve an AUP is appealable (\$257 appeal fee for fiscal year 2014) to the Planning Commission.

- Enhanced noticing requirements (Section 10-1.2763 on page 9 of Attachment II) – Requires notices to be sent to owners and residents within 500 (not 300) feet of a property proposed to have a new alcohol establishment requiring a conditional or administrative use permit.
- Cumulative Remedies (Section 10-1.2775 on page 17 of the Attachment II) – Establishes fines for violations of the alcoholic beverage outlets regulations.

Proposed Revisions to Central City-Commercial and General Commercial Zoning Districts – To reflect new definitions in the alcoholic beverage regulations, cabaret/dance provisions, and Zoning Ordinance definitions, staff is recommending the following, as reflected in Attachment IV:

- Add “Wine Shop” as an allowed administrative use in the Central City Commercial (CC-C) subdistrict and in the General Commercial (CG) district;
- Add “Cabaret” as an allowed conditional use in the Central City Commercial (CC-C) subdistrict and in the General Commercial (CG) district;
- Add “Brewery” and “Distillery” as allowed conditional uses in the Central City Commercial (CC-C) subdistrict and in the General Commercial (CG) district.

Staff is proposing such revisions to encourage a greater variety of uses in the downtown and General Commercial zoning district. Such uses would be subject to notification of property owners and residents within 500 feet of a proposed new facility and findings would be required for a conditional or administrative use permit.

Overview of Proposed Cabaret and Dance Regulations (Attachment V) – Planning Commission and staff are recommending that new regulations be established for live entertainment and dancing activity at establishments (Attachment V), which will replace the current Public Dance provisions found in Chapter 6, Article 2 of the Hayward Municipal Code. To summarize, the recommended new provisions include:

- New definitions, including for “cabarets” (essentially where live entertainment, including dancing, is regularly provided);
- New procedures and requirements for obtaining and annually renewing a cabaret license through the Hayward Police Department, including a requirement to obtain a conditional use permit from the City if the establishment serves alcohol;
- New procedures and requirements for obtaining a single event cabaret/public dance permit for non-cabaret establishments, whether they sell alcohol or not, through the Hayward Police Department (maximum of four permits/events allowed per year);
- New operating standards for all cabarets and public dances;
- New security standards, including a requirement that a minimum of one trained security staff be present for every fifty people on site at an event;
- Revocation and suspension provisions, which would allow the City to revoke the license/permit in the event that conditions warrant such action; and

- New provisions (incorporating existing provisions of Chapter 1, Article 7 of the Hayward Municipal Code) establishing ability to issue administrative citations for violators of these provisions (set by the Master Fee Schedule as \$100 for first violation; \$200 for second violation, and \$500 for third and each subsequent violation).

The proposed text in Attachment V would replace the current Public Dance regulations comprised of a page and a half found in [Chapter 6, Article 2 of the Hayward Municipal Code](#). Attachment V states that activities at cabarets and dance events “have the demonstrated potential for generating noise, crowd and traffic problems, interference with neighbors’ enjoyment and use of their property, disorderly conduct, vandalism and other nuisance activity.” Hayward Police Department has indicated such events, especially those involving large crowds that are not adequately maintained, can generate such negative impacts.

The following text summarizes the proposed new Code provisions:

New definitions, including for “Cabarets” (Section 6-2.11 on pages 2 and 3 of Attachment V) – Cabarets are defined as establishments offering live entertainment, including singing, dancing, playing live music, performing comedy, etc.

Cabaret license application requirements and processing procedures (Sections 6-2.12 through 6-2.25 on pages 3 through 12 of Attachment V) - Provides new procedures and requirements for obtaining and annually renewing a cabaret license through the Hayward Police Department, including a requirement to obtain a conditional use permit from the City if the establishment intends to serve alcohol.

The provisions identify the submittal requirements for license applications to the Hayward Police Department and establish an annual fee (recommended to be \$103 annually as currently required for public dance halls). The Chief of Police or his/her designee will conduct a background investigation and obtain criminal history information for each person required to be named on the application. The Chief shall render a decision on the application within sixty days of receipt of a complete application, and shall issue the cabaret license, if approved, within ten days of such decision. The City staff may deny the application, in which case such decision would be appealable to the Planning Commission. (Note the processing and issuance of a cabaret license could be done simultaneously and aligned with the processing of a conditional use permit application, if required, and associated decision by the Planning Commission.)

A cabaret license may be suspended or revoked by the City Manager if the establishment represents a threat or public nuisance, if it is operated in conflict with the cabaret license conditions or cabaret and dance provisions of the Code, if the associated conditional use permit has been suspended or revoked, or if the licensee fails to pay required fees. Such revocation or suspension shall be made only upon a hearing granted to the holder of the license, to be held before the City Manager after at least five days' written notice to such licensee, stating generally the grounds of complaint against him/her and stating the time and place where such hearing will be held. After the hearing, the designated “Hearing Officer” shall report findings to the City Manager within thirty days of the hearing, and the City Manager shall render a decision within thirty days of receipt of those findings, which shall be a final decision.

The provisions describe the process and information required to be submitted for annual license renewals. Licenses would not be transferrable, unless such transfer is approved by the Chief of Police. Video and recordation systems and products are indicated as being required to be marked, dated and made available to police upon demand.

Single-event dance permits (Section 6-2.26 on pages 12 and 13 of Attachment V) -

The procedures and application submittal requirements for processing a permit application for a single cabaret or dance event are outlined. Such permits, to be approved by the Chief of Police, would not be transferrable and are limited to no more than one per every three-month period.

Operating standards for cabarets and dances (Section 6-2.27 on pages 13 and 14 of Attachment V) - This code section establishes standards for all cabarets and dance events, which prohibit any obscene or illegal conduct or behavior; prohibit youth under eighteen years of age unless accompanied by his/her parent or guardian, or if the Chief of Police approves such participants as part of an event planned specifically for youth; restrict dancing between 2:00 and 10:00 am; and require well-lighted areas.

Security standards (Section 6-2.28 on pages 13 and 14 of Attachment V) - These provisions establish new security standards for cabarets and dance/cabaret events, including a requirement that a minimum of one trained security personnel be present for every fifty people on site.

Text Amendment Findings - The Council must make the following four findings in order for a text amendment to be approved. Staff's responses to the findings are shown below and included in Attachment VI and are applicable to all the text amendments proposed by staff in this report.

A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by:

- a. allowing happy hours and music at full-service restaurants that will help existing Hayward restaurants be more competitive with restaurants in surrounding cities and will help attract new restaurants to Hayward, which is underserved with such restaurants;
- b. establishing performance standards for all alcohol beverage establishments that will help ensure such establishments are operated in a manner so as not to constitute a public nuisance;
- c. prohibiting more liquor stores or bars, which are typically establishments generating more calls for service for the Hayward Police Department, in areas of the City that have an overconcentration of such establishments, as defined by the State Department of Alcohol Beverage Control;
- d. establishing "Summary Suspension" provisions to allow the City to quickly and effectively shut down an establishment where an imminent threat to public health and safety exists;

- e. creating cost recovery mechanisms through new fees, including critical incident response fees, which will help ensure more oversight of alcohol establishments by the City;
- f. establishing “Deemed Approved” performance standards for nonconforming uses, which typically generate more calls for service for the Hayward Police Department, which will help ensure such uses are operated in a manner so as not to create a public nuisance or negatively impact the public health, safety and welfare; and
- g. creating new operating standards for all cabarets and public dances, including security standards and license/permit suspension provisions to help ensure such businesses are operated responsibly with minimal impacts to the public, and to provide a process that allows the City to respond expeditiously to incidents at cabarets or dance events that represent an imminent threat to public health and safety.

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed text amendment is in conformance with City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the amendment, as described in the preceding finding, is aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities that will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging,

entertainment, education, and multi-family residential uses. The proposed text amendments will help attract new desirable uses and help ensure existing uses are operated in a responsible manner.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. Any new alcoholic beverage establishments, cabarets or dance halls would be required to have adequate streets and facilities before operating, as currently required.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The proposed regulations and text amendments would provide additional standards to help ensure alcoholic beverage establishments, cabarets and dances are operated in a manner that would not generate impacts to surrounding properties and neighborhoods. In addition, the proposed text amendments would provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Police Department.

Environmental Impact Analysis – Staff prepared a Negative Declaration and Initial Study (Attachment VIII), in accordance with the California Environmental Quality Act (CEQA), which concludes the proposed text amendments and new fees would not generate significant environmental impacts.

ECONOMIC IMPACT

With revisions to the City’s alcoholic beverage regulations that would provide more enforcement authority for problematic establishments and greater flexibility to attract desired alcohol-serving establishments, there are expected to be positive economic benefits through an enhanced and attractive Downtown and business environment. Establishments that demonstrate responsible alcohol service and sales contribute to the economic vitality and activity in entertainment areas of cities that seek to attract residents and visitors. The success of allowing happy hours and music at full-service restaurants as part of a trial program, claimed by some to have increased business by as much as thirty percent, is a good example of how regulations can positively affect economic growth and assist retaining and attracting desirable businesses.

FISCAL IMPACT

One of the directives from City Council to staff related to revisions to regulations was to ensure cost recovery. The recommended fees relate to costs incurred through performing the following activities by the Hayward Police Department’s Vice-Intelligence Unit:

- Coordination of Licensee Education on Alcohol and Drugs (LEADS) training for ABC licensed establishments personnel;
- Compliance operations at ABC establishments (e.g. Minor Decoy - where minor is sent into establishment to purchase alcohol, and Shoulder Tap - minor loitering outside asking patrons to buy them alcohol);
- ABC establishment inspection/compliance checks - Detectives inspect premises to ensure license is valid, compliance with all conditions of ABC licenses and conditional use permits, to include no minor consumption, service to intoxicated patrons, compliance with security conditions, etc.;
- Attend community meetings (e.g., Alcohol, Tobacco and Other Drugs (ATOD) and Hayward Coalition for Healthy Youth (HCHY) programs) promoting a healthy community; and
- Community education (sober graduation), facilitate ABC training to patrol officers.

The following fees are proposed to help ensure cost recovery, including for the activities identified above:

- Annual Alcoholic Beverage Establishment Retail License Level I fee: \$280 (Level I) fee for full-service restaurants, wine shops, and retail stores that devote no more than five percent of their floor area to alcohol sales, storage, and display; or \$1,120 fee (Level II - \$21.54 a week) for all other ABC-licensed establishments. Such fees are primarily related to cost recovery for Hayward Police Department, and would generate an estimated approximately \$110,000 annually, sufficient to support about 0.5 FTE police officer. The recommended fees are based in part on the time to conduct a compliance check, which on average takes ninety minutes. Therefore, establishments with Level I fees would generally be subject to a compliance check once a year and Level II fee establishments four times a year. Attachment XX identifies the recommended annual fee for each alcoholic beverage establishment in Hayward.
- Critical Incident Response Fee: to be equal to actual costs for the City to respond to violent incidents, or events requiring a response involving five or more police officers, is proposed to ensure recovery of costs related to response to incidents that represent an imminent threat to public health and safety.
- Cabaret/Dance License and Permit Fees: \$103 per year and \$42 for single cabaret/dance event, which are consistent with current Public Dance Permit fees and are proposed to help cost recovery associated with the processing of annual cabaret licenses and single cabaret or dance events by the City..

Also proposed are fines/citation fees to encourage compliance with City regulations:

- Fines for violations of the Alcohol Beverage Outlet Ordinance: \$750 for the first offense, \$1,500 for the second offense, and \$2,500 for the third and subsequent offenses are proposed to provide incentive for compliance and to assist with cost recovery in enforcing the regulations.
- Administrative Citations and Assessment of Fines for Violators of the Cabaret/Dance Provisions: \$100 for first violation; \$200 for second violation, and \$500 for third and each subsequent violation.

A survey of nearby agencies reveals that the Oakland Police Department (OPD) charges a \$1,500 annual fee to all ABC license type 20's, 21's, 48's, 64's (theater), 40's, and 42's (beer garden/wine club), with restaurants being exempt. When OPD's specialized unit (Alcoholic Beverage Action Team – ABAT) conducts inspections, they charge \$200 for violations that have not been corrected, usually by the third inspection.

There will undoubtedly be demand from the General Fund primarily related to staff of the Finance and Development Services Departments, as well as the City Attorney's Office, in collecting annual fees and enforcing the recommended provisions, especially the "Deemed Approved" provisions that require noticing and oversight. It is difficult to estimate that cost, and the cost will depend on the cooperation and response of operators to the "Deemed Approved" provisions and notices that will be sent out if the text amendment is approved. Future annual adjustments to fees may be needed in response to such demands and costs.

PUBLIC CONTACT

Significant outreach has occurred over the last two years for these proposed regulations, as described in the BACKGROUND section of this report.

Prior to the Planning Commission meeting, but after the meeting packets were distributed, staff received seven letters/communications (Attachment XXI), most of which raised concerns with the proposed fees. Other commenters suggested that the happy hour time period end at 7:00 pm versus 9:00 pm, expressed concerns with youth having access to alcohol, and recommended that new fees be established associated with costs incurred by other departments besides the police department (unknown cost at this time).

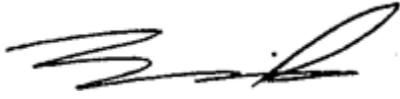
A notice of this hearing and the September 5 Planning Commission meeting was sent in mid-August to over 200 public members, including to all ABC licensees in Hayward and various interested parties (Hayward Chamber of Commerce President and CEO Kim Huggett, COMMPRE Program Director Linda Pratt, etc.). In response to Planning Commission's request, an additional notice (Attachment XVI) of this hearing was mailed to the same persons on September 16, and included specific information regarding the proposed \$280 and \$1,120 fees referenced above. Also, a notice of this hearing was published in *The Daily Review* on August 21, 2013.

NEXT STEPS

Should the Council adopt the attached two resolutions and introduce and adopt the attached four ordinances, staff will send out notices to all ABC licensees informing them of the new regulations, and begin to initiate collection of new fees. The Planning Commission suggested that an annual report be provided regarding implementation of the new provisions, and staff will do so at Council's direction.

Prepared by: David Rizk, AICP, Development Services Director
Diane Urban, Chief of Police

Approved by:



Fran David
City Manager

Attachments

- Attachment I: Draft Ordinance Regarding Proposed Revisions to Alcohol Beverage Outlet Regulations (**red-lined version**) – new HMC Sections 10-1.2750 *et seq.*
- Attachment II: Draft Ordinance Regarding Proposed Revisions to Alcohol Beverage Outlet Regulations (**clean version**) – new HMC Sections 10-1.2750 *et seq.*
- Attachment III: Draft Ordinance Regarding Proposed Revisions to the Zoning Ordinance Definitions (HMC Section 10-1.3500)
- Attachment IV: Draft Ordinance Regarding Proposed Revisions to the Central City-Commercial and General Commercial Zoning District Regulations (**red-lined version**)
- Attachment V: Draft Ordinance Regarding Proposed new Cabarets and Dances Regulations (**red-lined version**) - (Chapter 6, Article 2 of the Hayward Municipal Code)
- Attachment VI: Draft Resolution Regarding Proposed Ordinances and the Negative Declaration/Initial Study
- Attachment VII: Draft Resolution Regarding Proposed Revisions to the Fiscal Year 2014 Master Fee Schedule
- Attachment VIII: Negative Declaration/Initial Study
- Attachment IX: January 24, 2012 Joint City Council/Planning Commission Work Session Minutes (partial)
- Attachment X: June 19, 2012 City Council Meeting Minutes (partial)
- Attachment XI: December 4, 2012 City Council Meeting Minutes (partial)
- Attachment XII: December 4, 2012 City Council Work Session Minutes (partial)
- Attachment XIII: December 13, 2012 Planning Commission Work Session Minutes (partial)
- Attachment XIV: June 18, 2013 City Council Meeting Minutes (partial)
- Attachment XV: September 5, 2013 Draft Planning Commission Meeting Minutes (partial)
- Attachment XVI: Revised Public Hearing Notice
- Attachment XVII: City Council Resolution No. 06-005 (Letters of Public Convenience and Necessity)
- Attachment XVIII: Map Showing Census Tracts Over-concentrated with Alcohol Establishments
- Attachment XIX: Map Showing Locations and Types of ABC Licensees in Hayward
- Attachment XX: List of ABC Licensees in Hayward
- Attachment XXI: Communications Received After the September 5 Planning Commission Meeting Packets were Distributed

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ORDINANCE NO. __

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE
HAYWARD MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGE OUTLETS

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

Section 1. Upon the adoption of this Ordinance, Sections 10-1.2735b(1)-(13) of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 10-1.2750 through 10-1.2775, entitled “Alcoholic Beverage Outlets”, are hereby enacted to read as follows. The City Clerk is hereby directed to renumber Sections 10-1.2735c through 10-1.2735k sequentially to reflect the repeal of Section 10-1-2735b. The City Clerk is further directed to revise section references, as appropriate, throughout the City’s Zoning Ordinance to reflect the change in sequencing, resulting from the repeal of Sections 10-1.2735b(1)-(13) and the renumbering of Sections 10-1.2735c through 10-1.2735k.

“SECTION 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS

Sections:

Section 10-1.2750	Purpose
Section 10-1.2751	Definitions
Section 10-1.2752	Performance Standards for Alcoholic Beverage Sales Establishments
Section 10-1.2753	Security Requirements for New On-Sale Alcohol-Related Establishments with Cabaret Licenses
Section 10-1.2754	Conditional Use Permits for New Alcoholic Beverage Sales Establishments
Section 10-1.2755	Posting of Conditions of Approval
Section 10-1.2756	Findings
Section 10-1.2757	Application for Conditional Use Permit
Section 10-1.2758	Requirements for New On-Sale Alcohol-Related Establishments
Section 10-1.2759	Requirements for New Off-Sale Alcohol-Related Establishments
Section 10-1.2760	Conditions of Approval
Section 10-1.2761	Existing Establishments Selling Alcoholic Beverages
Section 10-1.2762	Modifications Permitted in Alcoholic Beverage Sales Establishments
Section 10-1.2763	Notice
Section 10-1.2764	Letter of Public Convenience or Necessity
Section 10-1.2765	Emergency Action to Abate Imminent Threats to Public Health, Safety or Welfare; Summary Suspension Procedures
Section 10-1.2766	Critical Incident Response Fee for Alcoholic Beverage Sales Establishments
Section 10-1.2767	Legal Nonconforming Alcoholic Beverage Sales Establishments; Deemed Approved Status
Section 10-1.2768	Notification to Owners of Deemed Approved Status
Section 10-1.2769	Deemed Approved Performance Standards

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Section 10-1.2770	Procedure for Enforcement of Deemed Approved Performance Standards
Section 10-1.2771	Revocation of Deemed Approved Status
Section 10-1.2772	Deemed Approved Alcoholic Beverage Sales Establishments Annual Fee; Liability for Expenses
Section 10-1.2773	Inspection and Right of Entry
Section 10-1.2774	Nuisance
Section 10-1.2775	Cumulative Remedies

SEC. 10-1.2750 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers of Hayward. At the same time, it is also recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.
- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

SEC. 10-1.2751 DEFINITIONS.

For the purpose of these regulations, certain terms and words shall have the following meaning:

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- a. "Alcoholic Beverage Sales ~~Commercial Activity Establishment~~" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding full-service restaurants that comply with the below-listed definition of full-service restaurant. All alcoholic beverage sales establishments are required to obtain an annual alcohol establishment retail license, in addition to the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual alcoholic beverage retail license and a conditional use permit from the City, unless otherwise indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.
- i. "On-sSale Alcohol-rRelated ~~Commercial Activity Establishment~~" shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises. ~~This section shall be interpreted to include bars, exclusive of night clubs.~~
- ii. "Off-sSale Alcohol-rRelated ~~Commercial Activity Establishment~~" shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- b. "Cabaret" is defined in Chapter 6, Article 2 of this Code, shall mean any establishment, event or place where live entertainment is provided by or for any patron or guest, including but not limited to singing, playing music, dancing, acting, conducting a fashion show, performing pantomime, performing comedy or other act or performance, either as the main purpose for such gathering or as an ancillary activity to some other purpose. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
- c. "Critical Incident" shall mean any event that, in the sole discretion of the Chief of Police, results in a crime of violence, or large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
- d. "Deemed Approved Alcoholic Beverage Establishments" shall mean those establishments identified in Section 10-1.2767.
- e. "Downtown Entertainment Area" shall mean that area generally between A and D Streets and between Second Street and Grand Street.

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- f. “Licensee” shall mean the holder of an ABC license, an alcoholic establishment beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
- g. “Liquor store” is defined in Section 10-1.3500 of this Ordinance (“Definitions”) shall mean any business of less than 10,000 square feet (gross) where beer, wine or distilled spirits are sold for off-sale consumption. All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
- h. “Night Club” – see definition of “Bar” as defined in Section 10-1.3500 of this Ordinance (“Definitions”). shall mean any alcoholic beverage sales commercial activity which engages in the sale of alcoholic beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 p.m. to 2:00 a.m., regardless of whether such establishment is simultaneously offering full restaurant meal service, or charges an entrance fee, or increases the sales price of beverages. All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article 2 of this code, in addition to a conditional use permit.
- i. Restaurant - Full Service. A "full service restaurant" shall mean a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants ~~or delicatessens~~. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. To be considered a full service restaurant, the commercial activity must meet the criteria listed below: Full-service Restaurants that fail to meet may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets these following criteria must apply for a conditional use permit.
- (1) A full service restaurant shall serve meals to guests at all times the commercial activity establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service

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being provided.

- (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
 - (3) A full service restaurant ~~shall not offer or permit~~ may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. any form of live or recorded entertainment; including by way of example and not limited to, the playing of recorded music by a disc jockey, karaoke, dancing, video or mechanical games. Background music complementary to a dining experience may be provided as determined by the Chief of Police. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code.
 - (4) A full service restaurant ~~shall not~~ may offer ~~any type of~~ reduced price promotion for alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages.
- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
- c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
- d. The establishment does not result in violations to any applicable provision of any other city, state,

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or federal regulation, ordinance or statute; and

- e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
- g. The establishment complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances".

SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

Except as otherwise provided herein, no new alcoholic beverage sales establishment may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each

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of the dates the event will be held; and

- (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year.

SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

SEC. 10-1.2756 FINDINGS.

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- a. The type of Alcoholic Beverage Control license the applicant is seeking for the establishment; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED COMMERCIAL ACTIVITIES ESTABLISHMENTS.

- a. With the exception of the downtown entertainment area, no new on-sale alcohol-related commercial activity establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related commercial activity establishment (with the exception of new or existing establishments which are exempted by subsection (3) above under Section 10-1.2754), or within within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.

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b. Notwithstanding the above:

- (1) Outside the ~~d~~Downtown ~~e~~Entertainment ~~a~~Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.
- (2) Within the ~~d~~Downtown ~~e~~Entertainment ~~a~~Area, no on-sale alcohol-related ~~commercial-activityestablishment~~ shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related ~~commercial-activityestablishment~~ (with the exception of new or existing establishments which are exempted ~~by subsection (3) above under Section 10-1.2754~~), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related ~~commercial-activitiesestablishments that which~~ front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
- (3) Within the ~~d~~Downtown ~~e~~Entertainment ~~a~~Area, no more than two (2) on-sale alcohol-related ~~commercial-activitiesestablishments~~ shall be permitted per block side or face, with the exception of new or existing establishments that are exempted ~~by subsection (3) above under Section 10-1.2754~~. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related ~~commercial-activityestablishments~~ on a block between the two immediate cross streets.

SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED COMMERCIAL ACTIVITIES ESTABLISHMENTS.

With the exception of the ~~d~~Downtown ~~e~~Entertainment ~~a~~Area, ~~n~~No new off-sale alcohol-related ~~commercial-activityestablishment~~ will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related ~~commercial-activityestablishment~~ (with the exception of new or existing establishments which are exempted ~~by subsection (3) above under Section 10-1.2754~~), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

SEC. 10-1.2760 CONDITIONS OF APPROVAL.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and ~~in subsection (1) above Section 10-1.2750~~, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

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- a. Commission by the permitted licensee or any employee of the permitted licensee of a criminal offense for which: 1) the permitted licensee establishment was the location where the offense was committed or where there is a direct correlation between the permitted licensee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare.
- b. Alcoholic beverage sales commercial activities establishments shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
- c. Alcoholic beverage sales commercial activities establishments with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
- d. Alcoholic beverage sales commercial activities establishments shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
- e. No beer or malt liquor shall be sold in bottles or containers larger than twelve (12) ounces for off-site consumption~~;~~.
- f. Beer and malt liquor in containers of twelve (12) ounces or less shall not be sold in units of less than one six-pack for off-site consumption~~;~~.
- g. Wine shall not be sold in bottles or containers smaller than seven hundred fifty (750) ml and wine coolers shall not be sold in containers smaller than twelve (12) ounces and in units of less than one four-pack for off-site consumption~~;~~.
- h. Distilled spirits shall not be sold in bottles or containers smaller than seven hundred (750) ml for off-site consumption~~; and~~.
- i. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor or alcoholic beverage sales establishment~~;~~.
- j. Alcoholic beverage sales commercial activities establishments shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.

SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

Any alcoholic beverage sales commercial activity establishment lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations. Upon the occurrence of either any of the following, however, operation of the

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establishment shall require approval of a conditional use permit:

- a. The alcoholic beverage sales ~~commercial activity establishment~~ changes its type of liquor license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES COMMERCIAL ACTIVITIES ESTABLISHMENTS.

Any permitted licensed alcoholic beverage sales ~~commercial activity establishment~~ operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- a. The alcoholic beverage sales ~~commercial activity establishment~~ changes its type of liquor license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales ~~commercial activity establishment~~ as defined in ~~subsection~~ Section 10-1.2761 above.

SEC. 10-1.2763 NOTICE.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (300 500) feet of the perimeter of the subject property for which use permit approval is sought.

SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Director is authorized to issue letters of public convenience or necessity to the State Department of Alcoholic Beverage Control for alcoholic beverage ~~sales commercial activities establishments~~ that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit it.

No finding of public convenience or necessity shall be made to the State Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any Census tract in which the ABC indicates that there is an over-concentration of ABC licenses.

SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO

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PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.

Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
 - (1) The attempt to contact the licensee fails; or
 - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
 - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
 - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.
- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:
 - (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
 - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or

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- (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment.
- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
 - (2) The grounds and reasons upon which the summary suspension is based; and
 - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the “Summary Suspension Reviewing Officials”) to appeal the summary suspension; and
 - (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
- (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
 - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
 - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
- e. Appeal of Summary Suspension.
- (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.
 - (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee’s request for the hearing.

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- unless the licensee requests an extension of time.
- (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact information provided by the licensee.
- (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
- (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
- (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
- (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.
- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a

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critical incident response fee shall be imposed on the party responsible for such incident and/or the licensee of any alcoholic beverage sales establishment, including those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident and/or the licensee with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

SEC 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the “deemed approved performance standards” set forth in Section 10-1.2769.

SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment’s deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public

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drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;

- d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
- e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
- g. The establishment complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.
- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
 - (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
 - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported

by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the establishment's deemed approved status should be revoked, the Planning Commission must find that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.

d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:

(1) The length of time the establishment has been in violation of the deemed approved performance standards;

(2) The nature and impact of the violation of the performance standards on the community;

(3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. "Reasonable steps" to remedy a violation shall include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment's property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.

e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.

f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

SEC. 10-1.2772 DEEMED APPROVED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS ANNUAL FEE; LIABILITY FOR EXPENSES.

The owner of a deemed approved alcoholic beverage sales establishment shall pay an annual fee, as shall be set by the City Council in the Master Fee Schedule, to cover the cost of administering the deemed approved regulations. Any person who is found to have violated the deemed approved Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the deemed approved establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2774 NUISANCE.

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

SEC. 10-2775 CUMULATIVE REMEDIES.

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.”

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 immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ___ day of _____, 2013, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

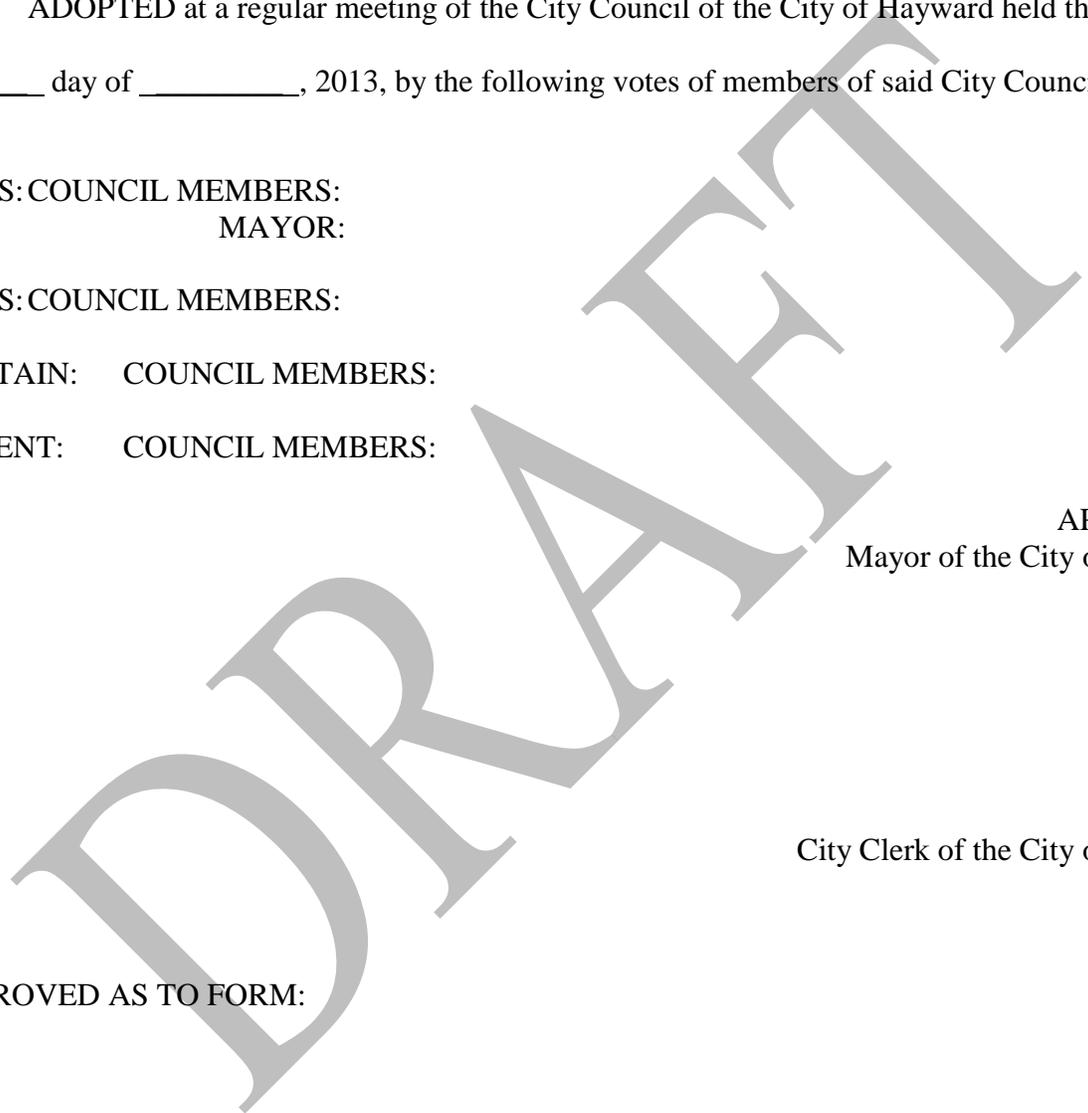
APPROVED:
Mayor of the City of Hayward

DATE:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



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ORDINANCE NO. __

ORDINANCE AMENDING CHAPTER 10, ARTICLE 1 OF THE
HAYWARD MUNICIPAL CODE RELATING TO ALCOHOLIC
BEVERAGE OUTLETS

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

Section 1. Upon the adoption of this Ordinance, Sections 10-1.2735b(1)-(13) of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 10-1.2750 through 10-1.2775, entitled “Alcoholic Beverage Outlets”, are hereby enacted to read as follows. The City Clerk is hereby directed to renumber Sections 10-1.2735c through 10-1.2735k sequentially to reflect the repeal of Section 10-1-2735b. The City Clerk is further directed to revise section references, as appropriate, throughout the City’s Zoning Ordinance to reflect the change in sequencing, resulting from the repeal of Sections 10-1.2735b(1)-(13) and the renumbering of Sections 10-1.2735c through 10-1.2735k.

“SECTION 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS”

Sections:

Section 10-1.2750	Purpose
Section 10-1.2751	Definitions
Section 10-1.2752	Performance Standards for Alcoholic Beverage Sales Establishments
Section 10-1.2753	Security Requirements for New On-Sale Alcohol-Related Establishments with Cabaret Licenses
Section 10-1.2754	Conditional Use Permits for New Alcoholic Beverage Sales Establishments
Section 10-1.2755	Posting of Conditions of Approval
Section 10-1.2756	Findings
Section 10-1.2757	Application for Conditional Use Permit
Section 10-1.2758	Requirements for New On-Sale Alcohol-Related Establishments
Section 10-1.2759	Requirements for New Off-Sale Alcohol-Related Establishments
Section 10-1.2760	Conditions of Approval
Section 10-1.2761	Existing Establishments Selling Alcoholic Beverages
Section 10-1.2762	Modifications Permitted in Alcoholic Beverage Sales Establishments
Section 10-1.2763	Notice
Section 10-1.2764	Letter of Public Convenience or Necessity
Section 10-1.2765	Emergency Action to Abate Imminent Threats to Public Health, Safety or Welfare; Summary Suspension Procedures
Section 10-1.2766	Critical Incident Response Fee for Alcoholic Beverage Sales Establishments
Section 10-1.2767	Legal Nonconforming Alcoholic Beverage Sales Establishments; Deemed Approved Status
Section 10-1.2768	Notification to Owners of Deemed Approved Status
Section 10-1.2769	Deemed Approved Performance Standards
Section 10-1.2770	Procedure for Enforcement of Deemed Approved Performance Standards
Section 10-1.2771	Revocation of Deemed Approved Status

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Section 10-1.2772	Liability for Expenses
Section 10-1.2773	Inspection and Right of Entry
Section 10-1.2774	Nuisance
Section 10-1.2775	Cumulative Remedies

SEC. 10-1.2750 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers of Hayward. At the same time, it is also recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.
- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

SEC. 10-1.2751 DEFINITIONS.

For the purpose of these regulations, certain terms and words shall have the following meaning:

- a. "Alcoholic Beverage Sales Establishment" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages. All alcoholic beverage sales establishments are required to obtain the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual alcoholic beverage retail license and a conditional use permit from the City, unless otherwise

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indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.

- i. "On-Sale Alcohol-Related Establishment" shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
- ii. "Off-Sale Alcohol-Related Establishment" shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- b. "Cabaret" is defined in Chapter 6, Article 2 of this Code. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
- c. "Critical Incident" shall mean any event that, in the sole discretion of the Chief of Police, results in a crime of violence, or large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
- d. "Deemed Approved Alcoholic Beverage Establishments" shall mean those establishments identified in Section 10-1.2767.
- e. "Downtown Entertainment Area" shall mean that area generally between A and D Streets and between Second Street and Grand Street.
- f. "Licensee" shall mean the holder of an ABC license, an alcoholic beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
- g. "Liquor store" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
- h. "Night Club" – see definition of "Bar" in Section 10-1.3500 of this Ordinance ("Definitions"). All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article

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2 of this code, in addition to a conditional use permit.

- i. Restaurant - Full Service. A "full service restaurant" shall mean a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.
 - (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
 - (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
 - (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code.
 - (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages.
- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons

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- residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
 - c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
 - d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
 - e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
 - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
 - g. The establishment complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
 - h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances",

SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

Except as otherwise provided herein, no new alcoholic beverage sales establishment may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five

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- (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
 - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
 - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each of the dates the event will be held; and
 - (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year.

SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

SEC. 10-1.2756 FINDINGS.

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- a. The type of Alcoholic Beverage Control license the applicant is seeking for the establishment; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

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SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED ESTABLISHMENTS.

- a. With the exception of the downtown entertainment area, no new on-sale alcohol-related establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.
- b. Notwithstanding the above:
 - (1) Outside the Downtown Entertainment Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.
 - (2) Within the Downtown Entertainment Area, no on-sale alcohol-related establishment shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related establishments that front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
 - (3) Within the Downtown Entertainment Area, no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face, with the exception of new or existing establishments that are exempted under Section 10-1.2754. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related establishments on a block between the two immediate cross streets.

SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED ESTABLISHMENTS.

With the exception of the Downtown Entertainment Area, no new off-sale alcohol-related establishment will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

SEC. 10-1.2760 CONDITIONS OF APPROVAL.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and Section 10-1.2750, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such

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conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

- a. Commission by the licensee or any employee of the licensee of a criminal offense for which: 1) the licensed establishment was the location where the offense was committed or where there is a direct correlation between the licensee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare.
- b. Alcoholic beverage sales establishments shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
- c. Alcoholic beverage sales establishments with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
- d. Alcoholic beverage sales establishments shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
- e. No beer or malt liquor shall be sold in bottles or containers larger than twelve (12) ounces for off-site consumption.
- f. Beer and malt liquor in containers of twelve (12) ounces or less shall not be sold in units of less than one six-pack for off-site consumption.
- g. Wine shall not be sold in bottles or containers smaller than seven hundred fifty (750) ml and wine coolers shall not be sold in containers smaller than twelve (12) ounces and in units of less than one four-pack for off-site consumption.
- h. Distilled spirits shall not be sold in bottles or containers smaller than seven hundred (750) ml for off-site consumption.
- i. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the alcoholic beverage sales establishment.
- j. Alcoholic beverage sales establishments shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.

SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.

Any alcoholic beverage sales establishment lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations.

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Upon the occurrence of any of the following, however, operation of the establishment shall require approval of a conditional use permit:

- a. The alcoholic beverage sales establishment changes its type of liquor license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

Any licensed alcoholic beverage sales establishment operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- a. The alcoholic beverage sales establishment changes its type of liquor license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales establishment as defined in Section 10-1.2761.

SEC. 10-1.2763 NOTICE.

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (500) feet of the perimeter of the subject property for which use permit approval is sought.

SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.

The Planning Director is authorized to issue letters of public convenience or necessity to the State Department of Alcoholic Beverage Control for alcoholic beverage establishments that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit it. No finding of public convenience or necessity shall be made to the State Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any Census tract in which the ABC indicates that there is an over-concentration of ABC licenses.

SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.

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Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
 - (1) The attempt to contact the licensee fails; or
 - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
 - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
 - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.

- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:
 - (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
 - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or
 - (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet

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of the licensed establishment.

- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
 - (2) The grounds and reasons upon which the summary suspension is based; and
 - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the "Summary Suspension Reviewing Officials") to appeal the summary suspension; and
 - (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
- (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
 - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
 - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
- e. Appeal of Summary Suspension.
- (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.
 - (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee's request for the hearing, unless the licensee requests an extension of time.
 - (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact

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information provided by the licensee.

- (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
- (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
- (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
- (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.
- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident and/or the licensee of any alcoholic beverage sales establishment, including those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident and/or the licensee with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

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SEC 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the “deemed approved performance standards” set forth in Section 10-1.2769.

SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment’s deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
- e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

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- f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
- g. The establishment complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
- h. The establishment does not sell alcoholic beverages to minors.

SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.
- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
 - (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
 - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the establishment's deemed approved status should be revoked, the Planning Commission must find that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.
- d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:

- (1) The length of time the establishment has been in violation of the deemed approved performance standards;
 - (2) The nature and impact of the violation of the performance standards on the community;
 - (3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. "Reasonable steps" to remedy a violation shall include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment's property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.
- e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.
- f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

SEC. 10-1.2772 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the deemed approved establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations,

provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2774 NUISANCE.

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

SEC. 10-2775 CUMULATIVE REMEDIES.

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.”

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 immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the ___ day of _____, 2013, 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

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTION 10-1.3500, ZONING ORDINANCE DEFINITIONS,
TO CONFORM TO THE CITY’S ALCOHOLIC BEVERAGE
OUTLETS ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution
, approving the text changes requested in Zone Change Application PL-2013-0175TA.

Section 2. Zoning Ordinance Section 10-1.3500, relating to definitions, is hereby amended
to add certain text (as indicated by underline) and delete certain text (as indicated by strikeout), to
conform to the City’s Alcoholic Beverage Outlets ordinance introduced herewith and as such
amendments are more specifically shown on Attachment “A” hereto.

Section 3. 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 4. In accordance with the provisions of Section 620 of the City Charter, this
ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the _____ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held
the _____ day of _____, 2013, 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

Attachment A

AUTOMOBILE REPAIR

- a. Automobile Repair - Minor. Minor automotive servicing and replacement of parts for passenger automobiles and/or motorcycles, usually in the same day. Services include, but are not limited to, engine tune-up, lubrication, and tire, muffler, brake, and electrical.
- b. Automobile Repair - Major. Repair garages and specialty establishments for motorcycles, and passenger automobiles and trucks of all sizes, such as machine, tire, body and fender, auto glass, radiator, transmission, motor tune-up, vehicle upholstery, and muffler shops. May also include repair of machinery and equipment.
- c. Home repair - minor adjustments or the replacement of vehicle parts where such adjustments or replacement may reasonably be expected to be accomplished within a forty-eight (48) hour period. No permit is required for such minor adjustments or replacement. Also see Section 10-1.2735.kj. "Vehicle Parking, Repair, Display and Storage Requirements."

AUTOMOBILE SALES. An establishment engaged in the retail sales and services of new and used automobiles, trucks, trailers, motorcycles, mopeds, and recreation vehicles and supplies. May include farm or industrial equipment, machinery, and supplies.

AUTOMOBILE SERVICE STATION. A structure or area primarily designed and used for the retail sale of motor vehicle fuel and lubricants to the public by direct delivery into the user's vehicle and may include incidental motor vehicular services such as tire repair, battery charging, brake adjustment, motor tune-up and washing where no conveyor, blower or steam cleaning device is used. Sale of food, beverages and related items as determined by the Planning Director is permitted in conjunction with an automobile service station within commercial zoning districts.

AUTOMOBILE STORAGE FACILITY. An establishment engaged in the storage of new passenger automobiles, passenger trucks, motorcycles, or similar vehicles for the purposes of future retail sales at a separate location.

BANK. See "FINANCIAL INSTITUTION."

BANQUET HALL. An establishment engaged in periodic events such as weddings, dances, and potlucks. Typically is rented out to private parties and/or special interest groups. Usually includes food preparation and/or serving, and live entertainment or recorded music.

BAR, COCKTAIL LOUNGE. Any on-sale alcohol-related establishment that engages primarily in the sale of alcoholic beverages and where food service, if any, is subordinate or incidental to the sale of alcoholic beverages. Bars include night clubs, taverns, pubs, cocktail lounges and similar establishments. ~~An establishment where alcoholic beverages are sold for consumption on the premises, not including restaurants where the principal business is serving~~

~~food. Also referred to as a night club or tavern.~~ Please see Section 10-1.275035.b. “Alcoholic Beverage Outlets” for regulations.

BARBER, BEAUTY SHOP. An establishment where hair is washed, cut, dyed, and/or styled. May include ancillary services such as manicures or pedicures. Does not include massage or tanning services.

BATCH PLANTS. Any operation that involves sorting, crushing, reducing, refining, mixing, packaging or other processing of minerals for intermediate or final consumption.

BEDROOM. An enclosed space in a structure which is designed such that it could be used for sleeping purposes as determined by the Planning Director. A bedroom typically meets the room dimension requirements of the most recent edition of the Uniform Building Code, is not accessed directly from the garage, and has one or more windows.

BICYCLE SHOP. An establishment engaged in the retail sales and/or repair of bicycles. Does not include motorcycles or mopeds.

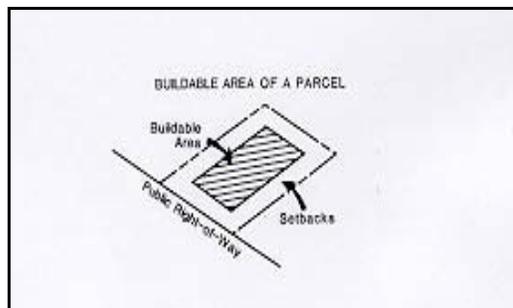
BOARDING HOME. A building where lodging or meals are provided for compensation for residents not functioning as a common household, usually for compensation.

BOOKSTORE. An establishment engaged in the retail sales of books, either used and/or new. May include a small area for coffee and bakery items (10 percent or less of floor area).

~~BREWERY—LIQUOR—DISTILLERY.~~ An establishment-plant where malt liquors or wines are manufactured and stored. Also see "MICRO-BREWERY." Please see Section 10-1.2750 “Alcoholic Beverage Outlets” for regulations regarding alcohol.

BROADCASTING STUDIO. An establishment where sound or images are transmitted by radio or television to the public.

BUILDABLE AREA. The space remaining on a zoning plot within which a building may be erected after the minimum lot and yard requirements of this Ordinance have been satisfied, notwithstanding all other applicable guidelines and Subdivision Map Act requirements of steeply sloped or unstable areas.



BUILDING. Any structure with substantial walls and roof securely affixed to the land and entirely separated on all sides from any other structure by space or by walls in which there are no communicating doors, windows or opening, and which is designed or intended for the shelter, enclosure or protection of persons, animals or property of any kind. Also defined as follows:

- a. "Completely enclosed building" means a building separated on all sides from the adjacent open space, or from other buildings or other structures, by a permanent roof and by exterior walls or party walls, pierced only by windows and normal entrance or exit doors.
- b. "Detached or accessory building" means a building separated by at least six feet of space open to the sky from any other building on the same zoning plot.
- c. "Existing building" means a building erected prior to the effective date of this title, or one for which a legal building permit has been issued.
- d. "Primary building" means a building in which is conducted the primary use of the lot on which it is situated.
- e. "Public building" means a building principally occupied by the federal, state, county, or city government, or any political subdivision agency, or instrumentally thereof.
- f. "Temporary building" means a building not permanently attached to the ground by fixed foundation, piers or substructure.

BUILDING HEIGHT. The vertical distance at any point from the finished grade or existing grade, whichever is lower, to the highest point of the coping of a flat roof, to the top roof line of a mansard roof, or to the midpoint of the highest gable of a pitched or hip roof. Where unusual deviations occur on the existing grade, such as a small swale, the Planning Director may make minor adjustments in the building height envelope to permit reasonable building design consistent with the intent and purpose of the building height standard. Graded area entirely under a building and not visible from the exterior of the building, such as underground garages and basements, shall not be included for purposes of calculating height.

BUILDING MATERIALS (SALES). An establishment engaged in the retail and wholesale sales of building materials such as lumber, masonry products, rock, soil, tile, and other similar materials needed to construct a structure and/or accessory structures and uses (fences, paved areas, retaining walls).

BUSINESS PARK DISTRICT (BP). A land use zoning district intended to provide for establishment of high quality business office parks in a campus environment at key locations within the Industrial Corridor. See Section 10-1.1700.

CABARET. Any establishment, event or place where live entertainment is provided by or for any patron or guest, including but not limited to singing, playing music, dancing, performing karaoke, acting, conducting a fashion show, performing pantomime, performing comedy or other act or performance, either as the main purpose for such gathering or as an ancillary activity to some other purpose. Please refer to Chapter 6, Article 2 of this Code for regulations regarding cabarets and to Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding

alcohol.

CAMERA STORE. An establishment engaged in the retail sales of cameras and photographic supplies. May include ancillary repair.

CARD CLUB. Any building or structure, or any portion of a building or structure, wherein any person or persons are permitted to play a card game in return for a fee, charge, or other compensation. Refer to Chapter 4, Article 3 of the Hayward Municipal Code for regulations.

CARNIVAL. An establishment providing one or more non-coin-operated powered amusement rides, or providing two or more uses such as a tent, freak, or side show, a feat of daring, or an exhibition of two or more wild animals except within a public park or zoo, or providing other similar uses.

CARPET/DRAPERY STORE. An establishment engaged in the retail or wholesale sales of carpets and drapes. Does not include on-site manufacturing.

CARPORT. A permanent roofed structure not completely enclosed on the sides and used for vehicle parking.

CAR WASH. An establishment engaged in the washing of passenger vehicles for a fee.

CATERING FACILITY. An establishment engaged in the preparation of food to be served at an event held off-site, usually at a banquet hall or private facility.

CATERING TRUCK. A commercially licensed motor vehicle, approved by the Alameda County 111, Department of Environmental Health Services, and the City of Hayward Police Department, from which food and beverages are sold, distributed, or otherwise provided to consumers on private property and which travels from place to place to conduct its operation. Does not include a Food Vendor cart. See Section 10-1.2735.[eb](#). for regulations.

CENTRAL BUSINESS DISTRICT (CB). A land use zoning district within which commercial and retail land uses may develop which provide a principal downtown area of regional importance, and several outlying areas of more than neighborhood importance, where concentrations of comparison shopping facilities, financial and business services, and amusement or recreation may be found in quantity. See Section 10-1.1300.

CENTRAL CITY DISTRICT (CC). A land use zoning district in the center of the City, within which land uses may develop which promote the development of the downtown. These land uses include business, government, cultural, financial, residential, office, and entertainment uses. See Section 10-1.1500. This District includes the following Subdistricts:

- a. Central City - Commercial (CC-C).

- b. Central City - Residential (CC-R).
- c. Central City - Plaza (CC-P).

CHECK CASHING STORE. An establishment primarily engaged in the cashing of checks for customers who usually do not have a checking account at a bank or other financial institution. Is commonly found in areas with easy access and high visibility.

CHRISTMAS TREE AND PUMPKIN PATCH LOTS. Seasonal establishments engaged in the retail sales of Christmas trees and pumpkins. See Section 10-1.2735.d.c. for standards.

CITY COUNCIL. The City Council of the City of Hayward, California.

CLOTHING STORE ("APPAREL"). An establishment engaged in the retail sales of new clothing, such as shoes, hats, dresses, shirts, etc. For used clothing, see "THRIFT STORE."

COMMERCIAL AMUSEMENT FACILITY. A facility offering entertainment open to the public for a fee or by membership subscription, for example, ticket, door charge, amusement device fee. Said facility shall include, but not be limited to, theaters, arcades (place of business containing five or more amusement devices), billiard parlors, golf courses (including miniature golf), water slides, indoor soccer, batting cages, and bowling facilities. Four (4) or less manually or coin- or token- or slug-operated viewing or electronic or video game machines or other amusement devices (excluding jukeboxes) located in association with other permitted uses and activities such as, but not limited to, taverns, restaurants, book stores, grocery stores, motels, hobby shops or toy stores, music or stereo stores, laundromats, barber or beauty shops, or computer stores shall be considered accessory to the permitted use.

CONCESSION STAND. A small, ancillary retail use that provides food and beverages to a primary land use. May include light cooking and heating of food commodities.

COMMERCIAL OFFICE (CO). A land use zoning district within which administrative, professional, businesses and financial office land uses may exist, yet which are not detrimental to the residential use of adjacent properties. See Section 10-1.1100.

COMMERCIAL RETAIL DISTRICT (BP). A land use zoning district intended to provide for limited retail, service, and office commercial uses which serve the needs of workers within the Industrial Corridor. See Section 10-1.1400.

CONSIGNMENT STORE. A retail establishment that sells good quality merchandise (for example, clean, not damaged, stained or frayed) that has been provided to the proprietor on a consignment basis as well as new merchandise. Sale of donated or otherwise second-hand merchandise is prohibited.

CONVALESCENT HOME. An establishment in which nursing, dietary and other personal services are furnished twenty-four (24) hours a day to convalescents, invalids, or the aged who are unable to or no longer want to care for themselves in a more traditional setting. Also referred to as nursing homes or intermediate care facilities. Does not include institutions which care for persons suffering from a mental disorder or communicable disease, or which offers surgery, maternity or other primary treatments.

CONVENIENCE MARKET. A retail food market which is typically less than 2,500 square feet in gross floor area and which caters to customers who buy a small number of items, is typically part of a larger chain or franchise system, often with long hours of operation, and as determined by the Planning Director.

CONSTRUCTION TRAILER. A temporary trailer used as an office, or an office/quarters combination with quarters for one security guard in connection with ongoing construction work associated with new construction of industrial, commercial, or multi-family development. See Section 10-1.2735.[be](#).

COPYING OR REPRODUCTION SERVICE. An establishment which provides printing services to customers. Typically includes blueprint machines, reproduction machines, paper goods, and binding services (spiral binding, glue binding, stapling, etc.) Also see "NEWSPAPER PRINTING FACILITY."

COURTYARD. The word "courtyard" shall mean an open unoccupied space bounded on two or more sides by the walls of a building. An inner courtyard is a court entirely within the exterior walls of a building. All other courts are outer courts.

CULTURAL FACILITY. Facilities maintained to develop, promote, or foster the arts or literature, as well as a clubhouse, lodge hall, and fraternal society meeting places, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses.

DANCE STUDIO. An establishment where dance classes and dance recitals are performed to recorded music.

DAY CARE CENTER A facility which provides non-medical care to 15 or more children and/or adults in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. May include pre-schools, infant centers, and extended day care facilities.

DAY CARE HOME. A single family residence which is occupied and used as such and provides non-medical day care on less than a 24-hour basis to children and/or adults. Day care home must be State-licensed, and may be either one of the following:

- a. Small Day Care Home. The use of a single-family residence to provide day care to eight (8) or fewer persons, including any children under the age of 10 years who reside at the home.
- b. Large Day Care Home. The use of a single-family residence to provide day care to 8- 14 persons, including any children under the age of 10 years who reside at the home.

DISTILLERY. An alcoholic beverage sales establishment where distilled spirits are made. Tasting distilled spirits may be included as an accessory use, but the distillery cannot operate as a bar. Please see Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding alcohol.

DISTRIBUTION FACILITY. An establishment which distributes, stores and warehouses commodities and goods for the purposes of marketing or merchandising at wholesale or retail.

DISTRICT. Means a zoning district established under the provisions of the Zoning Ordinance.

KENNEL. A lot, building, structure, enclosure or premises where one or more dogs, cats, or other household pets are kept for commercial purposes, including boarding, breeding of more than one litter per year and/or a litter every year, sale of goods or animals, or the rendering of services for profit. For the purposes hereof, the breeding and sale of the litter of animals kept and maintained as household pets and/or maintained by an animal fancier, shall not be deemed and considered a commercial kennel, provided they are less than one litter per year and litters do not occur every year.

KITCHEN. A definable area or room for food preparation, typically consisting of a permanent cooking appliance for use in food preparation, a refrigerator, cabinets, and a sink, usually in close proximity to one another.

LABORATORY. See "RESEARCH LABORATORY."

LANDSCAPING. An area devoted to or developed and maintained predominantly with native or exotic plant materials including lawn, groundcover, trees, shrubs, and other plant materials; and also including accessory decorative outdoor landscape elements such as pools, fountains, paved or decorated surfaces (excluding driveways, parking, loading, or storage areas), and sculptural elements.

LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT

DISTRICT (LM). A land use zoning district intended to provide limited manufacturing and other light industrial uses within the Industrial Corridor which are compatible with business parks and adjacent residential areas. See Section 10-1.1800.

LIMITED ACCESS COMMERCIAL (CL). A land use zoning district within which commercial uses may develop which normally tend to locate apart from standard commercial areas or service industries, or uses on highways of major importance. See Section 10-1.1200.

LIQUOR STORE. ~~An establishment which sells to the public at retail, alcoholic beverages in original, unopened packages for consumption off of the premises where sold. See Section 10-1.2735.b. for regulations of alcohol.~~ "Liquor store" shall mean any alcoholic beverage sales establishment primarily involving the sale of alcohol where beer, wine or distilled spirits are sold for off-sale consumption and where more than five (5) percent of the floor area of the establishment is devoted to the sale, display or storage of beer, wine or distilled spirits. Please see Section 10-1.2750 "Alcoholic Beverage Outlets" for regulations regarding alcohol.

LIVESTOCK. Domesticated farm animals kept for use or profit (See Section 10-1.2735.f. for regulations of livestock) and further defined as follows:

- a. Large Livestock. Horses, cattle or similar large animals, as determined by the Planning Director.
- b. Medium Livestock. Sheep, goats, and pigs, or similar medium animals, as determined

by the Planning Director.

- c. Small Livestock. Chickens, ducks, pigeons, five (5) or more rabbits, potbelly pigs, or similar small animals, as determined by the Planning Director.

MAILING OR FACSIMILE SERVICE. An establishment which provides postal services and a facsimile machine available to the public for a fee. Typically includes packaging and weighing facilities, and may include related copy work or wrapping paper and greeting cards for sale at retail as an ancillary use.

MANUFACTURED HOME. A factory built or manufactured home including mobile homes, as permitted by State of California and Federal laws. A manufactured home is synonymous with the definition of a “single family dwelling.”

MANUFACTURING. Repair, maintenance, preparation, compounding, processing, packing, treating, fabricating or assembling of items of any kind (i.e., electronics assembly.) May involve certain hazardous materials as defined herein (see "HAZARDOUS MATERIALS.")

MANUFACTURER'S REPRESENTATIVE OFFICE. An office from which a representative of a manufactured product sells that product at wholesale or retail via telephone, mail, and/or facsimile.

MARKET. See "SUPERMARKET."

MARTIAL ARTS STUDIO. An establishment where martial arts classes, private lessons, and demonstrations are provided to the public for a fee.

MASSAGE PARLOR. An establishment where body massage is provided to members of the public for a fee. Refer to Chapter 6, Article 10 of the Hayward Municipal Code for regulations.

MEDICAL/DENTAL LABORATORY. A facility which custom manufactures and distributes false teeth, dental crowns, braces, and other related dental equipment to dentists.

MEDIUM DENSITY RESIDENTIAL (RM). A land use zoning district which primarily allows the development of multiple-family dwellings at a set density and in a suitable environment for family life in areas where a compatible mingling of single-family and multiple-family dwellings is possible. See Section 10-1.400.

MICRO-BREWERY. A retail establishment where alcoholic beverages are produced and sold for consumption either on or off premises. Refer to Section 10-1.27~~5035.b~~. “Alcoholic Beverage Outlets” for regulations.

MISSION BOULEVARD RESIDENTIAL DISTRICT (MBR).

Repealed by Ordinance 11-12, Adopted October 11, 2011

MOBILE HOME Same as "Manufactured Home," but subject to the National Manufactured

Housing Construction and Safety Act of 1974.

MOBILE HOME PARK (MH). A land use zoning district designed for, used or intended to be used for the parking and occupancy of two or more mobile homes for dwelling or sleeping purposes. See Section 10-1.700.

MORTUARY. An establishment engaged in the preparation of human bodies and the arrangement and holding of funeral services prior to burial or final disposition. For the purposes of this Ordinance, a mortuary may include a crematory.

MOTEL. A group of attached or detached buildings containing individual sleeping or living units designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit where a maximum continuous length of stay is no longer than that established for transiency pursuant to Chapter 8, Article 4 (Transient Occupancy Tax) of the City of Hayward Municipal Code.

MULTIPLE-FAMILY DWELLING. See "DWELLING, MULTIPLE-FAMILY."

MUSIC STORE. An establishment which sells musical instruments, sheet music, and related commodities to the public at retail. Typically includes repair of musical instruments.

MUSIC STUDIO. An establishment which provides music classes and private music lessons to the public for a fee. Typically involves piano lessons and/or guitar lessons, both acoustical and amplified, and includes occasional music recitals by the studio students.

NAIL SALON. An establishment which provides nail manicures and pedicures to the public at retail for a fee. Does not include massage or tanning services.

NEIGHBORHOOD COMMERCIAL DISTRICT (CN). A land use zoning district which is carefully located in areas throughout the City in relationship to other commercial districts and in relationship to nearby residential districts. Land uses created in the CN district are general commercial and retail uses which provide convenience goods and services purchased frequently, serving nearby residences. See Section 10-1.800.

NEIGHBORHOOD COMMERCIAL - RESIDENTIAL DISTRICT (CN-R). A land use zoning district with a mix of neighborhood serving businesses and residences along portions of certain arterials in order to provide options for housing with ready access to shops and transit. See Section 10-1.900.

NEWSPAPER PRINTING FACILITY. A facility which prepares, assembles, prints, and distributes a newspaper publication, typically on a daily basis. Typically includes offices from

which publication articles are written and edited, and includes a printing press operation.

NIGHT CLUB. ~~See definition for “Bar”. “Night Club” shall mean any alcoholic beverage sales establishment that provides dancing or live entertainment (including the playing of recorded music by a disc jockey) between the hours of 6:00 p.m. to 2:00 a.m., regardless of whether such establishment is simultaneously offering full restaurant meal service, or charges an entrance fee, or increases the sales price of beverages.~~ Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article 2 of this Code. Please see Section 10-1.2750 “Alcoholic Beverage Outlets” for regulations regarding alcohol.

PUBLIC FACILITIES DISTRICT (PF). A land use zoning district within which typical land uses include public government buildings, public libraries, public community centers, and public parking lots, whether a fee is charged or not. See Section 10-1.2300.

PUBLISHING FACILITY. A facility which prepares, assembles and distributes books and magazines. Typically includes offices where articles are written and edited, and includes printing press facilities.

QUARRY. Any premises from which any rock, sand, gravel, earth, or mineral is removed or excavated for the purpose of disposition away from the immediate premises, whether the disposition is immediate or in the future, and excepting excavations within public roads and highway rights-of-way.

RADIO TRANSMISSION TOWER. See "ANTENNA."

RAILROAD YARD. A facility where railroad cars and engines are stored, repaired, and transferred to different trains. Also includes a freight station where items carried by train are transported onto and/or from trucks for transport. Also see "PASSENGER TRANSPORTATION TERMINAL."

RECREATIONAL FACILITY. Those facilities maintained to provide a pastime, sport or exercise as a means to refresh one's body or mind, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses. May be a commercial or non-commercial facility.

RECREATIONAL VEHICLE. A vehicle primarily designed as temporary living quarters for recreational, camping, or travel use.

RECREATIONAL VEHICLE (RV) STORAGE FACILITY. A parcel or group of contiguous parcels upon which two or more recreational vehicles, camper trailers and boats may be stored for a fee when not in use.

RECYCLING CENTER. A facility for the collection of large quantities of recyclable materials such as metals, glass, plastic, and paper. Such a facility shall not do processing except limited bailing, batching and sorting of materials. Recycling facilities include: bins, boxes, cans, kiosk type structures, bulk reverse vending machines, trucks, trailers, or vans. See General Regulations Section 10-1.2735.ji "Recycling Facilities" for regulations.

RECYCLING COLLECTION AREA. Any indoor or outdoor space allocated to collecting and loading recyclable materials to be transported to a recycling center. May include bins, boxes, cans, kiosk type structures, and reverse vending machines. See General Regulations Section 10-1.2735.ji "Recycling Facilities" for regulations.

RELIGIOUS FACILITY. Those facilities maintained by a tax-exempt religious institution, a government agency, or other non-profit organization exempt from taxation under the Internal Revenue laws as an organized system of belief in or the worship of God or gods or an institutionalized system of religious attitudes, beliefs and practices, and ancillary activities as determined by the Planning Director, and whose other functions are not indicated elsewhere in this ordinance as administrative or conditional uses.

RESEARCH AND DEVELOPMENT. A facility where research and on-site product creation and development is done. May also include computer centers, involving record storage and retrieval systems, data processing, and microfilming.

RESEARCH LABORATORY. A facility where research in a laboratory environment is done. Typically, but not always, involves the use of chemicals and heating products.

RESIDENTIAL NATURAL PRESERVATION DISTRICT (RNP). A land use zoning

district within which topographic configuration is a major consideration in determining the most appropriate physical development of the land. This district primarily allows the development of single-family homes only where they are subservient to and compatible with the preservation of major natural features of the land. See Section 10-1.300.

RESIDENTIAL-OFFICE (RO). A land use zoning district which allows the mix of office land uses with residential, the scale and form of which does not detract from adjacent or future residential land use in the same zone. See Section 10-1.600.

RESTAURANT Any establishment, other than a boarding house or dormitory, where food and beverages are provided for consumption on-premises or off-premises, and where typically, but not necessarily, there are tables, counters, benches, or other public seating facilities provided, or where food is taken off-premises, disposal containers are provided. Examples include a sit-down dining facility, fast-food restaurant (no drive-through window), donut shop, pizza shop, cafe, bakery, cafeteria, coffee shop, lunchroom, delicatessen, and ice cream parlor. The serving of alcoholic beverages is subject to the regulations in the “Alcohol Beverage Outlets” General Regulations, Section 10-1.27~~5035-b.~~ of this Ordinance.

RESTAURANT - DRIVE-THROUGH Any high-volume establishment serving food or beverages which utilizes a building design, site layout, or operating procedure whereby customers can drive onto the premises and remain in their vehicles while food or beverages are sold or dispensed. For regulations of drive-through restaurants see the “Drive-in Establishments-Special Standards and Conditions” contained in the Design and Performance Standards of various Sections of this Ordinance, including Sections 10-1.800 and 10-1.1000.

RETAIL. The sale of commodities or goods to ultimate consumers.

REVERSE VENDING MACHINES. A mechanical device which accepts one or more types of empty beverage containers, including aluminum cans, glass and plastic bottles, and cartons, and issues a cash refund or a redeemable credit slip. "Bulk reverse vending machines" are those machines which exceed 50 cubic feet in size or exceed 8 feet in height. See Section 10-1.2735.bi.
"RECYCLING FACILITIES."

VEHICLE RENTAL. See "AUTOMOBILE RENTAL."

VEHICLE REPAIR. See "AUTOMOBILE REPAIR."

VEHICLE SALES. See "AUTOMOBILE SALES."

VEHICLE SERVICING. For vehicle servicing such as same-day lube, oil, and filter, see "Automobile Repair - Minor." For major vehicle repairs such as engine overhauls, vehicle upholstery, auto glass, mufflers, etc., see "Automobile Repair - Major."

VIDEO SALES AND RENTAL STORE. An establishment which sells at retail and/or rents video tapes to the public.

VOCATIONAL SCHOOL. An educational facility providing training in a skill or trade to be pursued as a career.

WAREHOUSE. A facility where goods are stored. Typically, items are stored and awaiting distribution to an off-site wholesale and/or retail facility. Does not include public storage facilities (also "DISTRIBUTION FACILITY.")

WHOLESALE ESTABLISHMENT. The sale of commodities and goods to an establishment for resale to the consumer.

WIND ENERGY CONVERSION SYSTEM. A machine that converts the kinetic energy in the wind into a usable form. A wind energy conversion system is commonly known as a windmill or wind turbine, and includes all parts of the system including the tower and the transmission equipment.

WINE SHOP. "Wine Shop" shall mean an alcoholic beverage sales establishment, managed by a certified sommelier or oenologist, primarily for the retail sales of wine from multiple wineries and distributors that involves no sales of liquor or distilled spirits. Wine tasting may be included as an accessory use, but the wine shop cannot operate as a bar.

YARD. The word "yard" shall mean an open space other than a court, on a lot, unoccupied and unobstructed from the ground upward except as otherwise provided herein. A yard extends along a lot line or official plan line to a depth or width specified in the yard regulations for the District in which such lot is located.

ORDINANCE NO. _____

ORDINANCE AMENDING HAYWARD MUNICIPAL CODE
SECTIONS 10-1.1520 ET SEQ. AND 10-1.1000 ET SEQ.,
REGULATING THE CITY'S CENTRAL CITY COMMERCIAL
(CC-C) SUBDISTRICT AND GENERAL COMMERCIAL (CG)
DISTRICT, TO IMPLEMENT THE ALCOHOLIC BEVERAGE
OUTLETS ORDINANCE

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES
HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council incorporates by reference the findings contained in Resolution
, approving the text changes requested in Zone Change Application PL-2013-0175TA.

Section 2. Zoning Ordinance Sections 10-1.1520 through 10-1.1523, relating to the Central
City Commercial (CC-C) Subdistrict, are hereby amended to add certain text (as indicated by
underline) and delete certain text (as indicated by strikeout), to implement the City's Alcoholic
Beverage Outlets ordinance introduced herewith and as such amendments are more specifically
shown on Attachment "A" hereto.

Section 3. Zoning Ordinance Sections 10-1.1000 through 10-1.1020, relating to the
General Commercial (CG) District, are hereby amended to add certain text (as indicated by
underline) and delete certain text (as indicated by strikeout), to implement the City's Alcoholic
Beverage Outlets ordinance introduced herewith and as such amendments are more specifically
shown on Attachment "B" hereto.

Section 4. 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 5. In accordance with the provisions of Section 620 of the City Charter, this
ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward,
held the _____ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2013, 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

 SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

Sections:

Section 10-1.1005	Purpose.
Section 10-1.1010	Subdistricts.
Section 10-1.1015	Uses Permitted.
Section 10-1.1020	Conditionally Permitted Uses.
Section 10-1.1025	Lot Requirements.
Section 10-1.1030	Yard Requirements.
Section 10-1.1035	Height Limit.
Section 10-1.1040	Site Plan Review Required.
Section 10-1.1045	Minimum Design and Performance Standards.

SEC. 10-1.1005 PURPOSE.

The CG District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained in order to provide services for the support of primary business activities in the CB District or CC Districts.

SEC. 10-1.1010 SUBDISTRICTS.

Any combining B or SD District (See Sections 10-1.2400 and 10-1.2600).

SEC. 10-1.1015 USES PERMITTED.

a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District as primary uses.

- (1) **Administrative and Professional Offices/Services.**
 - (a) Accounting and financial offices. (Excluding check cashing stores)
 - (b) Architectural and engineering offices.
 - (c) Banks and financial institutions.
 - (d) Chiropractic and acupuncture offices.
 - (e) Insurance and real estate offices.
 - (f) Law offices.
 - (g) Medical and dental offices.
 - (h) Travel and airline agency offices.

- (2) **Automobile Related Uses.**

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (a) Automobile parts store.
 - (b) Automobile dealership. (Dealership selling primarily new vehicles, when all minimum design standards are met and when located along Mission Blvd. between Highland/Sycamore and 700 feet south of Harder Road.)
- (3) Personal Services.
- (a) Barber or beauty shop.
 - (b) Dance studio.
 - (c) Dry cleaner/laundry.
 - (d) Health club.
 - (e) Martial arts studio.
 - (f) Music studio.
 - (g) Nail salon.
 - (h) Palm reading service.
 - (i) Photography studio.
 - (j) Physical fitness studio.
 - (k) Shoe repair shop.
 - (l) Tailor/seamstress shop.
- (4) Residential Uses.
Residential dwelling unit(s). (Above first floor commercial uses only)
- (5) Retail Commercial Uses.
- (a) Antique store.
 - (b) Appliance store.
 - (c) Art and art supplies store.
 - (d) Bakery.
 - (e) Bicycle store.
 - (f) Bookstore.
 - (g) Camera store.
 - (h) Card shop.
 - (i) Carpet/drapery store.
 - (j) Clothing store.
 - (k) Consignment store.
 - (l) Coffee/Esspresso shop.
 - (m) Delicatessen.
 - (n) Fabric store.
 - (o) Floral shop.
 - (p) Furniture store.
 - (q) Gift shop.
 - (r) Hardware store.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (s) Jewelry store.
 - (t) Locksmith shop.
 - (u) Music store.
 - (v) Nursery (plant).
 - (w) Paint/wallpaper store.
 - (x) Pet grooming shop.
 - (y) Pet store.
 - (z) Plumbing and heating store.
 - (aa) Restaurant. (Where not abutting a residential district or property and with no bar)
 - (bb) Sporting goods store.
 - (cc) Stationary store.
 - (dd) Supermarket.
 - (ee) Theater (Small Motion Picture or Live Performance only.)
 - (ff) Thrift shop.
 - (gg) Toy store.
 - (hh) Variety store.
 - (ii) Video sales and rental store.
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop. (Not ancillary to a primary use.)
 - (b) Copying or reproduction facility.
 - (c) Equipment rental.
 - (d) Hotel or motel.
 - (e) Mailing or facsimile service.
 - (f) *Not Used*
 - (g) Reverse vending machine(s). (When located within a convenience zone.)
 - (h) Upholstery shop (furniture).
- (7) Other Uses.
- (a) Broadcasting studio.
 - (b) Banquet hall. (Where not abutting a residential district or property and where no alcohol is served.)
 - (c) Catering facility. (Where not abutting a residential district or property.)
 - (d) Christmas tree or pumpkin patch lot. (See ~~General Regulations~~ Section 10-1.2735d.50 et seq. for standards)
 - (e) Day Care Home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions)
 - (f) Educational facility. (Small, generally less than 2000 square feet,

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

designed to augment the learning process of elementary and secondary school students.)

(g) Public agency facilities.

b. **Secondary Uses.** The following uses are permitted as secondary or subordinate uses to the uses permitted in the CG District:

- | | |
|-----------------------------------|--|
| (1) Accessory buildings and uses. | (See section 10-1.1045.) |
| (2) Garage sales. | (4 per year per dwelling. See General Regulations —Section 10-1.2735e.d.) |
| (3) Home Occupation. | (See definitions) |
| (4) Household pets. | |

Sec. 10-1.1020 CONDITIONALLY PERMITTED USES

a. **Administrative Uses.** The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit :

- | | |
|--|---|
| (1) <u>Administrative and Professional Office/Services.</u>
Medical/dental laboratory . | |
| (2) <u>Automobile Related Uses.</u> | |
| (a) Automobile brokerage office. (See definitions.) | |
| (b) Automobile repair
(minor and major). | (See Section 10-1.1045h. for special requirements.) |
| (c) Automobile service station. | “ “ |
| (d) Automobile storage facility. | “ “ |
| (e) Car wash. | “ “ |
| (f) Drive-in establishments. | “ “ |
| (g) Parking lot. | |
| (3) <u>Personal Services.</u> | |
| (a) Suntan parlor. | |
| (4) <u>Residential Uses.</u> | |
| None. | |
| (5) <u>Retail Commercial Uses.</u> | |
| (a) Wine Shop | |
| (a)(b) Convenience market. (See General Regulations — | |

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- Section 10-1.2735b.50 et seq. for regulations of alcohol.)
- (b)(c) Restaurant. (Where abutting a residential district or property with no bar.)
- (6) Service Commercial Uses.
- (a) Appliance service and repair shop.(Not ancillary to a primary use)
- (b) Equipment rental.
- (c) Hotel or motel. (Where abutting a residential district or property)
- (d) Recycling collection area. (When located within a convenience zone)
- (e) Sign shop.
- (7) Other Uses.
- (a) Ambulance service.
- (b) Animal grooming service.
- (c) Animal hospital.
- (d) Auction.
- (e) Banquet hall. (Where abutting a residential district or property but not where alcohol is served)
- (f) Carnival.
- (g) Catering facility. (Where abutting a residential district or property)
- (h) Commercial amusement facility.
- (i) Cultural facility.
- (j) Day care center. (state-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions)
- (k) Educational facility.
- (l) Flea market.
- (m) Kennel.
- (n) Mortuary.
- (o) Outdoor gathering. (Refer to General Regulations Section 10-.2735h.g.)
- (p) Passenger terminal.
- (q) Recreational facility.
- (r) Religious facility.
- (s) Sign shop.
- (t) Temporary use. (i.e., parking lot or tent sale)
- (u) Wind energy conversion system.

b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CG District subject to approval of a conditional use permit:

- (1) Administrative and Professional Offices/Services.

SEC. 10-1.1000 GENERAL COMMERCIAL DISTRICT (CG)

- (a) Check cashing store.
 (b) Payday loan facilities.
- (2) Automobile Related Uses.
 Automobile sales and rental. Except as provided for under Sec.
 10-1.1015a.(2)(b)
- (3) Personal Services.
 (a) Massage parlor.
 (b) Tattoo parlor.
- (4) Residential
 Uses. None.
- (5) Retail Commercial Uses. (See ~~General Regulations~~ Section
 10-1.2735b.50 et seq. for regulations of
 alcohol.)
- (a) Bar, Cocktail lounge.
 (b) Brewery or Distillery.
 (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 (b)(d) Dance or night club.
 (e)(e) Liquor store
- ~~(d)(f)~~ Theater, Large Motion Picture.
- (6) Service Commercial Uses.
 None.
- (7) Other Uses.
 (a) Homeless shelter.
 (b) Warehouse. (When located behind and ancillary to primary
 uses.)
 (c) Wholesale establishment.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)**SEC. 10-1.1521 CC-C PURPOSE.**

The purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.

SEC. 10-1.1522 CC-C PERMITTED USES.

- a. **Primary Uses.** The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-C D as primary uses.
- (1) Administrative and Professional Offices/Services.
 - (a) Accounting and financial offices. (Excluding check cashing stores)
 - (b) Architectural and engineering offices.
 - (c) Banks and financial institutions.
 - (d) Chiropractic and acupuncture offices.
 - (e) Insurance and real estate offices.
 - (f) Law offices.
 - (g) Medical and dental offices.
 - (h) Travel and airline agency offices.
 - (2) Automobile Related Uses. Automobile parts store.
 - (3) Personal Services.
 - (a) Barber or beauty shop. (Excluding college)
 - (b) Dance studio.
 - (c) Dry cleaner/laundry.
 - (d) Health club.
 - (e) Martial arts studio.
 - (f) Music studio.
 - (g) Nail salon.
 - (h) Palm reading.
 - (i) Photography studio.
 - (j) Physical fitness studio.
 - (k) Shoe repair shop.
 - (l) Tailor/seamstress shop.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (4) Residential Uses.
- (a) Residential dwelling unit(s). (Above first floor commercial only.)
 - (b) Single-family dwelling. (Existing as of May 4, 1993, including accessory structures and uses)
- (5) Retail Commercial Uses.
- (a) Antique store.
 - (b) Appliance store.
 - (c) Art and art supplies store.
 - (d) Bicycle store.
 - (e) Bookstore.
 - (f) Camera store.
 - (g) Card shop.
 - (h) Carpet/drapery store.
 - (i) Clothing store.
 - (j) Consignment store.
 - (k) Fabric store.
 - (l) Floral shop.
 - (m) Furniture store.
 - (n) Garden supplies store.
 - (o) Gift shop.
 - (p) Grocer.
 - (q) Hardware store.
 - (r) Jewelry store.
 - (s) Locksmith shop.
 - (t) Music store.
 - (u) Paint/wallpaper store.
 - (v) Pet grooming shop.
 - (w) Pet store.
 - (x) Plumbing and heating store.
 - (y) Restaurant. (No bar)
 - (z) Sporting goods store.
 - (aa) Stationary store.
 - (bb) Supermarket.
 - (cc) Theater. (Small Motion Picture or Live Performance. Large Motion Picture Theater located between A and D Streets and Grand and Second Streets.)
 - (dd) Toy store.
 - (ee) Variety store.
 - (ff) Video sales and rental.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (6) Service Commercial Uses.
- (a) Appliance repair shop.
 - (b) Copying or reproduction facility.
 - (c) Mailing or facsimile service.
 - (d) Reverse vending machines. (When located within a convenience zone.)
- (7) Other Uses.
- (a) Broadcasting studio.
 - (b) Christmas tree or pumpkin patch lot. (See General Regulations Section 10-1.2735cd for standards)
 - (c) Day care home. (State-licensed, less than 24-hour care for children or adults, 14 or fewer persons, excluding staff. See definitions.)
 - (d) Educational facilities.
 - (e) Public agency facilities. Small, generally less than 2,000 square feet and designed to augment the learning process of elementary and secondary students.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the CC-C Subdistrict:

- (1) Accessory buildings and uses. (See Section 10.1.845a-d.)
- (2) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735ed.)
- (3) Home occupation. (See definitions)
- (4) Household pets.
- (5) Indoor storage. (clearly subordinate to a primary or conditional use that is open to the public and which conforms to the policies and goals of the Redevelopment Agency and the Central City-Commercial Subdistrict.)

SEC. 10-1.1523 CC-C CONDITIONALLY PERMITTED USES.

a. Administrative Uses. The following uses are permitted in the CC-C Subdistrict, subject to approval of an administrative use permit:

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- (1) Administrative and Professional Offices/Services.
None.
- (2) Automobile Related Uses.
Parking lot or parking structure.
- (3) Personal Services.
 (a) Massage parlor (When ancillary to a primary use, such as a beauty shop.)
 (b) Suntan parlor.
- (4) Residential Uses.
None.
- (5) Retail Commercial Uses.
~~None.~~ Wine shop. ([See General Regulations Section 10-1.2750 et seq. for regulations of alcohol](#))
- (6) Service Commercial Uses.
 (a) Recycling collection area. (When located within a convenience zone)
 (b) Upholstery shop. (Furniture only)
- (7) Other Uses.
 (a) Ambulance service.
 (b) Banquet hall. (Where no alcohol is served)
 (c) Catering facility. (Where no alcohol is served)
 (d) Day care center. (State-licensed, less than 24-hour care for children or adults, 15 or more persons, excluding staff. See definitions.)
 (e) Educational facility.
 (f) Fanner's market.
 (g) Home occupation - expanded.
 (h) Temporary use.
 (i) Cultural facility.
 (j) Commercial amusement facility.
 (k) Educational facility.
 (l) Hospital or convalescent home.
 (m) Mortuary.
 (n) Passenger transportation terminal.
 (o) Recreational facility.
 (p) Religious facility.
 (q) Taxi company.

 SEC. 10-1.1520 CENTRAL CITY-COMMERCIAL SUBDISTRICT (CC-C)

- b. **Conditional Uses.** The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
- (1) Administrative and Professional Offices/Services.
Check cashing store.
 - (2) Automobile Related Uses. (Refer to Section 10-1.1045h. for special requirements.)
 - (a) Automobile sales and rental.
 - (b) Automobile repair (minor and major).
 - (c) Automobile service station.
 - (d) Automobile storage facility. (See definitions)
 - (e) Car wash. Drive-in establishments.
 - (3) Personal Services.
Massage parlor.
 - (4) Residential Uses.
Multiple-family dwelling. (With dwelling units on first floor)
 - (5) Retail Commercial Uses. (See ~~General Regulations~~ Section 10-1.2735b.50 et seq. for regulations of alcohol.)
 - (a) Bar, cocktail lounge.
 - ~~(b) Brewery or Distillery.~~
 - ~~(c) Cabaret, Dance or Night club.~~ (See Chapter 6, Article 2 for regulations.)
 - ~~(d)~~ Convenience Market.
 - ~~(e)~~ Liquor Store.
 - ~~(f)~~ Pawn Shop.
 - ~~(g)~~ Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See Section 10-1.1045 for special requirements.)
 - (6) Service Commercial Uses. Hotel or motel.
 - (7) Other Uses.
 - (a) Auctions.
 - (b) Banquet hall. (Where alcohol is served. See ~~General Regulations~~, Section 10-1.2735b.50 et seq for regulations of alcohol)
 - (c) Card club. (Subject to Regulations in Chapter 4, Article 3 of the Hayward Municipal Code, "Card Club

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Regulations")

(d) Catering facility.

(Where alcohol is served. See [General Regulations](#) Section 10-1.2735 [b50 et seq](#) for regulations of alcohol)

ORDINANCE NO. ____

ORDINANCE AMENDING CHAPTER 6, ARTICLE 2 OF THE HAYWARD MUNICIPAL CODE RELATING TO CABARETS AND DANCES

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

Section 1. Purpose and Intent. The operation of ongoing cabarets, as well as one-time cabaret and dance events, have the demonstrated potential for generating noise, crowd and traffic problems, interference with neighbors' enjoyment and use of their property, disorderly conduct, vandalism and other nuisance activity. Such uses thus require close coordination with the Development Service Department and the Hayward Police Department. Therefore, the City Council determines that the public health, safety and welfare of the residents or and visitors to Hayward requires the establishment of regulations for the operation of ongoing cabarets, as well as for one-time cabaret and public dancing events. The City Council finds it necessary to regulate the persons who own and/or operate cabarets, as well as those person who may conduct occasional cabaret or public dance events; the location and operation of cabarets and public dances in the City, including noise, hours of operation and patron security and safety; and the issuance of permits and licenses, including limitations on transfer and assignment, for cabarets and public dances.

Section 2. Upon the adoption of this Ordinance, Sections 6-2.10 through 6-2.17, entitled "Public Dances," of the Hayward Municipal Code are hereby repealed and, in substitution thereof, Sections 6-2.10 through 6-2.35, entitled "Cabarets and Dances," are hereby enacted to read as follows:

SECTION 6-2.10 CABARETS AND DANCES

Sections:

Section 6-2.10	Title
Section 6-2.11	Definitions
Section 6-2.12	Cabaret License Required
Section 6-2.13	Exception to License or Permit Requirements for Certain Pubic Dances_
Section 6-2.14	Application for a License
Section 6-2.15	License Application Fee
Section 6-2.16	License Application, Acceptance, Referral, Investigation and Report
Section 6-2.17	License Issuance
Section 6-2.18	Suspension and Revocation of License
Section 6-2.19	Procedures for the Suspension and Revocation of Cabaret and Dance Licenses
Section 6-2.20	Expiration of Licenses
Section 6-2.21	Renewal Procedures and Fees for Licenses

Section 6-2.22	Licenses Non –Assignable
Section 6-2.23	Commencement of Operations
Section 6-2.24	Obligation to Inform of Certain Changes Concerning Licensees
Section 6-2.25	Record and Video Systems
Section 6-2.26	Permits for Single Cabaret or Public Dance Events
Section 6-2.27	Operating Regulations for all Cabarets and Dances
Section 6-2.28	Licensee/Permittee Responsible for Violations
Section 6-2.29	Violation of State and City Laws
Section 6-2.30	Patron Safety and Security
Section 6-2.31	Posting Operating Regulations
Section 6-2.32	Inspection for Enforcement; Summary Suspension
Section 6-2.33	Powers of Chief of Police and Officers
Section 6-2.34	Injunctive Relief; Administrative Citation
Section 6-2.35	Violations; Penalties

SEC. 6-2.10 TITLE. These provisions, relating to cabaret and dances as those terms are hereinafter defined, may be referred to as the “Cabarets and Dances Regulations.”

SEC. 6-2.11 DEFINITIONS. For the purposes of these regulations, unless otherwise apparent from the context, certain words and phrases are defined as follows:

- a. “Applicant” shall mean a living person, corporation, partnership or other business entity that applies for a license to establish, operate, manage or maintain a cabaret or public dance or applies for a permit for a specific, one-time cabaret or public dance event.
- b. “Application” shall mean the form submitted by the owner or operator that, when completed by the applicant, contains information requested by the City of Hayward upon which the Chief of Police or designee may base his or her approval or denial of such application.
- c. “Cabaret” shall mean any establishment, event, or place where live entertainment is provided by or for any patron or guest, including but not limited to: singing, playing music, dancing, performing karaoke, acting, holding a fashion show, performing pantomime, performing comedy or other act or performance and to which admission:
 - (1) may be gained by the public generally with or without the payment of a fee or cover charge or the purchase or presentation of a ticket or token; or
 - (2) may be gained by a person without invitation or by anyone who cannot be identified at the time of the issuance of the invitation by the sender.

Revisions shown reflect changes recommended by the Planning Commission at its September 5 meeting.

- d. “Day” shall mean a working day during which the City’s administrative departments are open and available to the general public.
- e. “Employee” shall mean any person employed by a licensee or permittee, with or without compensation, in a cabaret.
- f. “License” shall mean an annual license granted by the Chief of Police to an applicant to operate a cabaret in the City of Hayward.
- g. “Licensee” shall mean any person who holds a current, valid license, issued by the City of Hayward to operate an on-going cabaret.
- h. “Owner” shall mean any person, persons, corporation, partnership or any other business entity, or any combination of these, who has any interest, legal or equitable, in any cabaret or any one-time cabaret or public dance permit, excepting a bona fide lending institution licensed by the State of California or the federal government.
- i. “Permit” shall mean a permit granted by the Chief of Police to an applicant to hold a specific, one-time cabaret or public dance event in the City of Hayward.
- j. “Person” shall mean and include any individual, firm, association, partnership, joint venture or corporation (whether for-profit or nonprofit), or other business entity.
- k. “Premises” shall mean any structure or portion of a structure to be licensed or permitted, or for which a license or permit has been granted in accordance with the provisions of the Cabarets and Dances Regulations.
- l. “Public Dance” shall mean any event where guests, patrons or persons attending the event are permitted to dance, not including a licensed cabaret, and to which admission:
 - (1) may be gained by the public generally with or without the payment of a fee or cover charge or the purchase or presentation of a ticket or token; or
 - (2) may be gained by a person without invitation or by anyone who cannot be identified at the time of issuance of the invitation by the sender.
- m. “Revenue Division” shall mean the Revenue Division of the Finance Department for the City of Hayward.

SEC. 6-2.12 CABARET LICENSE REQUIRED. No person shall establish, maintain, manage or operate any cabaret or allow any cabaret to be established, maintained, managed or operated within any building or structure, or any portion of a building or structure, owned, occupied or controlled by him/her, unless such cabaret is maintained and operated pursuant to a

valid, unexpired, unsuspended and unrevoked cabaret license issued pursuant to the provisions of the Cabarets and Dances Regulations. The holder of any such license or his/her designated representative, which representative must have been disclosed in writing to the Chief of Police, shall be required to exercise personal control and direction over the operation of the cabaret and shall be available at reasonable times, during regular operating hours, to the Chief of Police or designee. The requirement for a cabaret license is in addition to any other license or permit required by the Hayward Municipal Code, including but not limited to a business license pursuant to Article 1 of Chapter 8 or any use permit or variance pursuant to Article 1 of Chapter 10.

SEC. 6-2.13 EXCEPTION TO LICENSE OR PERMIT REQUIREMENTS FOR CERTAIN PUBLIC DANCES. No cabaret permit or license shall be required for dances held by public recreational or educational agencies, or bona fide patriotic, religious, or fraternal associations or organizations, or for dances held in connection with patriotic, holiday, or school celebrations or festivals, where such dances are casual or for one such occasion only, and are not conducted more often than once a month.

SEC. 6-2.14 APPLICATION FOR A LICENSE. An application for a cabaret license shall be completed by the applicant and filed with the Police Department upon such form as may be furnished by that department. The Police Department shall forward copies of the application to the Director of the Finance Department and the Planning Manager of the Development Services Department. The application shall set forth and include the following:

- a. The location of the cabaret for which the license is required, including a specific description of the place, building, structure or portion of the building, structure or place, where the cabaret is to be situated. If the entire building, structure or place is proposed to be used as a cabaret, the application shall so state and shall request a license for the entire building, structure or place. If only a portion of the building, structure or place is proposed to be used as a cabaret, the applicant shall so state, shall describe such portion and shall request a license for only such portion. No license shall be deemed issued for any portion of any building, structure or place which the application fails to state is to be used for cabaret purposes or for which the application fails to specifically request a license.
- b. The true and complete name and address of each owner or owners of the building, structure or place within which the cabaret is proposed to be maintained.
- c. The true and complete name and address of the person or persons to whom it is requested that a cabaret license be issued as follows:
 - (1) If the proposed licensee is an individual, the application shall set forth the name, residence and business address of the individual;
 - (2) If the proposed licensee is a corporation, the application shall set forth the complete name of the corporation and the state within which it is incorporated, together with its home address and also its local address, as well as the names and addresses of the board of directors, the names and

- addresses of all of the corporate officers, and the name and addresses of each shareholder for a non-publicly traded corporation;
- (3) If the proposed licensee is a partnership, the application shall set forth the full names of all partners and the firm name under which the partnership operates, together with the addresses of all partners.
- d. A set of clearly identifiable fingerprints and photographs of each person to whom a license is to be granted; or in the case of a partnership, fingerprints and photograph of the managing partner; or in the case of a corporation, fingerprints and photograph of the president or chief executive officer. The fingerprints and photographs shall be in the form and manner and by an agency approved by the Chief of Police. Each person shall have paid to the Police Department the current fee set by the City of Hayward's Master Fee Schedule for receiving and processing fingerprints so taken.
- e. A statement as to whether or not any of the persons required to be named in the application have at any time been convicted of any crime or crimes and if so, the nature of the crime for which they were convicted, the date and jurisdiction of the conviction.
- f. A statement describing any previous permit or license, including conditional use permit, obtained by the applicant for the sale of alcohol or any entertainment or dancing activities with a statement as to whether any permit or license previously granted to the applicant has been denied, revoked or suspended, and also, the type of permit or license which was denied, suspended or revoked, the time of denial, revocation or suspension, the jurisdiction denying, suspending or revoking the permit or license and the reasons for such action;
- g. A statement that the applicant understands and agrees that the cabaret established or maintained under any license issued pursuant to the application filed shall be established, operated, managed and maintained in full conformity with all the laws of the State of California and the applicable laws and regulations of the City of Hayward, and that any violation of any such laws in or in connection with the cabaret shall render any license subject to immediate suspension or revocation and the ongoing operation of the cabaret a nuisance;
- h. A full and complete financial statement of the applicant (the individual, partnership, corporation or other business entity);
- i. A statement that the applicant understands and agrees that City representatives, including the Chief of Police or designee, shall have access to the proposed cabaret premises and to the business records of the applicant for the purpose of investigating compliance with the provisions of these regulations and all other

applicable state and federal laws and regulations, and the applicant consents to any such search and consequential seizure;

- j. A statement that the applicant understands and consents for itself and any individuals named in the application and thereby authorizes the Hayward Police Department to conduct background investigations and obtain criminal history information for each individual named in the application and further to include in any report to the City Manager and City Council any information, including but not limited to any criminal convictions, that the Chief of Police considers relevant and necessary concerning any person named in the application;
- k. A detailed description of the proposed activities to be conducted including whether an admission fee or cover charge will be charged or whether tickets will be issued and the identity of all on-site managers;
- l. A description of security measures the applicant has or will take or cause to be taken, including security personnel staffing, training and provision of security in and around off-street parking areas and whether security personnel will be armed. If the cabaret serves alcoholic beverages, such security measures shall be consistent with the provisions contained herein;
- m. A statement regarding the days and hours of operation to which the licensee will adhere;
- n. The building and floor plan of the premises, which shall have no hidden rooms or screens and which once the license is issued shall not be modified without the prior written approval of the City;
- o. A statement regarding whether alcohol will be served and whether the applicant has or will be applying for a license from the Department of Alcoholic Beverage Control;
- p. Such other information that the applicant or the City may consider pertinent; and
- q. The contents of the application shall be certified under penalty of perjury as follows:
 - (1) By the proposed licensee if an individual;
 - (2) By a general partner if the proposed licensee is a partnership; or
 - (3) By the president of the corporation if the proposed licensee is a corporation;
 - (4) By the controlling owner/manager/executive of any other business entity.

SEC. 6-2.15 LICENSE APPLICATION FEE. A nonrefundable application fee, the amount of which is set in the City of Hayward's Master Fee Schedule, shall accompany the application and shall be retained by the City for the cost of investigating and processing of the application, whether or not the application is approved. The application fee shall be paid to the Revenue Department before the application is submitted to the Police Department.

SEC. 6-2.16 LICENSE APPLICATION, ACCEPTANCE, REFERRAL, INVESTIGATION AND REPORT.

- a. Upon receipt of an application for a cabaret license, the Police Department shall examine it, and if it is determined that it fails to comply with the requirements of these regulations or does not contain all the information required by these regulations, the application shall be returned to the applicant for proper completion of the application, together with a statement indicating the deficiencies. If the application does comply, the Police Department shall refer copies to other City offices as needed, including the Planning Division of the Development Services Department.
- b. The Chief of Police shall investigate or cause to be investigated, the contents of the application. The Chief of Police, or designee, is hereby authorized to conduct background investigations and obtain criminal history information for each person required to be named in the application for determining whether any such person should be disqualified for any of the following reasons:
 - (1) Applicant has been convicted of any crime punishable as a felony or any misdemeanor involving dishonesty or moral turpitude or has entered a plea of nolo contendere to any lesser or included offense, including but not limited to crimes involving battery, assault, robbery, burglary, gambling, larceny, fraud, sale or possession for sale of a controlled substance, prostitution, pimping, pandering, or lewd conduct.
 - (2) Applicant has associated with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

The Chief of Police, within sixty (60) days of receipt of a complete application, shall render a decision on the application, and shall give reasons for the decision.

SEC. 6-2.17 LICENSE ISSUANCE.

- a. Within ten (10) days of the decision by the Chief of Police, the license may be approved subject to such conditions, limitations and restrictions as may be deemed reasonably necessary. Each license approved by the Chief of Police shall be subject to the licensee's compliance with all applicable provisions of these regulations, in addition to such conditions, limitations and restrictions as the Development Services Department may deem reasonably necessary.

- b. No license shall be approved if it appears that any one (1) of the following facts exists:
- (1) The applicant for the license has not obtained approval of a conditional use permit for the cabaret, if required by Article 1 of Chapter 10 of the Hayward Municipal Code; or
 - (2) The operation of a cabaret at the proposed location will aggravate the crime problems in the area, or otherwise be detrimental to crime prevention or be detrimental to the public peace, health, welfare or safety in the area; or
 - (3) The Fire Chief, Building Official or Planning Director indicates that the license would result in a violation of the laws or regulations such officials administer; or
 - (4) That the applicant, or its owners, officers or employees, are unfit to operate a cabaret business. In making such determination, the Chief of Police may consider:
 - (i) The commission of any acts by the applicant, its owners, officers, or employees involving dishonesty, fraud or deceit with the intent to benefit substantially oneself or another, or substantially injure another; or
 - (ii) The license and permit history of the applicant, its owners, officers and employees, and whether such person in previously operating in this or another state under a license or permit has had such license or permit revoked, denied or suspended, the reasons for such action, and the resulting actions of such persons;
 - (iii) The applicant does not have, in the judgment of the Chief of Police, the financial capability or business experience to operate a cabaret in a manner that would protect its patrons and the citizens of the community.
 - (5) That the applicant has failed to comply with any of the provisions of the Hayward Municipal Code or other applicable laws applicable to the premises, equipment or operation of the business for which a permit is requested; or
 - (6) That the applicant has knowingly made false statements in the application.
- c. Upon the approval or conditional approval of a license by the Chief of Police, the

Revisions shown reflect changes recommended by the Planning Commission at its September 5 meeting.

license shall be issued to the applicant within ten (10) days of such approval, pursuant to such conditions, limitations and restrictions required by the Chief of Police. In the case of a partnership, a license shall be issued in the name of all the partners.

- d. In the event an application is denied, the Chief of Police shall notify the applicant within ten (10) days of such denial and the reasons for the denial. The decision of the Chief of Police may be appealed to the Planning Commission in accordance with the provisions of Section 10-1.2845 of this Code.
- e. Under no circumstances shall any conditions attached to any license be construed to convert such license into any kind of transferable, conditional use permit.
- f. Every licensee under these regulations shall pay a business license tax as set forth in Article 1 of Chapter 8 of the Hayward Municipal Code.

SEC. 6-2.18 SUSPENSION AND REVOCATION OF LICENSE. All licenses authorized and issued under the provisions of the Cabarets and Dances regulations shall be subject to suspension or revocation by the Chief of Police under any of the following conditions:

- a. The licensee, or any employee or agent of such licensee has knowingly failed to comply with any of the provisions of these regulations; or
- b. The licensee, or any employee or agent of such licensee, has knowingly breached any term or condition upon which the cabaret license was issued; or
- c. Facts exist which would justify denial of an application for such license pursuant to these regulations; or
- d. The cabaret is conducted in such a manner as to constitute a nuisance, or to disturb the peace of persons in the vicinity or to be deleterious to the public peace, morals, health, safety or welfare; or
- e. The conditional use permit approved for the cabaret has been suspended or revoked; or
- f. The licensee has failed or refuses to pay such fees or taxes imposed under the Hayward Municipal Code when due and payable.

SEC. 6-2.19 PROCEDURES FOR THE SUSPENSION AND REVOCATION OF CABARET AND DANCE LICENSES. Cabaret and dance licenses or permits may be suspended or revoked pursuant to Article 1 of Chapter 6.

SEC. 6-2.20 EXPIRATION DATE OF LICENSES. All cabaret licenses issued pursuant to

these regulations shall automatically expire one year after such license was issued or renewed.

SEC. 6-2.21 RENEWAL PROCEDURES AND FEES FOR LICENSES. A valid license issued pursuant to the provisions of these regulations, or its predecessor regulations, which has not been surrendered, suspended or revoked, may be renewed for respective periods of not longer than one (1) year upon the following terms and conditions:

- a. An application for renewal of any such license shall be filed sixty (60) days prior to the expiration of the existing license with the Police Department on forms provided by that Department.
- b. Applications for renewal shall indicate whether any information required by Section 6-2.14 herein has changed, and shall be accepted, referred, investigated, reported, issued and dated as provided in Sections 6-2.16 and 6-2.17 hereinabove. If the completed application for renewal is submitted in a timely manner as required under subsection (a) above, then pending the completion of such investigations and reports, the existing cabaret license shall not expire pursuant to Section 6-2.20.
- c. If such application for renewal is not filed, or the application fee is not paid within the time specified by subsection (a) above, the license shall be deemed surrendered at the expiration date of such license.
- d. Renewal fees for licenses shall be the same as those fees charged for new licenses.
- e. Any current cabaret licensee who desires to physically relocate their cabaret must file an application for renewal pursuant to Sections 6-2.14 through 6-2.17 hereinabove and obtain a conditional use permit for such new location, if same is required by Chapter 10, Article 1 of the Hayward Municipal Code.

SEC. 6-2.22 LICENSES NON –ASSIGNABLE.

- a. Except as otherwise provided for in these regulations, no cabaret license may be sold, transferred or assigned by the licensee, or by operation of law, to any person, persons or legal entity without the prior approval of the Chief of Police, which approval shall be conditioned upon the proposed transferee's compliance with the Cabarets and Dances regulations. Any sale, transfer or assignment, or attempted sale, transfer or assignment without such prior approval shall be deemed a voluntary surrender of such license, which license shall immediately be deemed terminated and void.
- b. A license issued to an individual who dies during the calendar year shall terminate one year after the license was issued, except that the personal representative of the estate of that individual may apply for renewal of the license for one (1) year providing the representative has complied with all requirements of these regulations.

- c. If the licensee is a partnership and one (1) or more of the partners dies, the surviving partners, or partner, may, with prior approval of the Chief of Police, acquire, by purchase or otherwise, the interest of the deceased partner, or partners, without affecting a surrender or termination of the license.
- d. Any change in the board of directors of a corporation which holds a license or in the managing partners of a partnership or the ownership of any other business entity that holds a license shall require the prior approval of the Chief of Police, which may condition such approval on any appropriate basis.
- e. Any change of legal status of a licensee (such as a change from individual to corporate status) not otherwise provided in this section, shall require the prior approval of the Chief of Police, who may condition such approval on any appropriate basis.

SEC. 6-2.23 COMMENCEMENT OF OPERATIONS.

- a. An applicant who has received approval for a cabaret or license and paid all appropriate fees must commence operation of the cabaret within ninety (90) days following issuance of the license.
- b. A license becomes void upon a ninety (90) day absence or suspension of operations allowed by it, regardless of the reasons for the absence or suspension of operations; except that the Chief of Police may, during the ninety (90) days, extend the time for an additional sixty (60) days, for good cause shown.

SEC. 6-2.24 OBLIGATION TO INFORM OF CERTAIN CHANGES CONCERNING LICENSEES.

- a. The licensee shall notify the Police Department in writing within fourteen (14) days of any change in the information required in an application for license issuance or renewal as provided in Section 6-2.14, except that no such change need be reported if such change occurs within thirty (30) days immediately preceding the expiration of such license. At the discretion of the City, a new or amended application for a license may be required.
- b. The Chief of Police shall promptly inform the relevant City departments of any notification received pursuant to the provisions of subsection (a) above.

SEC. 6-2.25 RECORD AND VIDEO SYSTEMS. The licensee shall keep and maintain all cabaret books, documents, records and accounts (whether in printed form or as electronic media) in accordance with recognized business accounting principles. Any and all video ~~tape~~ recordings made for security in the cabaret shall be marked with the date and time made and shall

be kept, in an unaltered state, for a period of seven (7) days, unless longer or shorter periods of time are ordered by the Chief of Police or designee. All ~~tapes~~ video recordings must be made available to any law enforcement agency for duplication upon demand.

SEC. 6-2.26 PERMITS FOR SINGLE CABARET OR PUBLIC DANCE EVENTS.

- a. A single cabaret event or public dance event may be conducted in the City of Hayward upon the issuance of a permit by the Chief of Police.
- b. An applicant shall file an application with the Chief of Police at least two weeks prior to the proposed event with the application fee set forth in the City's Master Fee Schedule. The application shall include:
 - (1) The location of the cabaret or public dance event.
 - (2) The true and complete name and address of the person or persons to whom it is requested that a cabaret permit be issued, as follows:
 - (i) If the proposed permit is an individual, the application shall set forth the name, residence and business address of the applicant;
 - (ii) If the proposed licensee is a corporation, the application shall set forth the complete name of the corporation and the state within which it is incorporated, together with its home address and also its local address, as well as the names and addresses of the board of directors, the names and addresses of all of the corporate officers, and the names and addresses of each shareholder; and
 - (iii) If the proposed licensee is a partnership or other business, the application shall set forth the full names of all partners, owners and managers and the firm name under which the partnership or other business entity operates, together with the addresses of all partners.
 - (3) The true and complete name and address of each owner or owners of the building, place or structure within which the cabaret or public dance is proposed to be conducted.
 - (4) A description of the event including date and times of the event, number of people expected to attend, and whether alcohol will be served and if so whether the appropriate approval has been received by the State Department of Alcoholic Beverage Control.
 - (5) A description of the security measures that will be taken, both at the event and in and around off-street parking areas. If alcohol will be served at the event, the security measures shall meet the requirements contained herein.

- (6) Any further information the Chief of Police deems necessary in reviewing the application.
- c. Any such permit for a single cabaret or public dance event shall only be approved if the event will occur in a zoning district that permits such an activity pursuant to the Zoning Ordinance set forth in Chapter 10 of the Hayward Municipal Code.
 - d. In granting or denying such permit, the Chief of Police shall give consideration to the public health, safety and welfare, particularly for those persons living in the surrounding area.
 - e. Only one permit for a single cabaret or public dance event will be issued for a particular applicant or for a particular location within a three (3) month period.
 - f. Permits issued for a single cabaret event or a public dance event are nontransferable and non-assignable.
 - g. If both cabaret and dance activities are intended, only one permit under this section will be required, depending on the primary activity to be conducted.

SEC. 6-2.27 OPERATING REGULATIONS FOR ALL CABARETS AND DANCES. It shall be unlawful for any person operating a cabaret or conducting a dance or entertainment event, or any agent, employee, or representative or such person, to permit any breach of the peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct or otherwise, or to violate or permit the violation of any of the following regulations:

- a. The area in which any dancing is being done shall be kept well lighted.
- b. No ~~immoral~~, obscene or illegal conduct or behavior shall be permitted.
- c. No person under the age of eighteen (18) years shall be admitted unless accompanied by his parent, guardian or other person having the care and custody of such person. The Chief of Police may approve a permit to allow younger participants, if the event is planned specifically for youth.
- d. No dancing shall be permitted between the hours of 2:00 am and 10:00 am.
- e. All persons shall be fully clothed.
- f. No person under the influence of intoxicating liquor shall be admitted or permitted to remain in or upon the premises.

- g. At all times during the holding of any dance or event, all doors leading from or opening into the place where the dance is held, are to remain unlocked, unbarred, or unfastened.
- h. No return check shall be issued.

SEC. 6-2.28 LICENSEE/PERMITTEE RESPONSIBLE FOR VIOLATIONS.

The licensee of any cabaret or permittee for any cabaret or public dance event shall be responsible for all violations of the laws of the State of California, or of the ordinances, regulations and conditions of the City of Hayward, which occur within the cabaret, whether or not the violations occur within the licensee's/permittee's presence or with the licensee's/permittee's knowledge. The licensee/permittee agrees that allowing more patrons on the premises than that authorized by the Hayward Fire Marshal constitutes a violation of the license and may be enforced by the Police Department.

SEC. 6-2.29 VIOLATION OF STATE AND CITY LAWS. No licensee (or its agents or employees) nor permittee (or its agents or employees) shall engage in or permit any other person on such premises to engage in any act in violation of the laws of the State of California or of the ordinances, regulations and conditions of the City of Hayward.

SEC. 6-2.30 PATRON SAFETY AND SECURITY. The licensee/permittee shall be responsible for the security and safety of patrons in the cabaret in and around off-street parking areas. Security shall meet the following performance standards:

- a. There shall be a minimum of one security personnel on duty for the first fifty (50) patrons on site. Once the number of patrons exceeds fifty (50), there shall be one additional security personnel on duty for up to and including each additional fifty (50) patrons on site. "On-site" means all patrons within the establishment and waiting in line to enter the establishment.
- b. The security personnel shall be on duty when the entertainment begins or 9:00 p.m., whichever is earlier, and shall remain on duty for at least one-half hour after the establishment closes or until all patrons have vacated the area immediately surrounding the establishment and the parking sites used by the patrons.
- c. The security personnel shall provide security inside the establishment, along the outer perimeter of the establishment and parking sites immediately adjacent to the establishment and used by the patrons.
- d. The security personnel shall remove all illegal contraband that may be found on patrons, report the existence of the contraband to the Hayward Police Department, identify the person in possession of the contraband and immediately turn the contraband over to the proper law enforcement authorities.
- e. All security personnel shall be registered and maintain valid registration status with

the State of California's Department of Consumer Affairs. All security personnel shall be registered at a level that is equivalent to or greater than a proprietary private security officer. Proof of registration for all security personnel shall be maintained by the establishment's operator and shall consist of application forms, receipts for application fees and live scan fees and any other document showing evidence of valid registration.

- f. At closing time, the security personnel shall ensure that the establishment's patrons have been cleared from the sidewalk and street areas in front of the establishment, from other areas around the perimeter of the establishment and from areas within one hundred fifty (150) feet of the establishment.
- g. While on duty, all security personnel shall wear a nameplate containing the security personnel's full name and the word "Security" printed in bold, capital letters that are at least three-fourths of one inch high and in contrasting color. The nameplate shall be exhibited prominently on the clothing, at chest level, and shall be visible and easily read at all times. The nameplate shall be a minimum of two inches high and four inches wide. As an alternative to a nameplate, the security personnel's name and the word "Security" may be embroidered on the security personnel's outermost garment with the required information meeting the above specifications and located at chest level.
- h. The establishment's operator shall not allow any security personnel to, and no security personnel shall, sit at the bar, or consume alcoholic beverages or any controlled substance, be under the influence of alcoholic beverages or any controlled substance, or engage in any violations of the law while on duty.
- i. The establishment's operator shall not allow any security personnel to be, and no security personnel shall be, in possession of any firearm while on the establishment's premises without the security personnel having first obtained a license from the appropriate state or local agency authorizing the security personnel to be in possession of a firearm.
- j. If the establishment employs or otherwise engages security personnel who will be in possession of a firearm while on the establishment's premises, the security personnel shall provide the Chief of Police with the following documentation no less than fourteen (14) days prior to the date the security personnel will begin performing services at the establishment:
 - (1) A copy of the license issued to the security personnel authorizing the possession of such firearm;
 - (2) A copy of the security personnel's law enforcement identification if employed by a law enforcement agency; and
 - (3) A copy of the security personnel's California driver's license or California identification card.

Revisions shown reflect changes recommended by the Planning Commission at its September 5 meeting.

- k. The establishment's operator shall at all times manage waiting lines outside the establishment to ensure that there are no impediments to pedestrian travel in the pedestrian walkway, no blockage of neighboring businesses, and no disturbance of the public peace.
- l. At least one person in possession of a valid cabaret license shall be present at the establishment at all times when entertainment requiring a cabaret license is being provided. Said licensee shall cooperate fully with the Chief of Police, or any City official responsible for enforcing the Alcoholic Beverage Outlet regulations, with any inquiry, inspection reasonable request or investigation necessary to implement the requirements of these regulations or to enforce any other state, local or federal law.

SEC. 6-2.31 POSTING OPERATING REGULATIONS. A set of operating regulations in a form approved by the Chief of Police and containing the provisions of Sections 6-2.27 through 6-2.33 herein, as well as any relevant operating conditions that may be imposed by the Chief of Police, City Council or the Planning Commission, shall be prominently posted by licensee/permittee in at least one (1) conspicuous location within every cabaret, as determined by the Chief of Police.

SEC. 6-2.32 INSPECTION FOR ENFORCEMENT; SUMMARY SUSPENSION. All premises operating pursuant to the terms of these regulations may be inspected for violations of these regulations at any time during normal operating hours by the Chief of Police of the City of Hayward or designee. Any evidence of any violation of the terms of these regulations may be seized without warrant provided that such evidence shall be specifically identified and a receipt shall be given to the owner of such evidence and to the licensee of such premises or his agent. At all times, a designated manager or person in charge shall be on the premises and available to the Police Department. A violation of these Cabarets and Dances regulations may result in immediate closure by the Police Department, pursuant to the summary suspension provisions set forth in the Alcoholic Beverage Outlets regulations (Hayward Municipal Code Sections 10-1.2750 *et seq.*).

SEC. 6-2.33 POWERS OF CHIEF OF POLICE AND OFFICERS. The Chief of Police and his/her sworn officers shall have the power to stop any public dance or close any premises, whether a permit is issued hereunder or not, for disturbing the peace, disorderly conduct, obscene or indecent behavior, or for violation of any law or ordinance.

SEC. 6-2.34 INJUNCTIVE RELIEF; ADMINISTRATIVE CITATION. In addition to the legal remedies provided for in this Code, the operation of any cabaret in violation of the provisions of these regulations or other applicable laws and regulations shall be deemed a public nuisance, and the City of Hayward may bring an action in any court of competent jurisdiction to enjoin such nuisance or issue an administrative citation pursuant to Chapter 1, Article 7 of this Code.

SEC. 6-2.35 VIOLATIONS; PENALTIES. Any person violating any provision of these

regulations or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring the license or permit shall be punishable as set forth in Article 3 of Chapter 1 of this Code.”

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 thirty days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the _____ day of _____, 2013, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____, 2013, 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

HAYWARD CITY COUNCIL

RESOLUTION NO. 13-

Introduced by Councilmember _____

RESOLUTION APPROVING NEGATIVE DECLARATION AND ADOPTING FINDINGS SUPPORTING TEXT AMENDMENTS RELATED TO PROPOSED, NEW ALCOHOLIC BEVERAGE OUTLETS ORDINANCE AND CABARETS AND DANCES ORDINANCE

WHEREAS, at the direction of the City Council, staff has prepared a comprehensive package of administrative regulations governing establishments selling alcoholic beverages and establishments offering nightclub-type entertainment in the City of Hayward, including an Alcoholic Beverage Outlets Ordinance, a Cabarets and Dances Ordinance, and related amendments to the City's Zoning Ordinance and Master Fee Schedule implementing the proposed regulatory framework (the "Project"); and

WHEREAS, a Negative Declaration and Initial Study have been prepared and circulated for public review and comment, in accordance with the California Environmental Quality Act (CEQA) and its Guidelines, which conclude that the proposed Project would not have a significant environmental impact; and

WHEREAS, the Planning Commission considered the Project at a public hearing held on September 5, 2013, and unanimously recommended, with one Commissioner abstaining, that the City Council approve the Negative Declaration and the proposed text amendments (Application No. PL-2013-0175 TA), including revisions to the City's alcoholic beverage outlet regulations (new Section 10-1.2750 *et seq.* of the Hayward Municipal Code), the Definitions section of the Zoning Ordinance (Section 10-1.3500 of the Hayward Municipal Code), and the General Commercial (CG) and Central City-Commercial (CC-C) Zoning Districts (Section 10-1.1000 *et seq.* and Section 10-1.1520 *et seq.* of the Hayward Municipal Code); and

WHEREAS, amendments to the City of Hayward Fiscal Year 2014 Master Fee Schedule are proposed related to the text amendments, to offset costs to the City from the enforcement and administration of the proposed regulations; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on September 24, 2013.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- A. The proposed Project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and a Negative Declaration and Initial Study have been prepared, which conclude that no significant environmental impacts will occur as a result of the Project.

AMENDMENTS TO THE MUNICIPAL CODE RELATED TO ALCOHOLIC BEVERAGE OUTLETS AND CABARETS AND DANCES (COLLECTIVELY REFERRED TO AS THE “TEXT AMENDMENTS”)

A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.

The proposed Text Amendments will promote the public health, safety, convenience, and general welfare of the residents of Hayward by:

- a. allowing happy hours and music at full-service restaurants that will help existing Hayward restaurants be more competitive with restaurants in surrounding cities and will help attract new restaurants to Hayward, which is underserved with such restaurants;
- b. establishing performance standards for all alcoholic beverage establishments that will help ensure such establishments are operated in a manner so as not to constitute a public nuisance;
- c. prohibiting more liquor stores or bars, which are typically establishments generating more calls for service for the Hayward Police Department, in areas of the City that have an overconcentration of such establishments, as defined by the State Department of Alcohol Beverage Control;
- d. establishing “Summary Suspension” provisions to allow the City to quickly and effectively shut down an alcoholic beverage establishment where an imminent threat to public health and safety exists;
- e. creating cost recovery mechanisms through new fees, including critical incident response fees, which will help ensure more oversight of alcoholic beverage establishments by the Hayward Police Department;
- f. establishing “Deemed Approved” performance standards for nonconforming uses, which typically generate more calls for service for the Hayward Police Department, which will help ensure such uses are operated in a manner so as not to create a public nuisance or negatively impact the public health, safety and welfare; and
- g. creating new operating standards for all cabarets and public dances, including security standards and license/permit suspension provisions to help ensure such businesses are operated responsibly with minimal impacts to the public, and to provide a process that allows the City to respond expeditiously to incidents at cabarets or dance events that represent an imminent threat to public health and safety.

B. The proposed change is in conformance with all applicable, officially adopted policies and plans.

The proposed Text Amendments conform to City policies and plans. For example, the Economic Development Chapter of the General Plan contains the following strategies with which the Text Amendments, as described in the preceding finding, are aligned:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a city that has a broad variety of occupations and family incomes, ethnic diversity, diverse lifestyles and housing accommodations, a broad range of commercial services, educational and job opportunities, and many recreational opportunities.
- Promote Hayward as a destination for nonresidents.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses. The proposed Text Amendments will help attract new desirable uses and help ensure existing uses are operated in a responsible manner.

C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.

No properties are proposed to be reclassified. Any new alcoholic beverage establishments or cabarets or dance halls will be required to have adequate streets and facilities before operating, as currently required.

D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified. The Text Amendments will provide additional standards to help ensure alcoholic beverage establishments and cabarets and dances are operated in a manner that do not generate impacts to surrounding properties and neighborhoods. In addition, the proposed Text Amendments will provide cost-recovery mechanisms that currently do not exist, which will allow for greater oversight of such establishments by the Hayward Police Department.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the Negative Declaration and the findings in support of Text Amendment Application No. PL-2011-0175 TA, subject to the adoption of the companion ordinances.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO _____

Introduced by Council Member _____

RESOLUTION AMENDING THE CITY OF HAYWARD FISCAL YEAR 2014
MASTER FEE SCHEDULE ASSOCIATED WITH REVISIONS TO ALCOHOLIC
BEVERAGE OUTLETS ORDINANCE AND CABARETS AND DANCES
ORDINANCE

WHEREAS, Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;
3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing service areas; or
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by city Charter; and

WHEREAS, the City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions.

WHEREAS, in November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) is compliant.

WHEREAS, the City and Hayward Police Department is not achieving cost recovery associated with review and oversight alcohol beverage outlets and cabaret and dance establishments and events.

NOT, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Master Fee Schedule relating to fees and charges for the Finance and Police Departments, as reflected in Attachment A.

BE IT RESOLVED that this resolution shall become effective on the date that the last of the companion four ordinances (Ordinances No. 13- , No. 13- , No. 13- , and No. 13-) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2013

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Attachment A

FinanceA. **ASSESSMENT DISTRICT FEES**

- | | | |
|----|---|------------------------------------|
| 1. | <u>Establishment Fee</u> (applicable to all districts petitioned or requested after September 9, 1988) | \$3,084.00 |
| 2. | <u>Annual Administration Fee</u> (applicable to all districts) | \$2,934.00 |
| 3. | <u>Bond Call Fee</u> (applicable to all districts) | \$302.00 |
| 4. | <u>Annual Adjustment</u> : The 3 fees listed above shall be adjusted annually. Each fee shall increase by the lesser of: (1) 5% or (2) the percentage of increase, if any, in the San Francisco Bay Area Consumer Price Index (CPI-U) or (3) the City's actual incremental cost. When the 3 fees are so adjusted, the adjusted fees shall become the new base. The CPI for the San Francisco Bay Area in effect at the time of each annual updating of the Master Fee Resolution shall be used in determining each set of annual adjustments. | Calculated
Adjustment |
| 5. | <u>Irrevocability of the Establishment Fee</u> : Whether or not a proposed local improvement district becomes legally established, the Establishment Fee applies as the City's charge for initiating the transaction. | Same as
amount paid
in A (1) |
| 6. | <u>Special Assessment Inquiries</u> | \$26.00 each |
| 7. | <u>Secondary Disclosure Reporting</u> | \$256.00/
District |

B. OPERATING PERMITS

- | | | |
|----|---|----------------------|
| 1. | <u>Bingo Permit</u> (Reference HMC 4-3) | |
| | a. Initial or renewal Fee | \$50.00 |
| 2. | <u>Card Club Permit</u> (Reference HMC 4-3) | |
| | a. Application Fee | \$40.00 |
| | b. Annual Table Fee | \$8,693.00 per table |
| 3. | <u>Closeout Sale Permit</u> (Reference HMC 6-4) | |
| | a. Initial Fee | \$76.00 |
| | b. Renewal | \$67.00 |
| 4. | <u>Cabarets and Dance Licenses and Permits</u> (Reference HMC 6-2) | |
| | a. Annual License (payable quarterly in advance) | \$103.00/year |
| | b. Single Event Permit | \$42.00 |
| 5. | <u>Preferential Parking Permit</u> (Reference Hayward Traffic Regulations Section 3.95 and Hayward Traffic Code 6.36) | |
| | a. Initial Fee and Biennial Renewal Fee (for up to two residential or visitor permits) | \$50.00 |
| | b. Each additional residential permit | \$25.00 |
| | c. Each additional visitor permit | \$25.00 |
| 6. | <u>Peep Show Permit</u> (Reference HMC 6-9) | |
| | a. Peep Show Device | Time & Material |
| | b. Investigation Fee | Time & Material |

C. MISCELLANEOUS FEES

- | | | |
|----|---|-----------------|
| 1. | Monthly Listing of New Hayward Based Businesses | \$5.50/month |
| 2. | Business Verification/Ownership Research | \$8.00/business |
| 3. | Parking Tax Offset Fee | \$2.50 |

Police Department**B. POLICE ADMINISTRATION**

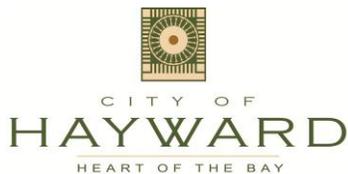
Any charges not specified below shall be established by State and/or Federal statutes.

1. Photocopying of Reports:
 - a. Traffic Accident Reports \$12.00 per report
 - b. Other Reports \$5.50 per report
2. Photographs Time & Motion
3. Fingerprinting \$23.00 each
(Fingerprint processing fees established by Federal or State agencies shall be additional charge.)
4. Traffic & Police Security Services
 - a. Traffic control and police security services for pre-planned, non-city sponsored events Time & Motion
 - b. Planned traffic control for contractors and utilities Time & Motion
5. Permit Processing
(Fees are for processing only, fingerprint and Department of Justice fees are not included)
 - a. Taxi Drivers
 - (1) Initial Permit \$260.00
 - (2) Annual renewal \$186.00
 - (3) Annual taxi operating sticker \$247.00
 - (4) Lost permit replacement \$91.00
 - b. Tow Permits
 - (1) Company 1st License \$297.00
 - (2) Company Annual Renewal \$297.00
 - (3) Driver 1st License \$297.00
 - (4) Driver Annual Renewal \$297.00
 - (5) Lost Permit Replacement \$74.00
 - c. Massage Establishment/technician permit

- | | | |
|-----|---|-------------------------|
| (1) | Establishment permit | |
| | (a) one owner | \$614.00 |
| | (b) two owners | \$845.00 |
| | (c) three owners | \$1,076.00 |
| (2) | Technician Permit | |
| | (a) Initial permit | \$230.00 |
| | (b) Annual renewal | \$76.00 |
| | (c) Lost permit replacement | \$76.00 |
| d. | Card clubs employee permit | |
| | (a) Initial permit | \$153.00 |
| | (b) Annual renewal | \$153.00 |
| | (c) Lost permit replacement | \$76.00 |
| e. | Auto Sales/Repair Permit | \$175.00 |
| f. | Background investigation | Time & Motion |
| g. | Firearm dealers annual permit | \$513.00 |
| h. | Diversion program | Time & Motion |
| i. | Petty Theft Workshop | \$80.00/per participant |
| j. | Other permit processing | Time & Motion |
| 6. | <u>Alarm Permit Fee</u> | |
| | a. new and annual renewal: | \$32.00 |
| | b. for Low income or persons in a temporary or permanent disabled status who: | \$15.00 |
| | (1) meet the City income guidelines as defined in the All City Department section of the Master Fee Schedule and | |
| | (2) file with the Revenue Division of the Finance Department a discount application and adequate documentary evidence showing that the Permit applicant comes within the provision of subparagraph (a). | |
| 7. | <u>False Alarm Fees</u> (for instances of false alarms within any one-year period): | |

a.	First False Alarm Fee	No Charge
b.	Second False Alarm Fee	\$182.00
c.	Third False Alarm Fee	\$182.00
	Penalty	\$ 50.00
d.	Fourth False Alarm Fee	\$182.00
	Penalty	\$200.00
e.	Fifth and Each Fee	\$182.00
	Subsequent False Alarm Penalty	\$400.00
8.	<u>Vehicle Release Fee</u>	\$235.00
9.	<u>Vehicle Verification or Administrative Fee</u>	
a.	Onsite verification	\$43.00
b.	Offsite verification	\$175.00
c.	Sign off of citation not issued by Hayward P.D.	\$ 20.00
10.	<u>Communication Tapes</u>	\$103.00 per tape
11.	<u>Clearance Letters</u>	\$43.00 per letter
12.	<u>Vehicle Abatement</u>	\$263.00 per vehicle
13.	<u>Prisoner Booking Fee</u>	per prisoner
a.	Cite & Release	\$ 89.00
b.	Hold for Court	\$ 180.00
c.	Transfer to Santa Rita	\$ 199.00
14.	<u>Driving Under the Influence</u>	Time & Motion
	Recovery of the cost of the public safety response to a DUI violation using the fully burdened cost allocation rate.	
	The following is authorized by sec 4-11.20 HMC	
a.	First Violation	\$ 750.00
b.	Second Violation	\$ 1,500.00
c.	Third & Subsequent Violations	\$ 2,500.00
	The following is authorized by sec 4-11.25 HMC	
d.	Administrative Citation – recovery of the cost of the public safety response to a violation of this ordinance using the fully burdened cost allocation rate.	Time & Motion

- | | | |
|-----|---|---------------|
| 15. | <u>Firearms Range Maintenance Fees</u> – apportions the upkeep of the firearms range among user law enforcement agencies over a <u>fiscal year</u> period: | \$ 750.00 |
| 16. | Alcoholic Beverage Outlets Fees (HMC sec 10-1.2750) | |
| a. | Level I - Alcoholic Beverage Establishment Retail License Fee - Full service restaurants, wine shops, and retail stores using no more than 5% of their floor area for alcohol sales, storage and display. | \$ 280.00 |
| b. | Level II - Alcoholic Beverage Establishment Retail License Fee - All alcoholic beverage outlets other than Level I. | \$ 1,120.00 |
| c. | Critical Incident Fee | Time & Motion |
| d. | Violation of Alcoholic Beverage Outlets Ordinance | |
| | (1) First offense | \$ 750.00 |
| | (2) Second offense | \$ 1,500.00 |
| | (3) Third and subsequent Offenses | \$ 2,500.00 |
| e. | Reinspection Fee | Time & Motion |
| f. | Alcohol Sales – Special Event Permit | \$ 42.00 |



**DEPARTMENT OF
DEVELOPMENT SERVICES
Planning Division**

NEGATIVE DECLARATION

Notice is hereby given that the City of Hayward finds that the Project summarized below (and described in detail in the attached Initial Study) relates to establishing new regulatory standards and fees associated with alcohol beverage outlets and cabarets and public dances in the City of Hayward, and would not result in a significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, Public Resources Code Section 2100 *et seq.*

I. PROJECT DESCRIPTION:

Text Amendment Application No. PL-2013-0175:

1. Proposed revisions related to Hayward's alcohol beverage outlet regulations (<http://www.hayward-ca.gov/blogdocs/ds/2013/AlcoholBeverageOutletsOrdinance-red-lined-rev081413.doc>), to include:
 - Revisions to definitions (<http://www.hayward-ca.gov/blogdocs/ds/2013/DraftZODDefinitions.doc>);
 - New security requirements and standards for dancing or entertainment establishments;
 - New basic operating standards and procedures for nonconforming uses ("Deemed Approved" provisions);
 - New emergency action procedures to abate imminent threats to public health, safety or welfare ("Summary Suspension" regulations)
 - Codifying 'trial period' provisions to allow happy hours from 4 to 9 pm and live music until midnight at full-service restaurants;
 - Establishing new fees for cost recovery, including for critical incident responses (<http://www.hayward-ca.gov/blogdocs/ds/2013/ProposedNewFees.doc>); and
 - Enhanced cumulative remedy provisions.
2. Proposed new regulations for cabarets and dances in Hayward, to include new definitions, licensing procedures and process, and operating standards for establishments that normally allow regular dancing and/or live entertainment (<http://www.hayward-ca.gov/blogdocs/ds/2013/CabaretsAndDancesOrdinance.doc>).

II. FINDING PROJECT WILL NOT SIGNIFICANTLY AFFECT ENVIRONMENT:

The proposed project could not have a significant effect on the environment, as described below and in the attached Initial Study.

III. FINDINGS SUPPORTING DECLARATION:

1. The proposed Project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study has been prepared by City staff for the proposed project. The Initial Study indicates that the proposed project could not result in significant effects on the environment.
2. The Project will not adversely affect any scenic resources.
3. The Project will not have an adverse effect on agricultural land.
4. The Project will not have an adverse effect on air quality.
5. The Project will not generate impacts to biological resources such as wildlife and wetlands.
6. The Project will not have impacts to known cultural resources, including historical resources, archaeological resources, paleontological resources, and unique topography, or disturb human remains.
7. The Project would have no impacts related to geological hazards.
8. The Project would not generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment.
9. The Project would not create a significant hazard to the public or the environment through the routine transport, use, disposal, storage, release or handling of hazardous materials.
10. The Project would not affect water quality standards.
11. The Project does not conflict with the policies of the City of Hayward General Plan and Zoning Ordinance since the proposed regulations and fees are in line with the Zoning Ordinance's existing alcohol outlet regulations purposes and the City Council's priority of fiscal stability.
12. The Project would not result in a significant impact to mineral resources.
13. The Project would not result in population growth or the displacement of residents.
14. The Project would not result in significant noise impacts and proposed amendments would not conflict with the City's established noise standards and regulations.
15. The Project could not result in a significant impact to public services, and in fact, the proposed regulations will help ensure police department resources are not over-burdened.
16. The Project would not result in a significant impact to traffic or result in changes to traffic patterns or emergency vehicle access.

17. The Project would not result in a significant impact to utilities and city services.

IV. PERSON WHO PREPARED INITIAL STUDY:



Signature: _____
David Rizk, AICP, Associate Planner

Dated: August 16, 2013

V. COPY OF INITIAL STUDY IS ATTACHED

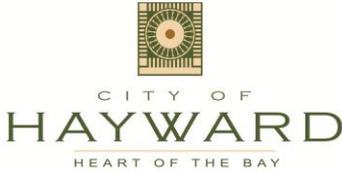
For additional information, please contact Arlyne Camire at the City of Hayward Planning Division, 777 B Street, Hayward, CA 94541-5007 or telephone (510) 583-4206.

DISTRIBUTION/POSTING

Provide copies to project applicants and all organizations and individuals requesting it in writing, including the Alameda County Airport Land Use Commission.

Provide copy to Alameda County Clerk’s Office.

- Reference in all public hearing notices to be distributed at least 20 days in advance of initial public hearing and/or published once in *The Daily Review* newspaper at least 20 days prior to hearing.
- Project file.
- Post immediately upon receipt at the City Clerk's Office, the Main City Hall bulletin board, and in all City library branches, and do not remove until after final action on the Project.



**DEPARTMENT OF DEVELOPMENT SERVICES
Planning Division**

INITIAL STUDY CHECKLIST

Project Title: Text Amendment Application No. PL-2013-0175: Proposed Revisions to Hayward’s Alcohol Beverage Outlet and Cabaret/Public Dance Regulations

Lead agency name/address: City of Hayward, Development Services Department; 777 B Street, Hayward, CA 94541-5007

Contact person: David Rizk, AICP, Development Services Director
(510) 583-4004
David.rizk@hayward-ca.gov

Project location: Citywide

Project Sponsor’s Name and Address: City of Hayward
777 B Street
Hayward, CA 94541

General Plan Designation: Various (no changes proposed)
Zoning Designation: Various (no changes proposed)

Project description:

Text Amendment Application No. PL-2013-0175:

1. Proposed revisions related to Hayward’s alcohol beverage outlet regulations (<http://www.hayward-ca.gov/blogdocs/ds/2013/AlcoholBeverageOutletsOrdinance-red-lined-rev081413.doc>), to include:
 - Revisions to definitions (<http://www.hayward-ca.gov/blogdocs/ds/2013/DraftZODefinitions.doc>);
 - New security requirements and standards for dancing or entertainment establishments;
 - New basic operating standards and procedures for nonconforming uses (“Deemed Approved” provisions);
 - New emergency action procedures to abate imminent threats to public health, safety or welfare (“Summary Suspension” regulations)
 - Codifying ‘trial period’ provisions to allow happy hours from 4 to 9 pm and live music until midnight at full-service restaurants;
 - Establishing new fees for cost recovery, including for critical incident responses (<http://www.hayward-ca.gov/blogdocs/ds/2013/ProposedNewFees.doc>); and
 - Enhanced cumulative remedy provisions.

2. Proposed new regulations for cabarets and dances in Hayward, to include new definitions, licensing procedures and process, and operating standards for establishments that normally allow regular dancing and/or live entertainment (<http://www.hayward-ca.gov/blogdocs/ds/2013/CabaretsAndDancesOrdinance.doc>).

Surrounding land uses and setting:Regional Setting

The City of Hayward is known as the “Heart of the Bay” due to its central location in Alameda County along the east side of the San Francisco Bay, twenty-five miles southeast of San Francisco, fourteen miles south of Oakland, twenty-six miles north of San Jose, and ten miles west of the valley communities of San Ramon, Dublin, and Pleasanton. The City of Hayward lies along the southeastern shore of the San Francisco Bay, at the western end of the Diablo Mountain Range. Topography in the eastern portion of Hayward generally consists of moderately steep foothills descending from the Diablo Range, leveling into a valley before reaching the San Francisco Bay.

The Nimitz Freeway (US 880) passes through the City of Hayward on its path between the City of San Jose and the San Francisco-Oakland Bay Bridge. The Hayward-San Mateo Bridge, State Route 92, spans the San Francisco Bay between the cities of Hayward and Foster City. The City of Hayward borders the cities of San Leandro, Union City, Fremont and Pleasanton. The census-designated places bordering Hayward within Alameda County are Castro Valley, San Lorenzo, Cherryland, and Fairview.

City Setting

The City of Hayward is highly urbanized, with the shoreline and hillsides containing natural open space. Commercial development tends to be located along major arterial streets such as Mission Boulevard, Foothill Boulevard, Jackson Street, Tennyson Road, and Hesperian Boulevard. The western and southern portions of Hayward primarily consist of industrial land uses. To the east and north of the industrial corridor lie numerous tracts of residential development often centered upon public school sites.

Requested Local Approvals: The following actions by the Lead Agency are necessary to carry out the project:

- Text Amendment: The project would entail:
 - Revisions to the City of Hayward’s existing Alcohol Beverage Outlet regulations (repeal of Hayward Municipal Code Section 10-1.2735b(1)-(13) and creation of new Sections 10-1.2750 through 10-1.2775);
 - Revisions to the Definitions Section of the Zoning Ordinance (Hayward Municipal Code Section 10-1.3500);
 - Revisions to various Zoning District regulations to reflect recommended new definitions; and
 - An overhaul of the City’s existing Public Dance provisions (repeal of Hayward Municipal Code Sections 6-2.10 through 6-2.17 (Public Dances”), and creation of Sections 6-2.10 through 6-2.35 (“Cabarets and Dances”).
- New Fees: Amend the Hayward Master Fee Schedule for Fiscal Year 2014.

Other public agencies whose approval is required:

None.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use / Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input type="checkbox"/> Utilities / Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.



 Signature
 David Rizk
 Printed Name

August 15, 2013
 Date

EVALUATION OF ENVIRONMENTAL IMPACTS:

ENVIRONMENTAL ISSUES:

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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II. AGRICULTURE AND FOREST RESOURCES:

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state’s inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. -- Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d) Result in the loss of forest land or conversion of forest land to non-forest use? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>III. AIR QUALITY -- Where applicable, the significance criteria established by the Bay Area Air Quality Management District (BAAQMD) is relied upon to make the following determinations. Would the project:</p>				
a) Conflict with or obstruct implementation of the applicable air quality plan? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Expose sensitive receptors to substantial pollutant concentrations? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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e) Create objectionable odors affecting a substantial number of people? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife Service or U.S. Fish and Wildlife Service? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>				
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife Service or US Fish and Wildlife Service? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in California Environmental Quality Act , Title 14; Chapter 3; Article 5; Section 15064.5? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Disturb any human remains, including those interred outside of formal cemeteries? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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ii) Strong seismic ground shaking? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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iii) Seismic-related ground failure, including liquefaction? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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iv) Landslides? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Result in substantial soil erosion or the loss of topsoil? **Comment:** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? <i>Comment: The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? <i>Comment: The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? <i>Comment: The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VII. GREENHOUSE GAS EMISSIONS --
Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? <i>Comment: The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

VIII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? Comment: <i>The Project would establish new standards and</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with*

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

IX. HYDROLOGY AND WATER QUALITY -
- Would the project:

a) Violate any water quality standards or waste discharge requirements? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>f) Otherwise substantially degrade water quality? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>j) Inundation by seiche, tsunami, or mudflow? Comment: <i>The Project would establish new standards and regulations associated with alcohol</i></p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

X. LAND USE AND PLANNING -- Would the project:

a) Physically divide an established community?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Conflict with any applicable habitat conservation plan or natural community conservation plan? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XI. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? Comment: <i>There aren't mineral resources on the Project site; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

XII. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development. Also, revisions would not entail changing the City's noise ordinance or standards; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development. Also, revisions would not entail changing the City's noise ordinance or standards; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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development. Also, revisions would not entail changing the City's noise ordinance or standards; thus, no impact.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? **Comment:** The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? **Comment:** The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XIII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? **Comment:** The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? **Comment:** The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? **Comment:** The Project would

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>				

XIV. PUBLIC SERVICES --

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Fire protection? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Police protection? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities, to help ensure police resources are not over-burdened, and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Schools? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development or changes to separation from schools from such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Parks? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development or changes to separation from parks from such uses; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Other public facilities? <i>Comment:</i> <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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such activities and does not entail proposed development; thus, no impact.

XV. RECREATION --

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XVI. TRANSPORTATION/TRAFFIC --
Would the project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? ***Comment:*** *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? ***Comment:*** *The*

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>				

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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e) Result in inadequate emergency access? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XVII. UTILITIES AND SERVICE SYSTEMS
 -- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<i>and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>				
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the City of Hayward that it has adequate capacity to serve the project' s projected demand in addition to the provider' s existing commitments? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the project' s solid waste disposal needs? Comment: <i>The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
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such activities and does not entail proposed development; thus, no impact.

g) Comply with federal, state, and local statutes and regulations related to solid waste?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
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XVIII. MANDATORY FINDINGS OF SIGNIFICANCE --

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Comment: *The Project would establish new standards and regulations associated with alcohol beverage outlet regulations and cabarets and dances/live entertainment, as well as new fees associated with such activities and does not entail proposed development; thus, no impact.*

Mr. Jesús Armas, with a business address on Main Street, invited all to the second annual "Fire and Salsa Game II," a basketball fundraising match between Los Chilones de Hayward and Hayward Firefighters, Local 1909, on February 4, 2012, at noon at the Mateo Jimenez Gym. Mr. Armas noted that the proceeds would benefit the Hayward Youth Commission.

Mr. Doug Ligibel, Grand Terrace resident, relayed questions from Alcohol and Drugs Specialists (ADS) about the consideration of a "happy hour" at local restaurants. The questions related to happy hour and public safety, crime, nuisance, youth eating at restaurants, overconcentration of on-site alcohol outlets, and hours of service. Mr. Ligibel shared arrest records that reflected several driving under the influence offenses, and arrests that showed a problem with youth females drinking and driving. Mr. Ligibel was concerned about the 9:00 p.m. to close happy hour consideration and urged Council to pay attention to the 9:00 p.m. to 2:00 a.m., happy hour policies of some restaurants.

Mr. Kim Huggett, Chief Executive Officer of Hayward Chamber of Commerce, supported removing the prohibition against restaurants offering alcoholic beverages for a reduced price promotion because the prohibition placed Hayward restaurants at a competitive disadvantage, compared to neighboring communities, reduced restaurant income, impacted City sales tax, and jobs. He noted that the prohibition erroneously presumed that owners and managers of our restaurants did not know how to train their employees and how to responsibly serve alcoholic beverages. Lastly, on behalf of Buffalo Bills' owner, Geoff Harries, he relayed to Council Mr. Harries' support for removing the ban against restaurants offering discounted alcoholic beverages.

Ms. Julie McKillop, Neumanali Restaurant owner, stated that she was not aware of the City's ordinance banning discounted alcohol beverages. Ms. McKillop favored happy hour as a good marketing tool and not necessarily something that increased alcohol consumption. She disapproved seeing Hayward restaurants at a competitive disadvantage and asked for a compromise on this issue.

SPECIAL JOINT CITY COUNCIL/PLANNING COMMISSION WORK SESSION

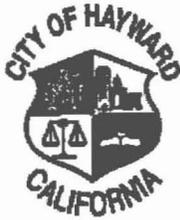
1. Revisions to the Alcohol Beverage Outlet Regulations in the Zoning Ordinance

Staff report submitted by Development Services Director Rizk and Police Chief Urban, dated January 24, 2012, was filed.

Mayor Sweeney invited Planning Commissioners to join Council at the dais. Development Services Director Rizk provided a synopsis of the report.

Mayor Sweeney said it seemed inappropriate to modify regulations for alcohol-serving establishments without having a tangible plan for enforcing the regulation of any undesirable uses that might drain limited City resources.

Council Member Henson noted that the purpose of revising the City's regulations on alcoholic beverage sales at full-service restaurants was an attempt to balance the economic needs of such restaurants with the need to eradicate problematic establishments.



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Tuesday, January 24, 2012, 7:00 p.m.**

Mr. Henson shared that other cities offered cabaret licenses and/or entertainment permits. Development Services Director Rizk noted that upon receiving direction from Council, staff could conduct research on the topic. In response to Council Member Henson's request to address the concerns raised by Mr. Ligibel, Director Rizk commented that full-service restaurants would have to adhere to regulations that required that 60% of restaurant sales come from food, and noted that, according to the Police Department, full-service restaurants were typically not a large source of calls for service. Council Member Henson pointed out there should be a clause in the City's ordinance addressing the actions that could be taken if things got out of hand.

Council Member Peixoto supported a compromise on the timing of happy hours, noting that the ordinance could be revised to restrict happy hours during the late night period.

Council Member Peixoto commented that the City's priorities were in place to develop a thriving downtown and believed that happy hours would encourage customers to stay at the full-service restaurant and have a meal. He agreed with Mayor Sweeney's concerns about potential safety issues that may arise from permitting happy hours after 9:00 p.m.

Planning Commissioner Lamnin favored instituting happy hours for full-service restaurants and suggested the following: that the revised ordinance require full-service restaurants to also offer low priced appetizers in addition to the discounted drinks; that the training provided to restaurant personnel be consistent for all of the full-service restaurants offering a happy hour; that the ordinance contain language for violations of the happy hour provision; and that full-service restaurants participate in crime prevention through environmental design standards. Commissioner Lamnin asked staff to look into whether or not dancing could be permissible at certain establishments. Due to concerns regarding the added costs resulting from the institution of a happy hour, Commissioner Lamnin shared that some cities had implemented an alcohol and tobacco retailer's license to assist in offsetting the cost of enforcement. She further stated that as a reward for businesses that were compliant with the City's regulations, a business might receive a discount in their permit fee.

Planning Commissioner Lavelle favored lifting the restriction on happy hours because it would allow local full-service restaurants to compete with other restaurants in the Bay Area. Commissioner Lavelle noted that the Elephant Bar in Hayward was the only Elephant Bar restaurant in Northern California lacking a happy hour. She expressed that having one early happy hour time would be adequate for restaurants and customers and added that discounted drinks being available late at night could contribute to driving under the influence. Ms. Lavelle supported Commissioner Lamnin's suggestion of discounted appetizers. Ms. Lavelle asked staff to explore the possibility of permitting music of a variety of sources at the full-service restaurants, and when permitted, would be in concurrence with the City's noise regulations. Ms. Lavelle noted that she did not read any references to Community Prevention of Alcohol-Related Problems (COMMPRE) and hoped that a representative would share their views regarding the proposed happy hour regulations.

In response to Planning Commissioner Mendall's question regarding situations that would necessitate changing back to the former regulation such as due to an increase in the number of service calls, Assistant City Attorney Conneely stated that staff could propose a trial period during which to test the revised regulation. Mr. Mendall asked if the City could place restrictions on problematic establishment. Development Services Director Rizk noted that the establishment would not be in compliance with the criteria of full-service restaurant and, therefore, would need to obtain a conditional use permit. Commissioner Mendall was supportive of revising the ordinance to allow happy hour for full-service restaurants, but only if regulating mechanisms were in place. He was amenable to a 3:00 p.m. to 7:00 p.m. happy hour timeframe, but was not comfortable with the late night happy hour. He added that the funding mechanism would need to be proportional to the size of the establishment or the amount of alcohol being served.

Planning Commissioner Faria pointed out that Applebee's restaurant had a conditional use permit, but was not on the list provided. Ms. Faria noted that in an effort to promote growth and business in the City, she would support lifting the prohibition of happy hour for full-service restaurants. She supported a funding mechanism for the oversight of the ordinance.

Planning Commissioner Márquez stated support of loosening the restrictions placed on full-service restaurants; however, she also believed that there needed to be additional research in terms of handling problematic businesses and maintaining compliance. In response to Commissioner Márquez' question of what intervening agency would respond to a problematic business, Police Chief Urban responded that it would be a shared responsibility between the Police Department and Alcohol and Beverage Control (ABC). Commissioner Márquez noted that the City needed to have fees associated with a revised ordinance and noted that a trial period made sense. She was in support of restricting happy hour from 3:00 p.m. to 7:00 p.m.

Planning Commission Chair Loché concurred with the comments made. Chair Loché noted that businesses that were poorly managed, whether they served alcohol or not, were the businesses that drained City services and he noted the importance of addressing that issue. In terms of a funding structure, he suggested cabaret fees. He added that a funding structure could help eliminate poorly run businesses and, on the same token, could help incentivize well run businesses.

Council Member Zermefio agreed with Planning Commission Chair Loché's comments regarding problematic businesses. Mr. Zermefio noted that he had been a proponent of eliminating the provision that prohibited happy hours, but disagreed that there needed to be more research for a funding structure to enforce regulations. He mentioned that the City was in need of economic vitality. For the time being, he agreed with the 3:00 p.m. to 7:00 p.m. happy hour timeframe. Furthermore, he mentioned that he wanted to see no limit to the number of restaurants that could be next to each other on a particular block.

Council Member Salinas stated that he was in agreement with the comments expressed by Council and Planning Commissioners. Mr. Salinas mentioned model businesses that were doing well. He liked the fact that bartenders were educated and skilled to identify and take care of problem customers. He added that full-service restaurants had a good opportunity to work with cab companies. He was supportive of lifting the provision that prohibits happy hour for full-service



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restaurants, allows music in those restaurants up until 10:00 p.m., and allows staff to conduct further research on alcohol sales.

Council Member Halliday mentioned that the Elephant Bar, Mimi's Cafe, Olive Garden, and Applebee's restaurants were relatively new to the Southland Mall area and appreciated staff's efforts to bring them into conformity with other cities in the area. In response to Council Member Halliday's question, Director Rizk explained that the State Board of Equalization would notify the Department of Alcohol Beverage Control (ABC) if a full-service restaurant had exceeded 40% of alcohol sales, and ABC would then work with the Hayward Police Department to address the issue. She agreed that having happy hour extended later into the night could prove problematic and therefore she favored allowing the earlier times for happy hours at full-service restaurants and allowing music and use permits for dancing. She was supportive of proper training for employees and researching a funding structure to regulate uses.

Council Member Quirk agreed with his fellow Council Members and, in particular, with Council Member Zermeño about getting the happy hour started right away. Mr. Quirk asked staff to poll participants of the restaurant tour about the importance of late night happy hours. He mentioned that if there was no evidence of problems, then he would not have a reason to be concerned about late night happy hours.

Council Member Henson said he was in favor of going forward and exploring the funding to support public safety oversight of alcohol-serving establishments. Mr. Henson noted that during this economic environment it was appropriate to give restaurants the opportunity to be competitive.

Mayor Sweeney stated there was general consensus among the two bodies and asked staff to provide options when the item comes back to Council. Mayor Sweeney noted that there was consensus to restrict the hours of the happy hour, with the exception of Council Member Quirk's request that staff poll restaurants and conduct a survey of late night happy hours, and bring back findings. Mayor Sweeney mentioned the suggestion offered by Commissioner Mendall to have a trial period with restrictions and at the end of the trial there would be a recommendation to establish a happy hour or leave the ordinance as is. Mayor Sweeney brought up Commissioner Lamnin's suggestion to consider adding discounted appetizers to the happy hour of full-service restaurants. He also pointed out that an effective strategy needed to be developed to address problem businesses that drain Police resources. Lastly, Mayor Sweeney commented that a stronger strategy needed to be developed to improve Hayward's economy.

2. Presentation of the Alternative Scenarios for the Regional Sustainable Communities Strategy

Staff report submitted by Development Services Director Rizk, dated January 24, 2012, was filed.



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Resolution 12-104, "Providing Notice of Scheduled Adoption of Appropriations Limit for Fiscal Year 2013 Pursuant to Article XIII B of the Constitution of the State of California"

8. Extension of 72-Inch Effluent Pipeline Shoring at the Water Pollution Control Facility

Staff report submitted by Senior Utilities Engineer Clark, dated June 19, 2012, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Henson, and carried unanimously, to adopt the following:

Resolution 12-105, "Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with McGuire and Hester to Extend 72 Inch Effluent Pipeline Shoring at the Water Pollution Control Facility"

LEGISLATIVE BUSINESS

9. Introduction of Ordinance to Amend the Hayward Municipal Code Section 11-3.255 Regarding Sewer Connection Fees to Allow for Longer Payment Terms – Continued to June 26, 2012

Staff report submitted by City Manager David, dated June 19, 2012, was filed.

Mayor Sweeney noted that staff was recommending continuation of the item to June 26, 2012.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 7:55 p.m.

It was moved by Council Member Halliday, seconded by Council Member Henson, and carried unanimously, to continue the item to June 26, 2012.

10. Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis Happy Hours from 4:00 to 9:00 p.m. and Music until 10:00 p.m. at Full-Service Restaurants

Staff report submitted by Director of Development Services Rizk and Chief of Police Urban, dated June 19, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report.

Council Member Zermeño asked about the prohibition of dancing during the trial period. Development Services Director Rizk noted that dancing could be allowed with a conditional use permit and he added that the recommendation was for music to be complementary to a full-service restaurant dining experience.

In response to Council Member Henson's inquiry related to dancing, Police Chief Urban said that music was secondary to the full-service dining experience and reiterated that dancing could be allowed by applying for a conditional use permit. Mr. Henson supported the proposed licensee education classes/trainings (LEADS) that the Hayward Police Department and the Department of Alcohol Beverage Control (ABC) plan to offer to ABC establishments.

In response to Council Member Halliday's inquiry related to the terms of Applebee's happy hour, Development Services Director Rizk noted that Applebee's Conditional Use Permit did not specify happy hour and he added that staff will look into an enforcement mechanism.

Mayor Sweeney opened the public hearing at 8:08 p.m.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, spoke on behalf of Hayward Chamber restaurant owners expressing support for the staff recommendation and noting that the current prohibition of reduced price alcohol sales places restaurant and chains at a disadvantage. Mr. Huggett added that musical entertainment improves the quality of life and would add to the success of local restaurants.

Ms. Francesca Lomotan, Second Street resident and representing the Hayward Coalition for Healthy Youth, spoke in support of allowing, on a trial basis, happy hours and musical entertainment at full service restaurants with three amendments: change happy hours from 5:00 to 7:00 p.m., remove "all you can drink" and "two for one" specials. Ms. Lomotan said the proposed amendments would reduce the possibility of binge drinking and over-consumption. Ms. Lomotan urged Council to support the Coalition's recommendations.

Mr. Ravai Bhatnagar, representing the Golden Peacock Banquet and Restaurant on Santa Clara Street, expressed support for the trial period in which happy hours and musical entertainment would be allowed. Mr. Bhatnagar also welcomed the licensee education classes/training. He added that dancing would allow Hayward restaurants to be competitive with other cities.

Mr. Tony Everfield, representing Mimi's Café on Hesperian Boulevard, mentioned that happy hour increased low volume sales, increased patronage, and allowed establishments to hire more employees. Mr. Everfield emphasized the importance of a good management team that would not allow underage drinking or binge drinking.

Mr. Ronald Gruel, Voyager Way resident, supported restricting happy hours from 5:00 to 7:00 p.m. Mr. Gruel urged Council to consider the current prohibitions carefully. He noted that dancing could cause negative situations and he mentioned there was a high density of liquor licenses in Hayward.

Mr. Richmond Apande, prospective B Street business owner, spoke in support of the staff recommendation. Mr. Apande noted that surrounding cities that offer happy hour promotions



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generate more business. He added that he would take proper measures to keep customers safe, bring entertainment, and provide appropriate training for his employees.

Mr. Aric Yererino, representing the Dirty Bird Lounge on Mission Boulevard, spoke in support of the staff recommendation. Mr. Yererino said he planned on opening a full service restaurant in downtown, but current regulations created roadblocks to open a successful downtown business. He mentioned Hayward needed to attract a younger population.

Ms. Monica Thompkins, Stonehaven Court resident and ME Restaurant owner, thanked Chief Urban for Police department support in providing the licensee education classes/training and asked Council to consider the staff recommendation. Ms. Thompkins mentioned that the happy hour promotion would generate revenue, walk-in-traffic, and needed jobs.

Mr. Ronnie Stewart, Executive Director of the Blues Society, spoke in support of the staff recommendation and, as a musician, commented that happy hours helped improve economic vitality and create a destination point. He also noted that the happy hour time frame could be extended.

Mr. Jason Jago, Elephant Bar Restaurant District Manager, noted that the Hayward location was the only restaurant that did not have a happy hour and added that through social media, Yelp being one, he received complaints from customers. Mr. Jago mentioned that Elephant Bar Restaurants provide alcohol awareness training for its employees and said that staff was responsible for alerting management if there were any alcohol-related issues.

Mayor Sweeney closed the public hearing at 8:39 p.m.

Council Member Salinas indicated he was in support of the staff recommendation noting the City needed to develop strategies for businesses to generate revenue. Mr. Salinas mentioned he frequents downtown establishments in order to patronize local businesses, along with other young urban professionals, and he had not witnessed any problems. Mr. Salinas noted that college students relayed to him that there was nothing to do in the downtown. Mr. Salinas supported the staff recommendation with an amendment to extend live or recorded musical entertainment from 10:00 p.m. to midnight.

Council Member Quirk seconded the motion. In response to Council Member Quirk's inquiry about the Police Department foreseeing any problems with extending musical entertainment until midnight, Police Chief Urban said the trial period would be a great opportunity to evaluate all concerns. Development Services Director Rizk noted that music must be in compliance with the Noise Ordinance.

Council Member Zermefio said he was in support of the staff recommendation and the amendment to extend musical entertainment until midnight. Mr. Zermefio pointed out that there would be consequences if businesses did not abide by the regulations and commented that the

recommendations offered by Ms. Lomotan were unnecessary. In response to Mr. Zermeño's inquiry, Development Services Director Rizk indicated that if an establishment wanted to allow dancing, it would need to apply for a Conditional Use Permit which would go to the Planning Commission and noticed as a public hearing.

Council Member Peixoto was in support of the staff report. Mr. Peixoto indicated that one of Council's priorities was to revitalize downtown and he noted that by allowing, on a trial basis, happy hours, more restaurants would come into downtown and generate needed revenue. He noted that effective management was a significant factor for problematic alcohol-serving establishments.

Council Member Henson was strongly in favor of allowing, on a trial basis, happy hours, noting it would help revitalize downtown and other areas where full-service restaurants were in operation. Mr. Henson added that the temporary revisions would make the City competitive, and if missteps happened during the trial period, he suggested allowing them to work it out through training. He was in favor of allowing dancing during the trial period.

Council Member Halliday supported the staff recommendation noting that happy hours would create equity for Hayward's full-service restaurants with other cities. Ms. Halliday mentioned downtown was a good place for entertainment, and noted that establishments that provide music and dancing in other residential areas of the City needed to use common sense and comply with the Noise Ordinance. She said she was in support of the motion because this was a trial period that would provide an opportunity to see how it worked while staff developed more permanent regulations.

Council Member Quirk offered an amendment to the motion directing staff to assess a suitable regulation to allow dancing after the trial period without disrupting the restaurant business. Council Member Salinas was amenable to the motion.

Mayor Sweeney noted that he was going to vote against the motion because of his concern with happy hours. Mr. Sweeney noted that "two for one" and "all you can drink" specials did not encourage patrons to reduce the amount of drinks. He added that drinking and encouraging drinking often leads to tragedy. He noted that Council's first priority was to protect the public. He did not agree that extending happy hour opportunities would improve economic activity.

It was moved by Council Member Salinas, seconded by Council Member Quirk, and carried with Mayor Sweeney voting against, to adopt the staff recommendation with an amendment to allow until midnight, during a six-month trial period, recorded or live musical entertainment without dancing at full service restaurants, and to direct staff to assess the possibility of allowing dancing after the trial period.

Resolution 12-106, "Resolution Allowing Reduced Price Alcohol Sales from 4:00 P.M. to 9:00 P.M. and Musical Entertainment without Dancing until Midnight at Full Service Restaurants During a Six-Month Trial Period"



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Staff report submitted by Landscape Architect Koo, dated December 4, 2012, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Jones, and unanimously carried with Council Member Mendall absent, to adopt the following:

Resolution 12-183, "Resolution Approving Request of Hayward Area Recreation and Park District for Allocation of Park Dedication In-Lieu Fees for the Purpose of Rebuilding Hayward Senior Center Kitchen in Compliance with the Americans with Disabilities Act and California Health Department Codes, Building a New Dog Park at Eden Greenway, and Installing a New Pre-Fabricated Restroom Building in Compliance with the Americans with Disabilities Act at Ruus Park"

7. Acceptance and Appropriation of Gang Resistance Grant Award

Staff report submitted by Administrative Analyst III Davis, dated December 4, 2012, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Jones, and unanimously carried with Council Member Mendall absent, to adopt the following:

Resolution 12-184, "Resolution Authorizing the City Manager to Execute an Agreement with the Bureau of State and Community Corrections to Implement the 2012/14 California Gang Reduction, Intervention and Prevention Program Grant (CAL-GRIP) Award"

8. Extension up to June 26, 2013, of Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis at Full-Service Restaurants Happy Hours from 4:00 to 9:00 pm and Music until Midnight

Staff report submitted by Director of Development Services Rizk and Chief of Police Urban, dated December 4, 2012, was filed.

It was moved by Council Member Zermeño, seconded by Council Member Jones, and carried with the following vote:

AYES: Council Members Zermeño, Jones, Halliday,
Peixoto, Salinas
NOES: MAYOR Sweeney
ABSENT: Council Member Mendall
ABSTAINED: None

the school community and contact Cal State East Bay and Chabot College to publicize notices in their newspapers. Mr. Salinas suggested that the educational community and its role and contribution to the City be a topic of discussion.

Council Member Zermeño suggested the topic “Rising Sea Level and Flooding” be a part of “Disaster Preparation and Response” topic and replace “Rising Sea Level and Flooding” with “Growth.” Mr. Zermeño requested adding “Education” as a topic because Hayward is a university town. Mayor Sweeney recommended maintaining “Rising Sea Level and Flooding” as a separate topic.

Council Member Halliday suggested presenting the topics of “Climate Action Plan” and “Rising Sea Levels and Flooding” in one session, and adding a session on the topic of “Health.” Ms. Halliday commented that items under the “Economic Development” topic should be land use, vision for downtown, and businesses geared toward young people. It was noted that discussion related to the City’s appearance: building heights, density, and corridors would be addressed during the “Draft Vision and Guiding Principles” session.

Council Member Jones suggested that the Task Force would benefit from being informed on the following topics: understanding how the California State University system implements land use planning; the value of creating a healthy business environment for commercial and industrial sectors; and the importance of jobs creation. Mr. Jones noted that areas that should also be included were transit-oriented development; arts and culture; and transportation alternatives such as cycling and pedestrian-friendly options.

Mayor Sweeney spoke about the importance of protecting the industrial corridors on the west and south sides of the City.

2. Recommended Revisions to Hayward’s Alcohol Beverage Outlet Regulations

Staff report submitted by Development Service Director Rizk, dated December 4, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report. Mr. Rizk noted that staff received an email from Ms. Linda Pratt and a letter from Mr. Richard C. Ersted after the packet was published.

Council Member Zermeño favored having live music and dancing at full-service restaurants, provided all the standards were in place. In response to what Mimi’s Café would need to do to be able to provide dancing, Police Chief Urban said a dance permit and noted the Hayward Police Department would make sure that appropriate security and accountability were in place. Mr. Zermeño supported the four objectives of the proposed revisions: attract desirable alcohol-serving businesses; ensure alcohol-serving businesses operated in a safe and responsible manner; shut down undesirable businesses; and provide a funding structure to support City staff with enforcement.

Council Member Halliday appreciated staff responding to concerns raised by Council and acknowledged COMMPRE’s input. Ms. Halliday noted the City’s on-going support for responsible



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establishments while it continued to tackle grandfathered-in establishments that did not have to comply with the same requirements. Ms. Halliday expressed concern that by allowing certain alcohol uses with an administrative use permit, the public would need to appeal the Planning Director's decision in order to provide input. It was noted that dance permits were renewed on an annual basis.

Council Member Jones supported the four objectives outlined in the staff report and cautioned staff to be cognizant of fees and not discourage new establishments from coming to Hayward. Mr. Jones said well managed and responsible establishments should be given maximum flexibility to operate successfully and poorly managed businesses should be shut down. Mr. Jones said the "Deemed Approved" process was a creative method to help businesses that were below par to meet basic standards.

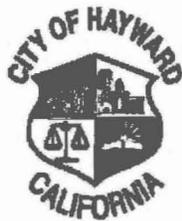
Council Member Salinas supported the four objectives outlined in the staff report and relayed the positive comments he had received about the trial period of "happy hour" alcohol sales, and was glad that there had not been an increase in police incidents due to "happy hour." Mr. Salinas favored allowing full-service restaurants to have live or recorded music until 1:00 a.m., liked that dance permits were renewed on an annual basis, and encouraged staff to view new businesses in an optimistic light. Mr. Salinas did not agree with Mr. Ersted that one member of the executive team should have the power to make a determination that there was an imminent threat to the public health, safety or welfare, but a decision should remain by the consensus of the group. There was discussion regarding nonconforming establishments and "Deemed Approved" regulations.

Council Member Peixoto expressed concern that the shift from a conditional use permit to an administrative use permit process would reduce the opportunity for public hearing input in exchange for making the process simpler for applicants. Mr. Peixoto said he mostly favored the entertainment component but looked forward to public input; wanted the regulations defined for full-service restaurant and nightclubs; and wanted to ensure that the City was capable of enforcing the proposed regulations.

Mayor Sweeney said Council members voiced valid concerns and agreed with Council Members Halliday and Peixoto about the importance of the public having the opportunity to comment on the proposed regulations. Mayor Sweeney noted that proposed regulations needed to be strengthened in terms of presentation and provide adequate public review, and funding for the enforcement needed to be identified and owned. He supported the Summary Suspension concept, but remarked that some standards were vague and suggested staff review Mr. Ersted's suggestions. Mayor Sweeney agreed with Council Member Jones that well managed, responsible and accountable business should be supported and poor managed businesses shut down.

CONSENT

Consent Item No. 8 was removed for separate vote.



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Chair Márquez asked how residents would be informed of these upcoming events and Planning Manager Patenaude said staff would work with Stonebrae to develop the most effective method to get the word out to surrounding residents.

Chair Márquez closed the Public Hearing at 8:27 p.m.

Commissioner McDermott moved the staff recommendation adding that she knew firsthand how hard hit the building industry had been and she said this action was the only appropriate step. Commissioner Loché seconded the motion.

Commissioner Lamnin asked staff if, when the neighborhood group convened, the undergrounding of utilities, the roundabout, and other traffic control measures were still needed, they would be part of the next phase of construction, and Planning Manager Patenaude said yes. He added that those topics would be what the working group looked at that year for the 2014 construction. Commissioner Lamnin asked if the Stonebrae PTA could be part of that community group and staff said yes.

The motion to recommend to City Council that it approve the Development Agreement amendment to extend the term for five years, subject to the required findings that such an amendment was consistent with the General Plan, was approved 5:0:2

AYES: Commissioners Lamnin, Loché, McDermott, Trivedi
Chair Márquez
NOES:
ABSENT: Commissioner Faria, Lavelle
ABSTAINED:

WORK SESSION

3. Recommended Revisions to Hayward's Alcohol Beverage Outlet Regulations

Development Services Director Rizk gave the report noting letters received were either attached to the staff report or distributed at the start of the meeting. Chair Márquez confirmed Mr. Rizk had received a letter distributed that evening from the Chamber of Commerce and Mr. Rizk was provided with a copy.

Chair Márquez conferred with staff regarding the appropriate time to allow public comments.

Chair Márquez opened public comments at 8:50 p.m.

Doug Ligibel, Mesa Street resident and member of the Hayward Coalition for Healthy Youth and the Downtown Leadership Group and a nationally certified rehabilitation counselor, noted that many downtown restaurants /bars either couldn't afford or couldn't get a Type 48 license from the California Department of Alcohol Beverage Control (ABC), so they operated under a Type 47 license. He noted that the City's ordinance stated that sixty of receipts must be from food for establishments operating under the Type 47 license, but pointed out that the City didn't have the resources to monitor food sales and establishments were morphing into nightclubs. He challenged the Commissioners to go downtown

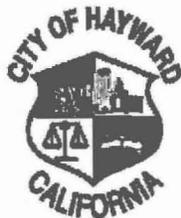
on a Friday or Saturday between 10-11 p.m. and see if these establishments were operating as restaurant/bars. Mr. Ligibel noted that Club ME was recently cited for having an open bar from 10 p.m. to midnight. He said that was problematic. He added that with a Type 48 license patrons had to be 21 and over only, but with Type 47 licenses, minors were allowed, and he asked how the minors would be removed from these establishments at 10 p.m. when they morphed into a nightclub. Mr. Ligibel asked, as leaders, what did the City wanted to happen in the downtown area: Did the City want nightclubs or were they trying to promote restaurant/bars?

Linda Pratt, Program Director of COMMPRE with business address on Second Street, brought Commissioners' attention to the letter she submitted and said she wanted to focus on the "Deemed Approved" ordinance. Ms. Pratt said the Deemed Approved ordinance was a land use tool that COMMPRE (Community Prevention of Alcohol-Related Problems) had worked with the City for many years to get approved and could be used by the City to take action when an establishment becomes problematic. Ms. Pratt pointed out that her letter listed the five performance standards, which had to do with making sure each business upheld local and state laws and didn't become a nuisance. She said that any person running a responsible business would agree to follow the performance standards and that was why no legal non-conforming use should be exempt from the standards including grocery stores and restaurants. Ms. Pratt recommended that these standards apply to all businesses and that the ordinance be considered before anything else, including the extension of the Happy Hour trial or allowing establishments to add entertainment, which were higher and more intensive uses. Ms. Pratt noted that the City had "chipped away" at its alcohol regulations and that it needed this ordinance to give police extra tools. Ms. Pratt explained that a Type 41 license allowed establishments to sell beer and wine and that the Type 47 license was problematic because restaurants could easily turn into bar or nightclub atmospheres. She said her biggest issue with that was how the youth were being protected. Ms. Pratt asked how the City would protect youth when these establishments were turning into bars and nightclubs and concluded by suggesting adding provisions to an ordinance that would protect youth.

Commissioner Lamnin asked Ms. Pratt how often an establishment with a Type 47 license had acted like a nightclub. Ms. Pratt mentioned Kumbala and noted for all of Council's discussion prior to opening, sales to minors still occurred and other law enforcement issues, which were never satisfactorily resolved. Ms. Pratt pointed out that if the City allowed entertainment in restaurants with a Type 47 license, this matter would be an on-going issue.

Commissioner Loché asked for clarification that Ms. Pratt wanted the Deemed Approved ordinance put in place now and she said yes; as a tool for police, the ordinance needed to be in place to deal with existing problematic establishments and should include a cost recovery structure.

Kim Huggett, President of Hayward Chamber of Commerce with business address on Main Street, said he was representing 30 Chamber establishments and noted this was the fifth time he had spoken on the issue. Mr. Huggett said Chamber members liked the staff report and the full-service restaurants were particularly appreciative of the Happy Hour provisions that allowed them to be competitive with neighboring communities. He said as they approach the end of the six months, the trial had been immensely successful with virtually no negative impacts involving law enforcement or social issues. Mr. Huggett pointed out that because of the Happy Hour trial period, Elephant Bar had added 12 new employees and moved from 23 in the nation to number 2. Mimi's Café had tripled its business on Wednesday nights and he said that was because of the provision that allowed full-service restaurants to have music. He asked the Commission what was so threatening if someone was allowed to play his violin at Buon Appetito. He said a rave wouldn't break out and there would not be any gun play; instead it allowed local businesses to demonstrate that Hayward could have entertainment and cuisine among its amenities.



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, December 13, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

Chair Márquez closed public comments at 9:03pm

Commissioner Lamnin asked staff if the time Hayward establishments were allowed to sell alcohol was taken into consideration when analyzing reported cases of public drunkenness. Director of Development Services Rizk asked Commissioner Lamnin if she was asking about restaurants or alcohol establishments in general and she confirmed establishments in general. Mr. Rizk said yes, the hours of operation were considered. In terms of full-service restaurants, Mr. Rizk explained that all were permitted as primary uses with a non-discretionary issuance of a business license. Mr. Rizk suggested Officer Cantrell speak on whether ABC considers hours when approving and issuing a license.

Officer Cantrell said ABC takes everything into consideration when adding conditions to licenses and he commented that there were quite a few establishments in Hayward that could only serve alcohol at certain times. He added that Hayward also had quite a few non-conforming uses that were not held to any conditions or times because they had been around for such a long time.

Commissioner Lamnin said she appreciated the thought and thoroughness of the report, the City's efforts to gather community input, and the Deemed Approved ordinance to address existing problematic establishments. She said she didn't see the danger in dancing and was confused about why a permit for dancing was required. Commissioner Lamnin pointed out that it appeared to come down to food; if the intent was to sit and eat it was a restaurant, if the intent was to drink it was a nightclub. At a nightclub, the sale of food was not required and therefore the environment was different and the impact of the alcohol was different, she said. Director of Development Services Rizk commented that was open to interpretation. He pointed out that an establishment could offer food, but hold an event or activity at which no one orders food. Mr. Rizk reiterated that the main concern was that restaurants would drift into becoming nightclubs where the main activity was drinking and entertainment. Commissioner Lamnin asked how that would happen and Mr. Rizk said either through violation of restrictions or having allowances for activities that were not consistent with a restaurant.

In terms of feedback, Commissioner Lamnin said youth should be protected and if an establishment was operating as a restaurant it should stay a restaurant. She said she agreed with prioritizing the Deemed Approved ordinance and adding in some cost recovery to pay for enforcement. She said that might be what was needed to prevent the establishment's mission from drifting.

Commissioner McDermott said the letters received had some valid concerns and said the biggest problem was addressing COMMPRE's concern. She commented that there seemed to be no way to monitor that sixty percent of sales were from food or there seemed to be no mechanism in place where sales were reviewed. Director of Development Services Rizk said monitoring could be done through ABC and the State Board of Equalization, but agreed it was a matter of resources and staffing. Commissioner McDermott asked for confirmation that businesses were supposed to submit receipts to the State that showed that food sales were at sixty percent. Mr. Rizk explained that the sixty percent threshold was set by Hayward; ABC's threshold was fifty-one percent. Officer Cantrell said any plan moving forward would include how that monitoring would take place. He added that ABC didn't conduct spot checks unless it was part of another investigation or a Hayward staff person had requested one. Office Cantrell said that the State Board of Equalization also monitored alcohol sales and tax revenues.

Commissioner McDermott asked for confirmation that most problem establishments were legal non-conforming and Officer Cantrell said that was correct; typically calls for service and critical incidences occurred at establishments that had no conditions and therefore the City had no “teeth” to shut them down. Commissioner McDermott asked if the proposed steps would address those issues and Director of Development Services said it would help and that was why the Deemed Approved status was included. He explained that the Deemed Approved status would place provisions and basic operating standards on non-conforming uses. Mr. Rizk added that the process would include administrative citations and fines; misdemeanors instead of infractions for repeated offenses; and through the City Attorney’s Office, if necessary, injunctions and court orders. Mr. Rizk concluded by reiterating that the Deemed Approved ordinance would let non-conforming businesses, potentially including restaurants and grocery stores, know that there were expectations for operation and that the City could require them to get a conditional use permit with more comprehensive conditions and restrictions in order to continue operating.

Chair Márquez asked roughly how many problematic non-conforming establishments there were and Officer Cantrell said it depended on the year, but less than a dozen. He noted that because the businesses were non-conforming, they had no ABC restrictions and that created problems for police.

Commissioner Loché said he liked the proposed ideas and thought they would solve a lot of the problems the City had been dealing with. That said, Commissioner Loché said he agreed with Ms. Pratt’s letter that the “certain uses” acceptable under an Administrative Use Permit, in lieu of a conditional use permit (CUP), needed to be specifically defined. He said a public hearing was always beneficial, but also agreed there could be uses that would not require a CUP. Director of Development Services Rizk said if the City could find an acceptable definition, it would be presented in the spring.

Commissioner Loché asked if the Deemed Approved ordinance could be approved separately because it was a significant undertaking on its own. Mr. Rizk said all changes were being brought forward as comprehensive revisions and that Council didn’t mention processing it separately, but he said that could be considered. He mentioned that in terms of cost recovery, staff envisioned the Deemed Approved regulations in place before other ordinances were approved. Mr. Rizk noted that Deemed Approved wouldn’t solve all the problems, there would still be more work to do, and that some businesses may object and appeal the determination to the Planning Commission. Mr. Rizk also commented that the summary suspension provisions might be more important because they would get to the heart of the problematic uses that pose an eminent threat to health and safety. He said that the Deemed Approved provisions could take a while depending on how many businesses objected to the status. Mr. Rizk noted that the Chief of Police strongly supported the summary suspension provisions.

Commissioner Loché asked how many full-service restaurants were problematic and asked for confirmation that restaurants would be exempt from the Deemed Approved. Director of Development Services Rizk said that was the initial recommendation, but staff was considering having full-service restaurants subject to the Deemed Approved status. Officer Cantrell said any ABC establishment could be determined as problematic, and he mentioned Kumbala, but he also pointed out that staff thought ME Restaurant and Lounge could be a big risk and they hadn’t had any problems because of lots of conditions and oversight. Officer Cantrell said any place could be a problem without any conditions in place that allowed the City to take immediate action.

Commissioner Loché said he didn’t want any establishment exempted from the Deemed Approved process. He agreed with Commissioner Lamnin that dancing should be allowed as the City moved forward saying he didn’t see it as an issue. Commissioner Loché said the sale of alcohol in itself was not the main issue; the main issue was whether or not the management was quality or poor. Citing a recent



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complaint by a resident regarding a local dry cleaner, Commissioner Loché said it didn't matter if alcohol was sold or not; a problem business was a problem business. He said the City should give businesses every opportunity to be successful and he said in terms of the staff report, it looked like the City was working toward doing that. Director of Development Services Rizk agreed that proper training and good management of a business made all the difference.

Commissioner Trivedi agreed that the proposed guidelines were thoughtful and a great starting point. He said he was very much in favor of Hayward having nice dining and entertainment options, noting there weren't a lot in the surrounding communities, and that the City could benefit by having attractions that brought people to Hayward and to the downtown area, which was so convenient and accessible by public transportation.

Commissioner Trivedi said he appreciated the feedback from the community, agreed the Deemed Approved status should apply to all ABC establishments, and asked if discussion could continue regarding Type 47 license restaurants morphing into nightclubs. Commissioner Trivedi said he had no problem with restaurants doing this and suggested issuing wristbands to patrons over 21 starting at 10:00 p.m. Regarding the percentage of sales from food versus alcohol, he said the exact percentage didn't matter, but noted the City could use the percentage as a mechanism to trigger review if an establishment became problematic. He asked staff what could trigger a review. Officer Cantrell responded that ABC would confirm a business was in compliance but only in association with another complaint they were investigating. He noted that the City had a good rapport with ABC and didn't think it would be a problem to ask ABC to check compliance, but noted the plan was to have ABC monitor compliance independently. Commissioner Trivedi said the final revisions should have a robust process by which the community and stakeholders had the ability to ask the City to review and revoke permits. Director of Development Services Rizk said that of the two regulatory bodies, the City and ABC, the City had no special permits for full-service restaurants, only business licenses, so any regulation would come from the ABC. He added that if the Council approved the Deemed Approved process, that would provide the City with a process to subject any ABC establishment to review, possible suspension and ultimately the revocation of the ABC license by ABC.

Chair Márquez commended staff and commented that she was glad that the City conducted the Happy Hour trial and that the results were positive based on comments from the Chamber of Commerce representative. She asked staff and police to confirm there were no problems associated with the Happy Hour trial. Officer Cantrell said there was no increase in the number of calls for service from locations known for frequent calls. Chair Márquez asked when the Happy Hour trial extension would end and Director of Development Services Rizk said the trial period was extended to June 26, 2013, and staff hoped to have the new regulations in place by the time the trial period ends.

Chair Márquez said she was in support of the proposed Executive Team, indicating the team could work with ABC and help with monitoring for compliance. She was also in support of on-going education being part of the ordinance and collaborating with the Chamber and any other interest parties. Chair Márquez said she shared the concerns of COMMPRE and wanted to minimize contact with youth in some of the establishments. She was in support of the dance permit because a lot of young people loved dancing and the activity drew a larger crowd; allowing the Chief of Police to decide on what businesses could have a permit would be a safeguard against problematic establishment holding a dance event.

Commissioner Lamnin asked if the square footage of an establishment could be the mitigating factor for dancing and Director of Development Services said the City was looking at that and also the number of people. Regarding full-service restaurants versus nightclubs, Commissioner Lamnin suggested making sure the kitchen remained open during business hours. She said she wasn't sure if an entertainment establishment definition was necessary, but "nightclub" should be clarified and it should be clear what the difference was between a nightclub and a restaurant. Commissioner Lamnin said she appreciated the acknowledgment that there was an over concentration of alcohol outlets in Hayward and that the City was taking steps to address that. She said she also supported the team and suspension approach. She supported including restaurants, and possibly grocery stores, under the Deemed Approved provisions. She noted that the State was tasking non-profits that benefited financially from the tobacco settlement agreement with checking if liquor stores that claimed they also sold groceries actually did so. Lastly, Commissioner Lamnin said that if the Deemed Approved recommendations moved forward, public hearings should be held to gather community input.

Chair Márquez agreed with Commissioner Lamnin's comments and suggested an oversight committee for the Task Force, but noted she understood that businesses had the right to appeal any fines or negative impacts. Director of Development Service Rizk said all provisions would have due process. Chair Márquez said that one of the letters mentioned listing problematic businesses on the City's website and she said would be important to highlight a link the public could use to notify staff of any issues they witness. Mr. Rizk told the audience and those watching that the City welcomed that input already.

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude reminded Commissioners that the meeting schedule switched to the 2nd and 4th Thursday in January and that both meetings were currently scheduled. He also reminded Commissioners to respond for the holiday party and wished everyone happy holidays.

Director of Development Services Rizk mentioned that Mr. Patenaude was retiring and that this meeting was his last official meeting. He thanked Richard for his hard work and years of service to his home town and explained that Mr. Patenaude would stick around for several months in 2013 while the City recruited a replacement. Commissioner McDermott also thanked him and congratulated Mr. Patenaude. Chair Márquez said the announcement was a surprise but was very happy for him. She said it had been a pleasure working with him.

Chair Márquez confirmed with staff that the December 20th meeting was cancelled.

5. Commissioners' Announcements, Referrals

Commissioner Trivedi also thanked Planning Manager Patenaude and wished him the best. Commissioner Trivedi wished everyone a happy and joyous holidays and a great New Year.

APPROVAL OF MINUTES

6. Minutes from November 15, 2012, approved with Commissioner McDermott abstaining and Commissioners Faria and Lavelle absent.



**MINUTES OF THE SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT
SUCCESSOR AGENCY/HOUSING AUTHORITY MEETING
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, June 18, 2013, 7:00 p.m.**

5. B Street Pavement Repair: Award of Contract

Staff report submitted by Assistant City Engineer Owusu, dated June 18, 2013, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermefio, and unanimously carried to adopt the following:

Resolution 13-083, "Resolution Increasing the Administrative Change Order Amount for the B Street Pavement Repair Project, Project No. 5107, and Awarding the Contract to Fonseca/McElroy Grinding Co., Inc."

6. For Full-Service Restaurants, Additional Extension up to December 26, 2013 of Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis Happy Hours from 4:00 to 9:00 pm and Music until Midnight

Staff report submitted by Director of Development Services Rizk, dated June 18, 2013, was filed.

It was moved by Council Member Zermefio, seconded by Council Member Salinas, and carried with Mayor Sweeney voting no to adopt the following:

Resolution 13-088, "Resolution Extending Until December 26, 2013 a Happy Hour Trial Program Allowing Reduced Price Alcohol Sales and Musical Entertainment During Specified Times at Full Service Restaurants"

7. Hayward Executive Airport Administration Building Project: Approval of Addendum, Award of Contract, Transfer of Funds, and Appropriation of Additional Funds

Staff report submitted by Assistant City Engineer Owusu, dated June 18, 2013, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Zermefio, and unanimously carried to adopt the following:

Resolution 13-084, "Resolution Approving Addendum No. 1 for the Hayward Executive Airport Administration Building Project, Project No. 6815, and Awarding the Contract to SW Allen Construction, Inc."

Resolution 13-085, "Resolution Amending Resolution 12-121, As Amended, the Budget Resolution for Capital Improvement Projects for Fiscal Year 2013, for a Transfer of Funds from the Airport Real Estate Fund (Fund 633) to the Airport Capital Improvement Fund



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION**

Council Chambers

Thursday, September 5, 2013, 7:00 p.m.

777 B Street, Hayward, CA94541

2. Proposed Revisions Related to Hayward's Alcohol Beverage Outlet Regulations and Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, including Proposed New Fees (Text Amendment Application No. PL-2013-0175); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward

Commissioner Márquez recused herself from Public Hearing Item No. 2.

Director David Rizk provided a synopsis of the staff report.

Commissioner Trivedi asked why the terms night club and cabaret were redefined in the proposed changes to the Alcohol Beverage Outlet Regulations. Director Rizk responded that the proposed change was made in order to differentiate between establishments which have live entertainment and establishments which do not have live entertainment because there are specific issues and concerns with establishments that do provide live entertainment. Director Rizk noted for Commissioner Trivedi that the previous definition of a night club was worded vaguely in the original regulation. He specifically pointed out the definition of "Night club" under Section 10-1.3500 that the current regulations indicated that a "Night Club" made reference to alcoholic beverage sales establishments provide dancing or live entertainment between the hours of 6:00 p.m. to 2:00 a.m.

Commissioner Trivedi commented if cabarets would now serve to be a catchall phrase which could include any establishment where music is played; this could consist of anything ranging from exotic dances, a rock concert, a disc jockey playing, or a theater production.

Director Rizk responded that a cabaret would be any establishment where live entertainment is provided and this could include a variety of things. He indicated that staff is aware of this, and thus staff is making the recommendation that full service restaurants be allowed to have live music without a cabaret permit or license.

Director Rizk clarified for Commissioner Trivedi that live music at licensed cabarets would be unlimited; however, live entertainment at establishments with a cabaret or dance permit for a single event would be limited to having entertainment up to four times a year, every three months.

Commissioner Trivedi raised a question about whether the recommended restriction on issuing letters of public convenience and necessity restrict the opening of a new establishment in an over-concentrated area. Director Rizk stated that such restriction would prohibit new liquor stores and bars from opening in over-concentrated areas. Director Rizk noted that the recommendation was consistent with a policy adopted by the City Council in 2006 as Resolution No. 06-005.

In response to Commissioner Trivedi's question about a potential business owner wanting to open up either a bar or a restaurant in the downtown area, Director Rizk highlighted that the business could not be a liquor store or a bar. He added that this establishment could be another type of alcohol serving establishment; however, the business would have to obtain a conditional use permit. In such a

circumstance, the City would issue a letter of public convenience and necessity to ABC for the approval of the permit.

Commissioner Trivedi asked staff how it was determined that a response of five officers to a scene would constitute a critical incident and wondered if staff had a guideline that contained this definition.

Lieutenant Martinez, a representative of the Hayward Police Department, stated that it is the Police Department's practice that if five officers are dispatched to a call for service, then this may be indicative that things may have gotten out of hand with a particular incident. He noted that a normal response for disturbance related to loud music or a domestic violence call for service typically would get two officers dispatched to the scene. He shared that if there is a presence of a large group where the loud music complaint occurred, providing the example of a party of 100 people at a residence or at an establishment, then dispatch would send at least three officers due to officer safety reasons. Lieutenant Martinez expressed that the response of five officers to a critical incident was an adequate number.

In regards to the assessment of fees charged for the occurrence of a critical incident, Commissioner Trivedi questioned staff how is the determination made as to who will bear responsibility and also, how can this responsibility be shared between the responsible party and the ABC licensee.

Director Rizk indicated that there would be a review of the facts of the case and this would include addressing what caused the incident. He noted that staff felt strongly about the licensees bearing some of the responsibility; the review would consist of evaluating whether the licensee was responsible with alcohol service and whether security checks were done at the establishment. He noted that in addition to the ABC licensee being responsible for the critical incident, there may be additional responsibility to another party and this was emphasized by the public through comments received at the Community Meeting held on July 29, 2013.

Commissioner Trivedi noted that this component could allow the perpetrator of a critical incident to bear responsibility. He further expressed that although he understood the need for flexibility in the regulations in determining who will hold responsibility, based on some comments of the owners of alcohol establishments, there was concern if these businesses would be billed for whatever critical incident took place even if an establishment was not negligent and did provide security.

Assistant City Attorney Conneely commented that there would be a process by which an assessment and allocation of responsibility would be conducted; noting that there could be circumstances where the licensee did everything appropriate however a critical incident still occurred. She added that in this case, it might not be suitable to fine the licensee because the City wants to encourage the licensee to make calls for service to the Police Department during the occurrence of an incident; the City does not want to discourage the licensee from making the calls for service out of concern that there may be a possibility of imposition of a large fine.

Lieutenant Martinez commented that the Police Department would have to justify the response of five officers at the scene and they would have to prove that five officers were warranted for the critical incident. He provided the example of some patrons who have left an establishment and there was a drive-by shooting that occurred thereafter in the parking lot next to the establishment which required a critical incident response. He highlighted that in this scenario, the establishment would not be fined for this critical incident response.

Commissioner Trivedi expressed that it was important to give the alcohol establishment owners some type of recourse which they can pursue, so that they are not irrevocably held responsible.



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Lieutenant Martinez added that if during their investigation, staff discovered that there was an over-serving of alcohol to the patrons who were involved in the critical incident, then this would be a circumstance where staff could recoup some of the cost from the establishment.

Director Rizk noted for Commissioner Trivedi that staff added the additional language to the regulation so that staff could assess each incident individually.

Commissioner Trivedi asked staff to clarify what constituted an “imminent threat to the public” which was the language presented in the new Summary Suspension provisions. Lieutenant Martinez said one example of an imminent threat could be if there was continuous behavior by a licensee where the establishment was not performing security checks, thereby resulting in a critical incident. He noted that situations such as this would be evaluated by staff on a case by case basis. Director Rizk also gave another example of a fight involving fifty people occurring at an establishment and if additional people came to the establishment to join the fight; this could serve as an example to an imminent threat to the public.

Assistant City Attorney Conneely added that these particular provisions were adapted from the ordinances currently in place with the Cities of San Jose and San Francisco; furthermore, these ordinances have been used in the Summary Suspension Procedures for unruly incidents where there was gunplay and fighting on a regular basis, which resulted in establishments being shut down. The intent of the provision is to address the imminent threat to the public within that thirty day or shorter timeframe, if the problem cannot be corrected within the thirty days because that is the outside maximum, then a Summary Suspension can be placed. Then the City would have the opportunity to move forward and pursue other legal remedies, such as an injunction seeking to close the establishment after the thirty days.

In response to Commissioner McDermott’s question, Assistant City Attorney Conneely indicated that the only component of the Ordinance that has been tested in the court are the Deemed Approved provisions.

Director Rizk noted that a specific timeframe has not yet been established for when the fees will be due nor is there any specific language in the proposed regulation addressing this; he shared that the City does collections on overdue fines and penalties on an annual basis. He conjectured that collections on these fees could be done on an annual basis, after which the City would move forward to begin the process to revoke the Deemed Approved status or the permit if the fees were unpaid.

Director Rizk confirmed for Commissioner McDermott that the downtown area is considered to have an over-concentration of ABC licenses and confirmed that proposed new liquor stores or bars would be prohibited from doing business in the downtown area due to the overconcentration of these license types.

Commissioner Loché acknowledged that staff put in a lot of effort into this item and commended their hard work.

In response to Commissioner Loché’s question, Director Rizk stated that even though some establishments may not need the higher level of compliance checks, they may still end up paying the higher fees.

Lt. Martinez responded that it would be difficult to gauge this and that staff would have to go back and check prior history and delineate each alcohol establishment. He indicated that the fees are related to cost recovery only and he also confirmed for Commissioner Loché that a lot of this work being done is proactive work.

Assistant City Attorney Conneely commented that the Summary Suspension process would not last more than thirty days and that the appeals process could be for a longer period of time than the thirty days. She noted for Commissioner Loché that if the licensee is going to pursue an appeals process, then staff would try to expedite the meetings of the Planning Commission and the City Council. She noted that the appeals process is a new trial program which the City is adopting. Right now, staff does not anticipate that any particular establishment would be closed longer than thirty days, administratively. Once the thirty days are up, whether the appeals have been completed or not, the establishment will either reopen or the City will have to take further action to close them down.

Commissioner Loché mentioned that the enhanced noticing requirements were a great addition.

Director Rizk confirmed for Commissioner Lavelle that in order to remove ambiguity, the word “karaoke” could be included in the definition of cabaret.

Assistant City Attorney Conneely clarified for Commissioner Lavelle that the proposed fees are cost recovery so they are not considered a tax. She stated that the proposed fees are annual fees which are based on the estimated visits that the Hayward Police Department will make to the establishment(s); furthermore, she noted that Proposition 26 and Proposition 218 do not require exactitude and instead, they require a reasonable estimate of what the actual costs are to the jurisdiction and that is what staff has used to determine these fees.

Commissioner Lavelle indicated that she did not think that it was fair that some 7-11 establishments could get two visits per year and they would be expected to pay \$1120 while other establishments such as Walgreens that may have a **problem pay** only \$280 per year.

Commissioner Lamnin said she appreciated the hard work done by staff on this item, the community outreach that was done and the community meetings that were held. Although she understood the need for cost recovery, Commissioner Lamnin said she is unsure if we are spreading out the burden in a fair way as it relates to the annual fees.

Director Rizk was agreeable to Commissioner Lamnin’s recommendation that staff could add the word “excessive” to subsection f of Section 6-2.27 so it reads “no person under the influence of excessive intoxicating liquor...”, if the Commission directed staff to do so.

Director Rizk clarified for Commissioner Trivedi that the fees of \$750, \$1500, and \$2500 are fines for violating the regulations.

Commissioner McDermott commented that the wording in Section 10-1.2765 addressing “Informal Procedure” was unclear. Director Rizk suggested that the following change could be made: “The Chief will attempt to discuss with the licensee...to obtain the licensee’s consent for voluntary compliance measures...” Commissioner McDermott said she was agreeable to this modification.

Chair Faria opened up the Public Hearing at 9:35 p.m.



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Kim Huggett, President of the Hayward Chamber of Commerce, encouraged the Planning Commission to honor the hard work that has been put in by staff, the community, and the business community over the last two years. He discussed that the proposed ordinance will set the happy hour timeframe from 4:00 p.m. to 9:00 p.m. which was an appropriate accommodation. He noted that over the sixteen month trial period so far, the Police Department concluded that there is no noticeable increase in service calls; he asked that the Planning Commission take that into consideration and to recognize that the business community is ready to move ahead.

Commissioner Lamnin asked Chamber of Commerce President Huggett if the Chamber reached out to its members regarding the proposed fees. Mr. Huggett stated that no chamber will endorse a fee, and there was a concern about that. He added that there is a sense that the Chamber members would like the offenders to carry the weight. He indicated that the Chamber members also recognized that they want to be economically competitive with other communities, especially those that are allowing happy hour and live music.

Speaker Ravi Bhatnagar filled out a speaker card but was not present in the audience to speak.

Richard Ersted, owner of property located in the Hayward hills, commended staff on doing an outstanding job on this item. He shared that staff studied a number of other jurisdictions and commended that the staff report and each of the ordinances are well written. He had a couple of concerns which the Planning Commission has already addressed. He spoke about the location of his property which is two doors down from a legal non-conforming use and shared an incident that occurred at this establishment.

Linda Pratt, a member of CommPre and member of the Hayward Coalition for Healthy Youth (HCYC), thanked staff for their hard work. She appreciated the numerous community meetings that were held that allowed so much input by the community. She indicated that the organizations which she is representing are supportive of a majority of the ordinances' language, including the performance standards and the proactive enforcement which the cost recovery fees will cover. She shared that the critical incident fees are for the outliers that are really draining City services and that we want to prevent that from happening, which will be addressed by the proactive enforcement. She commented that five officers responding to a call for service sets the number too high for the required number of officers present to classify a situation as a critical incident. She asked if the Hayward Area Historical Society's banquet hall permit that was approved at the current meeting would be subject to the same Alcohol Outlet Beverage Regulations.

Lieutenant Martinez confirmed that the banquet hall would be subjected to the same regulations.

Chuck Horner, a pastor in Hayward, thanked staff for all their time and effort that was put into the project; especially the Deemed Approved provisions which he reviewed as a member of the Hayward Coalition for Healthy Youth. He noted that the City doesn't need more night clubs pretending to be restaurants nor does it need more distribution points for alcohol. He commented that this is not a healthy way to raise funds in our community as there are human costs to this. He said that the annual fees are not imposed on alcohol establishments as they can be viewed as an investment in our community. Mr. Horner said that currently the Police Department does not have the resources to do sting operations and shoulder taps. He stressed that it was cheaper to make an investment in prevention. He said that we need to equip our officers with all the tools that they need. He expressed that it is not fair that complying

restaurants like *Famous Dave's* have to compete with grandfathered legal non-conforming businesses that create issues and raise a stigma for the City.

Carolyn Travels, resident of Hayward, expressed that she is a forty-one year resident of Hayward and has lived in the City for all of her adult life. She said that she sees children and adults walking around all day and all night long that are under the influence of alcohol and/or drugs that appear to be potentially dangerous. She does not feel safe to walk out of her home after 7 p.m. at night. She noted that seeing this breaks her heart and makes her sad. She pointed out that alcohol is a debilitating drug and commented that the five hour long happy hour provision is excessive. She was astounded at the number of alcohol selling establishments located in Hayward. She stated that the profits earned from alcohol sales by alcohol establishments would make them capable of paying the proposed annual fees. She said that we do not have the police force required to deal with all the problems as the Police Department lacks enough funding. Ms. Travels indicated that she recently did a ride-along with one of the officers and expressed that the Police Department needs whatever resources necessary to handle the crime and the problems evident in the City. She requested that the Planning Commission not enable more alcohol abuse in the City as this is very detrimental to the health of the City, our families and children.

Chair Faria closed the Public Hearing at 9:53pm.

Commissioner Trivedi expressed his support for a majority of the recommendations, especially the the Deemed Approved provisions and the greater oversight of alcohol establishments. He commented that a number of people have voiced concern and he felt that this new ordinance will allow greater oversight and enforcement so that these establishments don't serve minors or let their patrons get out of hand. He stated that at some point in the future, staff should assess fees based on the number violations over a period of time, raising the costs for the establishments that violate the proposed regulations more frequently. He noted that this would create an incentive to comply with the regulations. Commissioner Trivedi said that he is supportive of restrictions being placed on census tracts that are already over-concentrated with ABC licenses; however, he would like to see some type of an exception for cabarets in the downtown area as these provide live entertainment and these are not alcohol serving establishments exclusively. He underscored that some establishments that have live entertainment provide the community with cultural enrichment and these are the types of businesses that he would like to see in the downtown, preserving the downtown as an entertainment area. Commissioner Trivedi indicated that the intent behind the five hour long happy hour provision is to have an option in selecting a block of time within these hours.

Commissioner Lamnin echoed the happy hour and live entertainment considerations that Commissioner Trivedi stated. She suggested that staff consider having a flat fee of \$400 fee for all alcohol establishments. She stated that this fee is slightly higher than the immediate cost recovery and thus some establishments will have to pay a little more, and others will pay less. Commissioner Lamnin noted that establishments that have a critical incident happen or if they are a problem business, should bear the cost of violating the regulations by paying higher fees. This would also give problem establishments the opportunity to become a good business through compliance with regulations and could be incentivized reducing the fees once compliance was achieved.

Commissioner Lamnin commented on the fairly low attendance at the Planning Commission meeting. She recommended that staff and the Chamber of Commerce review the outreach that is done to get the community and affected businesses engaged as this item comes before the City Council soon.

Commissioner Lavelle recommended language changes be made to Section 6-2.25 on page 11 of the report which states that "Any and all video tape recordings..." be modified to use "video recordings."



**MINUTES OF THE REGULAR MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, September 5, 2013, 7:00 p.m.
777 B Street, Hayward, CA94541**

She also recommended that language changes be made to Section 6-2.27 on page 13 by removing the word “immoral.” Commissioner Lavelle commented that the City is not in the business of judging what people’s morals are and that by modifying this language, the intent of the language remains the same.

Commissioner Lavelle supported the goals of the proposed ordinance and she commented that the fees should be reviewed and perhaps adjusted in the future. She expressed that improved efforts be made to notice the affected establishments, suggesting that staff send notices on colored postcards and that the notice be available in Spanish as well.

Commissioner Loché commented that the City will be greatly benefited by what is being proposed with the Alcohol Outlet Beverage Regulations. He stated that his concern about the critical incident level involving five police officers was clarified by the Police Department representative. He noted that although the appeal process with the Summary Suspension seems odd, his concerns have been addressed.

Commissioner Loché indicated that he is not entirely comfortable with the annual fees that have been discussed of \$280 and \$1120. He noted that although he agreed with having the annual fees in place, he expressed that the levels should be leaned towards businesses that require more attention by the police or businesses that violate the Alcohol Beverage Outlet Regulations. Commissioner Loché urged that staff and the City Council review the fees and determine if there are ways to balance the fees out in order to mitigate the higher fees. He stated that the Deemed Approved provisions are much needed in the City and indicated his support for the item to be heard by the City Council.

Commissioner McDermott echoed the same concern as Commissioner Lavelle about having a better methodology in place for noticing. She said that it would be frustrating for affected establishments to be surprised with a fee being imposed that they were not aware of. She said that she is supportive of the performance standards. She requested that staff conduct additional outreach to the business community before this item is heard before the City Council.

Director Rizk stated that staff can send out another colored postcard, have this available in Spanish, and specifically list on the notice the two proposed fees and also identify which types of establishments would be subject to this prior to the public hearing on this at the City Council meeting. He commented that \$1120 amounts to \$21 per week for establishments. He noted that every year Council adopts a new fee schedule and thus every year these fees will also be reviewed and/or adjusted. Director Rizk commented that the collection of the fees is done annually. He appreciated the input and comments about rewarding alcohol establishments with ABC licenses exhibiting compliance with regulations and potentially requiring the noncompliant establishments to have to pay the higher fees.

Commissioner Lamnin disclosed that she met with the Hayward Coalition for Healthy Youth prior to the Planning Commission meeting and she echoed Commissioner Lavelle’s comments about the immoral language being removed.

Commissioner Trivedi moved the staff recommendation, seconded by Commissioner Lamnin, with the following changes: modify the language by adding “karaoke” to the definition of cabaret; to replace language in Section 6-2.25 from “video tape recordings” to “video recordings” ; remove the word

“immoral” from Section 6-2.27; improve the methodology of noticing to the affected businesses by sending color postcard notices and sending notices in Spanish and English; reevaluate the alcoholic beverage outlet fees; grant exceptions for cabarets in the downtown area; and include transparency in the appeals process and give recourse to establishments that are shut down.

Chair Faria commented that she was supportive of the proposed changes to the regulation and was also supportive of providing the Police Department with the tools necessary to keep our City safe. She expressed that violators of the proposed regulations should carry the responsibility for a majority of the fees related to cost recovery. She inquired if it would be possible to get an annual report that would display what the outcome of implementing the proposed regulations are. Commissioner Faria commented that she met with the Hayward Coalition for Healthy Youth and also met with Mr. Ersted about this item.

With Commissioner Márquez absent, it was moved by Commissioner Trivedi, seconded by Commissioner Lamnin, and carried to find that the Planning Commission recommends that the City Council adopts the Negative Declaration/Initial Study and approves the proposed revisions to the City’s Alcohol Beverage Outlet Regulations, Zoning Ordinance definitions, various Zoning District regulations related to land uses, new regulations related to Cabarets and Dances, and related new fees.

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

**NOTICE OF SEPTEMBER 24, 2013
CITY COUNCIL PUBLIC HEARING**

**PROPOSED REVISIONS TO HAYWARD'S ALCOHOL
BEVERAGE OUTLET REGULATIONS, NEW
CABARET/DANCE REGULATIONS AND NEW FEES**

Proposed revisions to alcohol beverage outlet regulations include:

- Revisions to definitions;
- New security requirements and standards for dancing or entertainment establishments;
- New basic operating standards and procedures for all alcohol establishments, including nonconforming uses ("Deemed Approved" provisions);
- New emergency action procedures to abate imminent threats to public health, safety or welfare ("Summary Suspension" provisions)
- Codifying 'trial period' provisions to allow happy hours from 4 to 9 pm and live music until midnight at full-service restaurants; and
- Enhanced cumulative remedy provisions.

Proposed new regulations for cabarets/dances for establishments that involve dancing and/or live entertainment include:

- New definitions;
- New licensing procedures and process; and
- New operating standards.

Proposed new fees, including annual cost-recovery fees of:

- \$280 for full-service restaurants, retail stores devoting no more than 5% of their floor area to alcohol, and wine shops; and
- \$1,120 for all other establishments that sell alcohol.

Also, the City has prepared a Negative Declaration/Initial Study, which concludes that the project will not have a significant negative impact on the environment. Copies of the staff report (beginning Friday afternoon, September 20) and Negative Declaration/Initial Study may be reviewed at the Main City Library, 835 C Street, or the Weekes Branch, 27300 Patrick Avenue, or at the Hayward Planning Division, 777 B Street, Hayward, and on the City's website at www.hayward-ca.gov.

**HAYWARD CITY COUNCIL PUBLIC HEARING
SEPTEMBER 24, 2013 at 7:00 PM**

The City Council public hearing will be held at Hayward City Hall in the Council Chamber, 2nd Floor, 777 B Street, Hayward, CA 94541.

We welcome your input. If you have any questions, or would like additional information regarding these proposed revisions, please contact:

David Rizk, AICP
Director of Development Services
777 "B" Street
Hayward, CA 94541
Phone: (510) 583-4004
Fax: (510) 583-3649
e-mail: david.rizk@hayward-ca.gov



TDD: (510) 247-3340
For disabilities assistance, call
48 hours in advance: (510) 583-4200



CITY OF
HAYWARD
HEART OF THE BAY

Planning Division
777 B Street, Hayward CA 94541-5007

**IMPORTANT OFFICIAL NOTICE
CITY OF HAYWARD**

Reference:

Negative Declaration and Related Proposed Revisions to Hayward's Alcohol Beverage Outlet Regulations, New Regulations for Cabarets and Dances, and New Fees (Text Amendment Application No. PL-2013-0175) City of Hayward (Applicant)

Si necesita esta información en español, por favor llame al teléfono 510-583-4400.

**IMPORTANT OFFICIAL NOTICE
CITY OF HAYWARD**

September 16, 2013

HAYWARD CITY COUNCIL

RESOLUTION NO. 06-005

Introduced by Council Member Quirk

RESOLUTION REGARDING LETTERS OF PUBLIC
CONVENIENCE AND NECESSITY TO THE CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

WHEREAS, the California Department of Alcoholic Beverage Control requires cities to make a finding that the sale of alcoholic beverages would serve the public convenience and necessity when the maximum number of alcoholic beverage licenses considered acceptable by ABC standards has been exceeded within a census tract; and

WHEREAS, data establishes that there are a sufficient number of bars and liquor stores, as those terms are defined in the Hayward Zoning Ordinance, to serve the public in the City of Hayward in census tracts where an over-concentration of ABC licenses exists.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses.

IN COUNCIL, HAYWARD, CALIFORNIA January 17, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Jimnez, Quirk, Ward, Dowling
MAYOR: Cooper

NOES: COUNCIL MEMBERS: Halliday, Henson

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST: Angelina Reyes
City Clerk of the City of Hayward

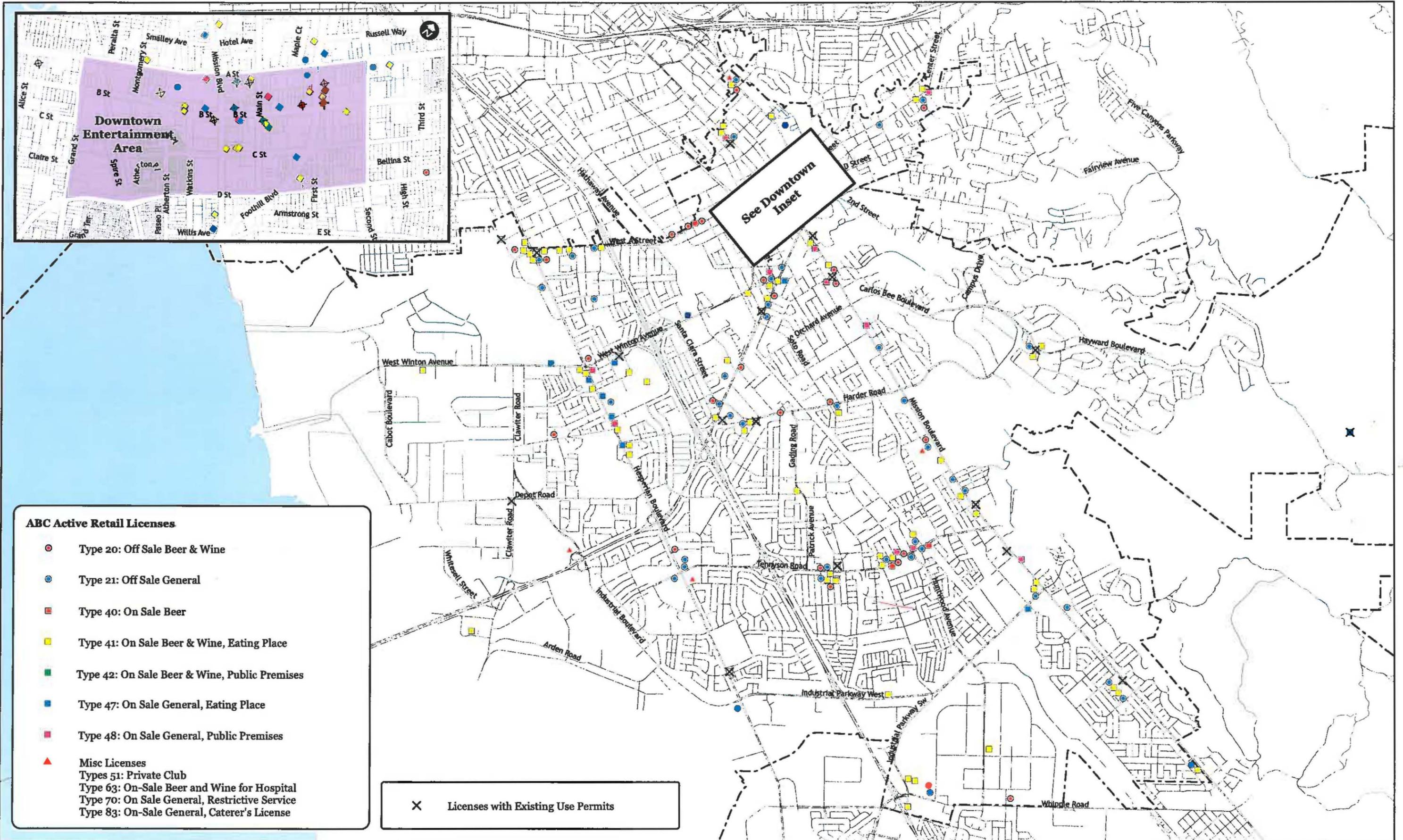
APPROVED AS TO FORM:

M. O. Johnson
City Attorney of the City of Hayward



ABC Retail Licenses in Hayward

0 0.25 0.5 1 Miles



ABC Active Retail Licenses

- Type 20: Off Sale Beer & Wine
- Type 21: Off Sale General
- Type 40: On Sale Beer
- Type 41: On Sale Beer & Wine, Eating Place
- Type 42: On Sale Beer & Wine, Public Premises
- Type 47: On Sale General, Eating Place
- Type 48: On Sale General, Public Premises
- ▲ Misc Licenses
 - Types 51: Private Club
 - Type 63: On-Sale Beer and Wine for Hospital
 - Type 70: On Sale General, Restrictive Service
 - Type 83: On-Sale General, Caterer's License

X Licenses with Existing Use Permits

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
20	7 ELEVEN 2231 18177A	130 HARDER RD	\$ 1,120			
20	7 ELEVEN 2232 14175	24883 SANTA CLARA ST	\$ 1,120			
20	7 ELEVEN 2234 14186	375 W TENNYSON RD	\$ 1,120			
20	7 ELEVEN 2234 18825G	339 JACKSON ST	\$ 1,120			
20	7 ELEVEN STORE #2366-18348D	24476 MISSION BLVD	\$ 1,120			
20	7 ELEVEN STORE 2234 14182G	2175 ALDENGATE WY	\$ 1,120			
20	BUFFALO BILLS BREWERY	1082 B ST	\$ 280	CUP 95-170-01		
20	CHAVEZ SUPERMARKET	1157 W TENNYSON RD	\$ 280		YES	
20	CHAVEZ SUPERMARKET	24601 MISSION BLVD	\$ 280		YES	
20	CORE MARK	31300 MEDALLION DR	\$ 280		YES	
20	CROSSROADS WORLD MARKET	230 JACKSON ST	\$ 280	CUP 2004-0176		
20	DOC'S WINE SHOP	22570 FOOTHILL BLVD	\$ 280	CUP 2012-0174		
20	DOLLAR TREE 1264	20800 HESPERIAN BLVD	\$ 280		YES	
20	EL CHARRO MARKET	480 W TENNYSON RD	\$ 1,120			
20	FRESH & EASY NEIGHBORHOOD MARKET STORE 1307	19691 HESPERIAN BLVD	\$ 280		YES	
20	GROCERY OUTLET	22660 VERMONT AVE	\$ 280		YES	
20	HARDER ROAD BEACON	392 W HARDER RD	\$ 1,120	CUP 2003-0497		
20	HAYWARD PRODUCE MARKET	370 WINTON AVE	\$ 280		YES	
20	LA ESPERANZA TRI COLOR	340 A ST	\$ 280			
20	LA GRANDE MARKET	22766 3RD ST	\$ 1,120			
20	LA MEXICANA TORTILLA FACTORY INC	236 A ST	\$ 1,120			
20	LA RAZA DELI MARKET	24495 MOHR DR	\$ 1,120			
20	LA TIENDITA MARKET	112 A ST	\$ 1,120			
20	MI PUEBLO FOOD CENTER 11	187 W HARDER RD	\$ 280		YES	
20	QUIK STOP MARKET 127	505 A ST	\$ 1,120	CUP 83-116		
20	TARGET T1472	2499 WHIPPLE RD	\$ 280		YES	
20	WALGREENS 02306	1138 W TENNYSON RD	\$ 280			
20	WALGREENS 02401	21463 FOOTHILL BLVD	\$ 280			
20	WALGREENS 04659	164 W JACKSON ST	\$ 280			
20	WALGREENS 05310	26781 MISSION BLVD	\$ 280			
20	WALGREENS 06502	23958 HESPERIAN BLVD	\$ 280			31

ABC License Type 20: OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
21	7 STAR FOOD & LIQUOR	29633 MISSION BLVD	\$ 1,120			
21	B ST LIQUOR	1681 B ST	\$ 1,120			
21	BOBBY DISCOUNT LIQUORS	24895 SANTA CLARA ST	\$ 1,120			
21	BONFARE MARKET 23	26775 HAYWARD BLVD	\$ 1,120	CUP 93-179		
21	BRUNETTE LIQUORS	25516 MISSION BLVD	\$ 1,120			
21	COSTCO WHOLESALE 1061	28505 HESPERIAN BLVD	\$ 280		YES	
21	COUNTRY LIQUORS	201 JACKSON ST	\$ 1,120			
21	CVS PHARMACY STORE 816	22501 FOOTHILL BLVD	\$ 280		YES	
21	CVS PHARMACY STORE 9622	243 W JACKSON ST	\$ 280		YES	
21	EDENS LIQUOR & DELI	1086 A ST	\$ 1,120			
21	FOOD MAXX 406	27300 HESPERIAN BLVD	\$ 280		YES	
21	FOOD SOURCE 710	26905 MISSION BLVD, STE D	\$ 280		YES	
21	FOOTHILL FOOD & LIQUOR	21460 FOOTHILL BLVD	\$ 1,120			
21	FRESH & EASY	31049 MISSION BLVD	\$ 280		YES	
21	GNG FOOD & LIQUORS	583 W TENNYSON RD	\$ 1,120			
21	GROCERY OUTLET	426 W HARDER RD	\$ 280		YES	
21	HAYWARD FOOD & LIQUOR	28260 HESPERIAN BLVD	\$ 1,120	CUP 93-88		
21	HAYWARD LIQUOR & GROCERIES	849 SYCAMORE AVE	\$ 1,120			
21	HAYWARD SUPER MARKET	22624 BLACKWOOD AVE	\$ 1,120			
21	JACKSON LIQUOR	566 JACKSON ST	\$ 1,120			
21	JOES MODEL LIQUOR 1	430 W A ST	\$ 1,120			
21	KARAVAN LIQOURS	27445 HESPERIAN BLVD	\$ 1,120			
21	KMART 4457	26231 MISSION BLVD	\$ 280		YES	
21	L & M LIQUOR STORE THE	22610 VERMONT ST	\$ 1,120			
21	LUCKYS 715	22555 MISSION BLVD	\$ 280		YES	
21	LUCKYS 716	25151 SANTA CLARA ST	\$ 280		YES	
21	MAC D LIQUORS	153 W HARDER RD	\$ 1,120			
21	MEXICO SUPER	32575 MISSION BLVD	\$ 280		YES	
21	MI PUEBLO FOOD CENTER	20812 HESPERIAN BLVD	\$ 280		YES	
21	NSB LIQUOR & GROCERY	27826 MISSION BLVD	\$ 1,120			
21	PERRYS LIQUORS	27220 HESPERIAN BLVD	\$ 1,120			
21	R & H LIQUORS	1201 A ST	\$ 1,120			
21	RITE AID STORE 5920	31091 MISSION BLVD	\$ 280		YES	
21	RITE AID STORE 5921	24536 HESPERIAN BLVD	\$ 280		YES	
21	SAFEWAY INC 797	271 JACKSON ST	\$ 280		YES	
21	SAFEWAY INC 971	22280 FOOTHILL BLVD	\$ 280		YES	
21	SHAMROCK LIQUORS	396 WINTON AVE	\$ 1,120			
21	SHOP N SAVE	21400 ROYAL AVE	\$ 1,120			
21	SMART & FINAL STORES	1094 SUEIRRO ST	\$ 280		YES	
21	STEVES LIQUORS	1145 W TENNYSON RD	\$ 1,120			
21	STOP BY MARKET & LIQUOR	21995 MISSION BLVD	\$ 1,120	CUP 98-160-19		
21	STOP N SAVE 106	338 W TENNYSON RD	\$ 1,120			

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
21	SUPER STOP	551 GARIN AVE	\$ 1,120			
21	SUPERWAY MARKET	121 W TENNYSON RD	\$ 1,120			
21	T N T LIQUOR	27575 MISSION BLVD	\$ 1,120			
21	TARGET T1472	2499 WHIPPLE RD	See License Type 20		YES	
21	TENNYSON LIQUOR & DELI	1190 W TENNYSON RD	\$ 1,120			
21	ZACKS MARKET	50 W TENNYSON RD	\$ 1,120			48
ABC License Type 21: OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.						
40	CHALK IT UP	22540 FOOTHILL BLVD	\$ 1,120	CUP 2010-0046		
40	LA CASITA RESTAURANT	320 A ST	\$ 1,120			
40	NORAEBANG BAR	21995 MISSION BLVD	\$ 1,120			
40	SUPERWAY KITCHEN	44 W TENNYSON RD	\$ 1,120			
40	TAQUERIA ARANDAS	512 W TENNYSON RD	\$ 1,120			5
ABC License Type 40: ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.						

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
41		948 C ST	\$ 280			
41	AKAIHANA JAPANESE RESTAURANT	22560 FOOTHILL BLVD	\$ 280			
41	ANNAS COFFEE SHOP	444 JACKSON ST	\$ 280			
41	BAY CITY BISTRO	3979 TRUST WAY	\$ 280			
41	BRONCO BILLS PIZZA PALACE	26775 HAYWARD BLVD	\$ 280			
41	BUDDYS BITES AND BREWS	24297 HESPERIAN BLVD	\$ 280			
41	CAFE VASALIKI	25202 HESPERIAN BLVD	\$ 280			
41	CAFFE CARIBE	26775 HAYWARD BLVD	\$ 280			
41	CARMEN & FAMILY	692 W A ST	\$ 280			
41	CHINA BEST RESTAURANT	26775 HAYWARD BLVD	\$ 280			
41	CHUCK E CHEESES 363	24039 HESPERIAN BLVD	\$ 280			
41	CITY BISTRO	30162 INDUSTRIAL PKWY SW	\$ 280			
41	COCOS 1116	20413 HESPERIAN BLVD	\$ 280			
41	D & K RESTAURANT	320 JACKSON ST	\$ 280			
41	EL DORADO RESTAURANT	384-386 WINTON AVE	\$ 280			
41	EL TAQUITO RESTAURANT	22354 MISSION BLVD	\$ 280			
41	EL TAQUITO RESTAURANT 2	215 W WINTON AVE	\$ 280			
41	EMIL VILLAS	24047 MISSION BLVD	\$ 280			
41	FAVORITE INDIAN RESTAURANT	1235 A ST	\$ 280			
41	FAVORITE INDIAN RESTAURANT	24052 MISSION BLVD	\$ 280	CUP 83-157		
41	FU ZHOU KITCHEN	1687 INDUSTRIAL PARKWAY	\$ 280			
41	GRAND TAIPEI	25036 HESPERIAN BLVD	\$ 280			
41	GREAT RIVER RESTAURANT	22218 FOOTHILL BLVD	\$ 280			
41	HANFORD HOTELS	20777 HESPERIAN BLVD	\$ 280			
41	HONG KONG SEAFOOD RESTAURANT	661 W TENNYSON RD	\$ 280			
41	JAYS FISH & CHIPS	21439 FOOTHILL BLVD	\$ 280			
41	JULIANS BBQ BEER & WINE	22532 FOOTHILL BLVD	\$ 280			
41	KOREA HOUSE	702 A ST	\$ 280			
41	LA PINATA 1	904 ROSE ST	\$ 280			
41	LOS COMPADRES RESTAURANT	944 C ST	\$ 280			
41	LOS DOS HERMANOS	28257 MISSION BLVD	\$ 280			
41	LOS PERICOS GRILLED	792 B ST	\$ 280			
41	LOS PLANES DE RENDEROS	22841 MISSION BLVD	\$ 280			
41	MANILA GARDEN RESTAURANT	20500 HESPERIAN BLVD	\$ 280	CUP 2004-0225		
41	MARIAS RESTAURANT	27973 LEIDIG CT	\$ 280			
41	MIA PIZZA & TAQUERIA	26712 GADING RD, STE A & B	\$ 280			
41	MOUNTAIN MIKE PIZZA	31083 MISSION BLVD	\$ 280			
41	MOUNTAIN MIKES PIZZA	410 W HARDER RD	\$ 280			
41	NAKED FISH JAPANESE CUISINE	24703 AMADOR ST	\$ 280			
41	NEUMANALI WINES INC	742 B ST	\$ 280	CUP 2002-0106		
41	NEW YORK PIZZA	665 W TENNYSON RD	\$ 280			
41	PAYATHAI RESTAURANT	1149 B ST	\$ 280			

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
41	PEPES TAQUERIA II	27915 MISSION BLVD	\$ 280			
41	PIZZA HUT	1199 WEST A ST	\$ 280			
41	PIZZA ONE STOP	1108 W TENNYSON RD	\$ 280			
41	POPS DELI & GRILL	30982 HUNTWOOD AVE	\$ 280			
41	PUPUSERIA Y TAQUERIA LOS COCOS	29617 MISSION BLVD	\$ 280			
41	RAY'S SUSHI	888 WEST A ST	\$ 280			
41	RED CHILI	29583 MISSION BLVD	\$ 280			
41	RIBS N THINGS BBQ & SOUL FOOD	22616 VERMONT ST	\$ 280			
41	RIGATONIS RESTAURANT	20501 HESPERIAN BLVD	\$ 280			
41	ROUND TABLE	22457 FOOTHILL BLVD	\$ 280			
41	ROUND TABLE PIZZA	157 W HARDER RD	\$ 280			
41	SAN MARCOS TAQUERIA	436 W HARDER RD	\$ 280			
41	SAPPORO RESTAURANT	22507 MAIN ST	\$ 280			
41	SHARK SHACK	871 B ST	\$ 280			
41	SIAM PALACE THAI CUISINE	22545 FOOTHILL BLVD	\$ 280			
41	SISTERS HOUSE THE	21851 MISSION BLVD	\$ 280			
41	SIZZLER 316	24107 HESPERIAN BLVD	\$ 280			
41	SMILING JACK PIZZA & WINGS	32681 MISSION BLVD	\$ 280			
41	STRAW HAT PIZZA	24748 HESPERIAN BLVD	\$ 280			
41	STRAW HAT PIZZA	1653 INDUSTRIAL PKWY W	\$ 280			
41	SUSHI ICHIMOTO	888 W A ST	\$ 280			
41	TANDOOR RESTAURANT	27167 MISSION BLVD	\$ 280			
41	TAQUERIA EDUARDO 2	1104 W TENNYSON RD	\$ 280			
41	TAQUERIA EL PASTORCITO	507 W TENNYSON RD	\$ 280			
41	TAQUERIA LA ESMERALDA 2	2010 B ST	\$ 280			
41	TAQUERIA LA PLACITA INC	27548 TAMPA AVE	\$ 280	CUP 89-72		
41	TAQUERIA LOS GALLOS	31081 MISSION BLVD	\$ 280			
41	TAQUERIA LOS PERICOS	24369 SOUTHLAND DR	\$ 280			
41	TAQUERIA LOS PORTALES 2	30200 INDUSTRIAL PKWY SW	\$ 280			
41	TAQUERIA MAR Y TIERRA	754 W A ST	\$ 280			
41	VUA PHO	410 W A ST	\$ 280			
41	WAKAMATSU	22724 FOOTHILL BLVD	\$ 280			
41	WING FIESTA	790 B ST	\$ 280			
41	WING STOP	2490 WHIPPLE RD	\$ 280			
41	WINTON DELI	2042 W WINTON AVE	\$ 280			
41	YUKI HANA SUSHI	920 C ST	\$ 280			
41	YUMMY RESTAURANT	1160 W TENNYSON RD	\$ 280			79

ABC License Type 41: ON SALE BEER & WINE – EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). **Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.**

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
42	VINTAGE CELLARS WINE BAR	1001 B ST	\$ 280	CUP 95-5		1
ABC License Type 42: ON SALE BEER & WINE – PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.						
47	APPLEBEES NEIGHBORHOOD GRILL & BAR	24041 SOUTHLAND DR	\$ 280	CUP 94-115		
47	B ST BAR & GRILL	846 B ST	\$ 280	AUP 98-81		
47	BIJOU RESTAURANT & BAR	1034-1036 B ST	\$ 280			
47	BUON APPETITO	917-919 A STREET	\$ 280	CUP 2004-0581		
47	CELIAS MEXICAN RESTAURANT	25010 HESPERIAN BLVD	\$ 280			
47	CHEERS TAVERN	22626 MAIN ST	\$ 280			
47	CHEFS EXPERIENCE CHINESE RESTAURANT & BAR	22436 FOOTHILL BLVD	\$ 280			
47	ELEPHANT BAR RESTAURANT	24177 SOUTHLAND DR	\$ 280			
47	ELITE CAFE OF MISSION HILLS OF HAYWARD	275 INDUSTRIAL PKWY	\$ 280			
47	FAMOUS DAVE'S BBQ	790 W WINTON AVE	\$ 280			
47	FIESTA MEXICANA RESTAURANT	225 W WINTON AVE, STE 100	\$ 280			
47	GOLDEN PEACOCK BANQUETS & RESTAURANT	24989 SANTA CLARA ST	\$ 280	AUP 2011-0031		
47	HAN YANG BBQ RESTAURANT	22365 MISSION BLVD	\$ 280			
47	HAYWARD FISHERY RESTAURANT THE	22701 FOOTHILL BLVD	\$ 280			
47	HAYWARD RANCH	22877 MISSION BLVD	\$ 280			
47	KUPE STUDIO	943 B ST	\$ 280			
47	ME RESTAURANT & LOUNGE	926 B ST	\$ 280	CUP 2011-0334		
47	MI COCINA & CANTINA	467 JACKSON ST	\$ 280			
47	MIMIS CAFE	24542 HESPERIAN BLVD	\$ 280			
47	MISSION PARADISE INC	31113 MISSION BLVD	\$ 280	CUP 96-160-17		
47	OLIVE GARDEN ITALIAN RESTAURANT THE 1382	24688 HESPERIAN BLVD	\$ 280			
47	PARAISO	29097 MISSION BLVD	\$ 280	CUP 79-43		
47	RAJA INDIAN CUISINE & BAR	1275 W WINTON AVE	\$ 280			
47	RUSSELL CITY SPORTS BAR & GRILL	25037 CLAWITER RD	\$ 280	CUP 87-44		
47	SKYWEST RESTAURANT	1401 GOLF COURSE RD	\$ 280	CUP 2010-0222		
47	STONEBRAE COUNTRY CLUB	222 COUNTRY CLUB DR	\$ 280	AUP 2009-0034		
47	TOMODACHI SUSHI BISTRO	24123 HESPERIAN BLVD	\$ 280			27
ABC License Type 47: ON SALE GENERAL – EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.						

License Type	Business Name	Premises Address	Recommended annual fee of \$280 (Level I) or \$1,120 (Level II)	Conditioniional Use Permit (CUP) or Administrative Use Permit (AUP) Numbers	Greater than 10,000 sf? (exempt from needing a CUP provided ≤5% of floor area is devoted to alcohol sales, storage and display)	Totals
48	BIG JORGES HOLLOW LEG	24740 HESPERIAN BLVD	\$ 1,120			
48	BLUE BIRD II COCKTAILS	390 WINTON AVE	\$ 1,120			
48	BOTTOMS UP CLUB	27935 MANON AVE	\$ 1,120			
48	CURLYS PLACE	2059 B ST	\$ 1,120			
48	DARK HORSE LOUNGE	24018 HESPERIAN BLVD	\$ 1,120			
48	DIRTY BIRD LOUNGE THE	29308 MISSION BLVD	\$ 1,120			
48	EL POTRO CLUB	871 W A ST	\$ 1,120			
48	FERNANDES STEIN LOUNGE	939 B ST	\$ 1,120			
48	FOXES COCKTAIL LOUNGE	171 W TENNYSON RD	\$ 1,120			
48	FUNKY MONKEY THE	22554 MAIN ST	\$ 1,120			
48	LA TABERNA NIGHTCLUB	24061 MISSION BLVD	\$ 1,120			
48	RAINBOW ROOM	21859 MISSION BLVD	\$ 1,120			
48	SHAR ADE COCKTAILS	25144 MISSION BLVD	\$ 1,120			
48	TURF CLUB	25519 MAIN ST	\$ 1,120	CUP 2000-160-15		14
ABC License Type 48: ON SALE GENERAL – PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.						
51	FRATERNAL ORDER OF EAGLES 1139	21406 FOOTHILL BLVD	\$ 280			
63	KAISER	27400 HESPERIAN BLVD	\$ 280			
70	QUALITY INN & SUITES	25921 INDUSTRIAL BLVD	\$ 280			3
ABC License Type 51: CLUB - Authorizes the sale of beer, wine and distilled spirits, to members and guests only, for consumption on the premises where sold. No off-sale privileges. Food service is not required. Minors are allowed on the premises. ABC License Type 63: ON SALE BEER AND WINE FOR HOSPITAL. ABC License Type 70: ON SALE GENERAL – RESTRICTIVE SERVICE - Authorizes the sale or furnishing of beer, wine and distilled spirits for consumption on the premises to the establishment’s overnight transient occupancy guests or their invitees. This license is normally issued to “suite-type” hotels and motels, which exercise the license privileges for guests’ “complimentary” happy hour. Minors are allowed on the premises.						
86	DOC'S WINE SHOP	22570 FOOTHILL BLVD	See License Type 20	CUP 2012-0174		
86	FOOD SOURCE 710	26905 MISSION BLVD	See License Type 21		YES	2
ABC License Type 86: INSTRUCTIONAL TASTING LICENSE – Issued to the holder of and premises of a Type 20 or Type 21 licensee, authorizes the tasting of alcoholic beverages as authorized to be sold from the off-sale premises, on a limited basis. Requires physical separation from the off-sale premises while tasting is taking place and generally requires the participation of a specifically-authorized manufacturer or wholesaler licensee.						
GRAND TOTALS			\$ 106,680			207
			(\$280x145)+(\$1,120x62)		Note: Three establishments have two different ABC license types	(210 listings; 207 establishments).

**Planning Commission Meeting
Council Chambers – 7:00 p.m.
Thursday, September 5, 2013**

**Correspondence from the public pertaining to
Item #2**

Proposed Revisions Related to Hayward's Alcohol Beverage Outlet Regulations and Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, including Proposed New Fees (Text Amendment Application No. PL-2013-0175); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward



August 30, 2013

Hayward Planning Commission
 City of Hayward
 777 B Street,
 Hayward, CA 94541

Re: Proposed Revisions to Hayward's Alcoholic Beverage Outlet Regulations

Dear Planning Commission Members:

Over the past year we have attended several community meetings and been engaged providing input to the Planning Department on the proposed amendments to the above referenced ordinance. We wish to thank the Planning Department staff for their hard work and thoughtfulness in preparing for the upcoming hearings of the Planning Commission and City Council

We strongly support the majority of the new ordinance language, particularly the minimum performance standards for all alcoholic beverage sale establishments and cost recovery fees to provide proactive enforcement and recouping of costs for enforcing violations of the ordinance. There are however, a few recommendations of changes we would like the Commission to consider:

1) Happy Hour/Reduced Drink Prices 4-9pm: While the City seems poised to adopt the policy to allow low-cost drink specials, we don't believe this is in the best interest of the greater community. There is solid research that demonstrates that low cost drink specials encourage higher rates of consumption, which then lead to increased community impacted alcohol-related problems. The proposed hours of 4-9pm encourage higher drinking rates into the night hours – beyond the typical pre-dinner hours. Traditional happy hours are from 4-6pm. If the City is resolute in providing happy hour/reduced drink pricing, we think there should be a compromise of the hours 4-7pm.

2) Wine Shops/Specialty Boutique Shops: The definition of 'wine' needs to be included in Section 10-1.2751 Definitions. It isn't clear what types of wine a 'wine shop/specialty boutique shop' can carry. For example, can a wine shop sell fortified wines or wine coolers? Also, can beer be sold at wine shops? What types of liquor will be allowed at wine shops? There is no unique ABC license for a 'wine shop/specialty boutique shop', therefore a license type 20 would allow for the sale of beer and wine, including fortified wines, malt beverages and wine coolers. How will the City prevent a store from converting to a typical wine and beer sales establishment?

3) Full-Service Restaurants: The draft ordinance states that full-service restaurants (License type 47) may have live or recorded music until midnight without a cabaret license. We are very concerned with restaurants turning into bar environments primarily deriving revenue from alcohol sales. The biggest problem is that minors are allowed in full-service License type 47 restaurants (they wouldn't be allowed in cabarets). The ordinance is silent as to providing safeguards to address and prevent easy access to alcohol by minors in these late night environments where there is primarily alcohol consumption. How will the City adequately enforce that youth will be protected, and unable to access alcohol?

In advance, thank you for your consideration.

Sincerely,


 Daisy Bates
 Chair

From:
Sent: Wednesday, September 04, 2013 11:48 PM
To: David Rizk
Subject: Hayward Planning Commision Public hearing Sept. 5, 2013

Reference: Negative Declaration and related proposed revisions to Hayward's Alcohol Beverage Outlet Regulations and Establishing New Regulations for Cabarets and Dances (Text Amendment Application No. PL-2013-0175) City of Hayward (Applicant)

Dear Mr. Rizk, AICP

It is with great concern that it seems the City of Hayward discourages businesses that have entertainment, food and spirited drinks. That the City of Hayward Planning Commision has an abolishtion attitude towards businesses that bring much revenue into the city's offers, if that business has anything to do with alcohol and entertainment. Yet the city doe not try to impose strick regulations to retail businesses that provide alcohol for sale for the public and home (I.e. big box stores). It is with this type of sales that puts excessive alcohol consumsion and public drunkenness with the highest numbers of police calls.

This new proposed revisions and new regulations are aimed at **small** businesses who do not have large corpate lawyers at their beck and call, and cannot make their voices heard and considered on the same scale as larger corporations. So you target these small businesses to pad your city coffers with new regulations that other big businesses do not have follow the same standards. How many calls does a big name retail outlet store get before they are charged for the call for assistance from the Police Department?

I am sure that shop lifting is a daily occurance in most big retail stores and this requires the City's Police Department to respond at least every week. If these stores attract thieves and criminal behavior within the City are they allowed to have unlimted calls to the Police Department without extra charge?

So why is the City of Hayward targeting smalll businesses such as resturants, bars and cabarets to punish them with extra charges and fees for the use of public services allotted to other businesses without extra charges?

And who is to regulate the Police Department on how they respond (which past history shows that they ususally respond in an OVER display of force when it is not necessary) to how many cars they dispatch to any call. What are the boundaries? If a place of business has the space to have over 100 people capacity for itself and does not necessarily have that many actual people in it's establishment when the call is made for assistance from the Police Department, does this business have to pay extra because of this? Retail stores always have the capacity of over 100 people, yet do they get an over response by the Police Department for calls.

All busniesses must pay retail taxes, license fees, permit fees and local fees and taxes. Even small businesses help pay for public services such as the Police Department, and yet your city thinks it is OK to charge small businesses that serve alcohol and some have some form of entertainment to pay more than other businesses.

WHERE IS THE FAIRNESS WITH THESE REVISED AND NEW REGUALTIONS?

If the City of Hayward is to impose new charges and fees for PUBLIC SERVICES it should include all businesses.

Also where is the fairness that the City of Hayward will give away live entertainment permits to some businesses and refuse these same permits, even with huge fees, to other businesses.

The City of Hayward should look to other cities to see how well they function with **many** live entertainment permits and **plenty** of alcohol establishments and still have a small town feel with great policies toward new businesses and low crime rates. The City of Lodi (where I live) is know as one of the great wine cities of the world with small fee and free alcohol tasting on every single block of the entire downtown and surrounding areas. This city attracts tourists from all around the world. Yet the entire murder rate for the year is less than a single week in Hayward. They deal with same problems as the City of Hayward (i.e. gangs, homelessness, poor and unemployment, etc.) yet they have money in their coffers to deal with all of these things because they are liberal with permits to small businesses with alcohol and live entertainment. Because they welcome businesses with alcohol and entertainment of all sorts this city thrives. It is a city with high moral stantards and a high rate of church attendance and still they welcome these small businesses (and they have plenty of large corporations also).

You really should look at cities that are very successful (i.e the City of Lodi) and encourage bars, wine tasting rooms and many other small businesses of alcohol consumption and practice **FAIR** and **EQUALITY** for all of its'small business establishments, **before** you decide to punish your small business owners with extra charges for publice services. See what they are doing right and making it work for them before you drive out all small businesses. California is NOT a "dry" state,why are trying to make Hayward a "dry" city?

And if you insist on passing prejudice regulations then at least try to give some leaway to businesses with larger capacities more calls per year than small capacity busniessses.

Sincerely,

Rose Tamez

(An individual who does business in the City of Hayward)

RICHARD C. ERSTED ET AL.

VIA EMAIL

September 5, 2013

Planning Commission Chair Faria and Members Lamnin, Lavelle, Loché, Márquez, McDermott, and Trivedi
City of Hayward
777 B Street
Hayward CA 94541-5007

Re: Alcohol Beverage Outlet Regulations: Recommended Revisions
5 September 2013 Planning Commission Meeting: Public Hearing: Item 2

Subject: Recommended Revisions

Planning Commission Chair & Members:

Together with certain others, I own the real property more particularly identified as Alameda County APN 078C-461-1-13 and -14; I'm writing today in regards to the above-referenced matter.

In general, we are very pleased with staff's work here. It's substantive and comprehensive; care and attention to detail are each readily in evidence. We thank the City for its efforts.

We strongly support the proposed revisions to the City's Alcohol Beverage Outlet Regulations, Zoning Ordinance definitions, and Zoning District text; the proposed new Cabaret and Dance Regulations; and the proposed new Fees.

We owners respectfully wish to make the following recommendations:

1. **Alcohol Beverage Outlet Fees**

At present, the draft Alcoholic Beverage Outlet Fees exclude the costs of certain City departments — Finance; Development Services; and the City Attorney's Office — charged, in part, with administering and enforcing the related regulations. The staff report states in part:

"There will undoubtedly be demand from the General Fund primarily related to staff of the Finance and Development Services Departments, as well as the City Attorney's Office, in enforcing the recommended provisions, especially the 'Deemed Approved' provisions that

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1091 INDUSTRIAL ROAD, SUITE 101, SAN CARLOS, CALIFORNIA 94070-4118
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Planning Commission Chair Faria and Members Lamnin, Lavelle, Loché, Márquez, McDermott, and Trivedi
 September 5, 2013
 Page 2

require noticing and annual collection and oversight of fees. It is difficult to estimate that cost ... Future annual adjustments to fees may be needed in response to such demand and costs."

We **recommend** the City (i) increase the proposed Alcoholic Beverage Outlet Fees — as set forth in Attachment V to the staff report; including both the Level I and Level II fees — to include a reasonable estimate of the costs of City Finance, Development Services and City Attorney staff to administer and enforce such Fees, and (ii) review such estimate in a public hearing after two (2) years, when staff will possess actual cost data over a reasonable period of time. We believe it's prudent for the City to now include staff administration and enforcement costs within such fees.

2. Critical Incident Definition

The proposed Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets states in part:

"Critical Incident" shall mean any event that, in the sole discretion of the Chief of Police, results in a crime of violence or large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment."

Would the Alvarez shootings — both inside and outside the Dirty Bird Lounge at 29308 Mission Boulevard — in the early morning hours of September 24, 2012 meet the proposed definition of a critical incident? As we understand, the City dispatched three (3) police officers to such shootings; Alvarez and the officers were later involved in a separate discharge of firearms on Tennyson Road.

If such shootings do not meet the proposed definition, we **recommend** the City revise the definition to include, but not be limited to, the discharge of a firearm — where such discharge is connected directly or indirectly to the operation of an alcoholic beverage sales establishment; and where such discharge is part of an assault or battery — no matter the number of officers dispatched by the City.

3. Critical Incident Response Fee Payment

The draft Section 10-1.2766 states in part:

"In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident and/or the licensee of any alcoholic beverage sales establishment ..."

We **recommend** the City (i) levy and impose such fee solely on the licensee of the Alcoholic Beverage Outlet, and (ii) include — within such fee — the actual cost of any and all City services, including, but not limited to, those provided by Police and Fire Departments and the City Attorney's Office. As drafted, ultimate responsibility for critical incident fee payment is unclear. Under our

Planning Commission Chair Faria and Members Lamnin, Lavelle, Loché, Márquez, McDermott, and
Trivedi
September 5, 2013
Page 3

recommendation, the licensee may pursue — under existing applicable tort law — reimbursement of such fee payment from any individual or group of individuals.

Thank you for your attention to the foregoing.

Sincerely,

/s/ Richard C. Ersted

Cc: David Rizk, Director, Development Services, City of Hayward via email

From:
Sent: Thursday, September 05, 2013 12:14 PM
To: David Rizk
Subject: Hayward planning commission public hearing September 5th

To the city of Hayward:

I as a citizen of Hayward California, feel that these new ordinances are completely unjust and bias to say the least. I work for a bar and am challenged with the decision to call the hpd every day. I attribute this to all the criminals, pedophiles, bums, junkies, and drug dealers who seem to roam the streets all day long!!! Hpd cares to do nothing with these folks because they a repeat offenders(most of whom reside in the green shutter) and is a waste of time, paper work, and money. Which leads me back to the same problem I deal with these same people on a daily basis and these undesirables are usually the folks I call the police for. Moving on to another issue... I feel this whole issue is unfair and will be seeking a lawyers advice!!! I am thoroughly AGAINST the proposed revisions to Haywards alcohol beverage outlet regulations and establishing New Cabarets and dances regulations!!!!!! I am thoroughly disgusted that the city of Hayward wants to pass on the cost of normal police calls to us!!! This is outrageous and unfair. I pay taxes which pay the police and they should be anywhere I need them free of charge!!!! THE CITY OF HAYWARDS NEW ORDINANCE IS GOING TO MAKE PEOPLE AFRAID TO CALL THE POLICE!!! This is wrong!!!

From: Susan Cain-Birkert
Sent: Thursday, September 05, 2013 1:38 PM
To: David Rizk
Subject: New Regulations for Cabaret & Dances Amendment-questions

Dear sir,

Allow me to voice my concern for the imminent passage of these reprehensible provisions on small business owners that the city of Hayward plans to impose. Have you no shame? why on earth did you take the trouble to revitalize - and I use the term 'revitalize' loosely - downtown Hayward? There has been a plethora of empty store fronts from Day 1. See, maybe, JUST MAYBE - someone should have put an agreement of some sort in place with existing landlords preventing them from raising the rents. Result? Space for a thriving downtown - and no takers.

I guess you were going for the tax writeoffs, huh? So much for 'revitalization.'

Now you intend to present a series of amendments that punish bars, saloons - call them what you will:

Restaurants get free music permits - bars do not. How is that fair? When was the last time one was heard to say, 'Hey, let's go to the Olive Garden! They've got a great band'?

OH. Perhaps you're protecting a certain restaurant conveniently located near city hall?

Or perhaps you're prejudice against those with alternate life styles that have great bands and great patios?

Or perhaps the city counsel is hell-bent to close every drinking establishment in Hayward?

That's it, isn't it? NEWS FLASH: Alcohol is legal. Swear to God.

Compounding the issue, you intend to - this can't even be right, it makes no sense:

charge ONLY SMALL BUSINESSES, i.e., bars & saloons, EVERY time law enforcement is called to their establishment.

WHAT? Here's a novel suggestion: how about the Hayward PD - JUST DOES IT'S JOB.

THAT'S ALL: Instead of having 20 to 30 officers in front of one establishment at 1:30 - 2:00 a.m. - which is, you know, OVERTIME, harrassing bartenders

that don't even drink & threatening to arrest people waiting for cabs - how about working them for a straight 8 hours & sending them home? Really, some of us have been here since the 1960's. We have KIND OF had our fill of Hayward PD harrassment.

Similarly, one could write a book on the corrupt history of Hayward politics & how it seems to continue- or at least file a lawsuit.

Why don't you just put up a sign next to your shiny new loop signs saying something like 'Welcome to Hayward! Puritans Only Allowed! No Drinking allowed! Downtown shuts down at 10 PM. Violators will be prosecuted - then charged. Please take your money & your business else.'

I've worked for the Federal Gov't. for 37 years & continue to do so. Additionally, I live in Hayward - at least until I decide to retire. Good Lord, I hate to see how this city treats/charges the elderly!

Sincerely,

Susan Cain-Birkert
94542

September 5, 2013

David Rizk, AICP
Development Services Director
City of Hayward
Hayward, CA

Dear Mr. Rizk:

I am submitting the following comments regarding the proposed revisions to Hayward's Alcohol Beverage Outlet Regulations and request that changes be incorporated into the proposed revisions.

Critical incident response fees should be paid by responsible party – this should not be “and/or licensee”. If the licensee is the responsible party, than this should be the basis for payment, not merely being the licensee. Proper diligence should be used to determine the responsible party and assess fees accordingly. The convenience of assessing fees solely due to the location or proximity of an incident is neither appropriate nor reasonable.

In earlier workshops related to these regulations, there was discussion by the police department that 5 or more calls within a year would result in fees to licensee. Is this still included in the regulations? Calls for police service should be dependent on need rather than number and based the incident. If calls for police services are discouraged, incidents could potentially escalate. Similarly, calls for police service should not be used solely to determine “nuisance activities” as this would be potential self-incrimination, whereas the basis of the service call would be to abate illegal or nuisance activities.

Performance standards include “nuisance activities within the premises or in close proximity of the premises”. While an establishment may reasonably control activities within the premises, the control of activities in the public street or sidewalk, adjacent private property, and areas not part of the establishment cannot be assigned to the establishment. In fact, activities within the public street or sidewalk should be policed and protected by the Police Department and are the cities' responsibility. Also proximity appears to be used to determine responsibility whether or not violations are associated with an establishment. An example of this type misassignment of responsibility would be the activities of attendees of the downtown street party that are adjacent to business establishments.

Thank you for your consideration of this matter.

Joeann Pepperell

From: Christy Paulson
Sent: Thursday, September 05, 2013 3:27 PM
To: David Rizk
Subject: City Council Meeting this evening

It is not right to tax or make small business owners to pay for services that are already part of our constitutional rights. Police, Firemen and other public agencies are there to serve and protect all citizens.