

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 09/14/04  
AGENDA ITEM 3  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Use Permit Application No. PL-2004-0010 – Alex Aguilar (Applicant)/Jim Morris (Owner) – Appeal of the Planning Commission’s Approval of a Request to Operate a Nightclub in Conjunction with a Restaurant in the CC-C (Central City-Commercial) Zoning District – The Property is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek

**RECOMMENDATION:**

It is recommended that the City Council deny the appeal, upholding the Planning Commission’s approval of the use permit.

**DISCUSSION:**

At its meeting of June 24, 2004, the Planning Commission approved (4:0:3) a use permit to allow the operation of a nightclub in conjunction with a restaurant. The proposal is to utilize an existing building for a restaurant with a large dining room that would be used for buffet dining, entertainment and dancing. The restaurant would include a bar and an ancillary bakery.

The applicant intends to use the north half of the building located on the easterly side of Foothill Boulevard between Russell Way and San Lorenzo Creek. The owners of the building intend to reface the entire building exterior. Plans, which include adding new windows to the north side of the building so that patrons would be able to look out over the creek, were reviewed by the City Center Commercial Center Improvement Committee on July 28, 2003, and the Planning Commission approved a site plan review application on November 4, 2003. The building permit for the exterior reface was issued in April this year. The building owners have also leased land from the City Redevelopment Agency and constructed a parking lot immediately to the rear of the building to serve customers and employees of the building.

The applicant is proposing to use approximately 14,000 square feet of the building for a restaurant which would have two sections. One area is about 10,000 square feet and would be used for dining and entertainment. The smaller area is about 4,000 square feet and would accommodate dining, the kitchen and an ancillary bakery. The proposal includes a restaurant serving “Puerto Vallarta Style” food for breakfast, lunch and dinner with buffets on weekends. The ancillary bakery function would take place in the area of the kitchen.

The applicant also intends to offer live entertainment, including music, dancing and comedy, Thursday through Sunday nights. The function of the live entertainment, coupled with a bar, qualifies the establishment as a nightclub, for which a use permit is required. As conditioned by the Planning Commission, the establishment would be open from 8 a.m. to 2 a.m. with alcohol sales limited to the hours between 10 a.m. and 1 a.m.

Commpre appealed the Commission's approval on July 1, 2004 (see Attachment D). It asserts that the applicant's proposal for both a restaurant and a nightclub is a violation of the Zoning Ordinance. The Type 47 license the applicant intends to request from the State Department of Alcoholic Beverage Control would allow the operation of a nightclub, but also requires the restaurant portion of the establishment to operate as a bona fide restaurant. It is this combination of a bona fide restaurant and a nightclub that Commpre believes is a violation of the City's Zoning Ordinance.

Bona fide restaurant and nightclub are defined in the Zoning Ordinance as follows:

'Bona fide restaurant' shall mean a place which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and does not have a bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, and which is further outlined in section 23038 of the State of California Alcoholic Beverage Control Act, and which maintains a minimum of 51 percent of its gross receipts from the sale of meals. 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 72 hours' prior written notice.

'Night club' shall mean any establishment 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. (Underlining added for emphasis)

There is nothing in the Zoning Ordinance that prohibits the two functions from coexisting. In fact, the definition of nightclub recognizes that it may simultaneously offer full meals.

The applicant asked for permission to start background music at noon each day. When the Commission questioned Acting Police Chief Lloyd Lowe if his Department would object, he stated that background music prior to 9 p.m. would be okay, but that the live entertainment could not begin until 9 p.m. when all minors have left the premises. The Planning Commission supported the idea of background music, but the Commission did not address the issue in their motion to approve the project, so staff did not revise the conditions. The applicant has requested that the City Council amend the conditions of approval to allow background music.

Background music could be live or recorded and might include a solo guitar player or a small mariachi band that would walk through the restaurant. In an effort to distinguish between background music and music as entertainment, staff recommends including the following requirement in the conditions of approval:

Background music shall be permitted anytime. Background music may be live or recorded and shall not utilize a stage. Live music shall not be amplified. No cover charge may be

collected and no dancing shall be permitted. Tables and chairs shall not be set up in a way that creates a focus on the music as entertainment.

During the Planning Commission meeting, Acting Police Chief Lowe mentioned that a primary concern is the peace and tranquility of Casa Sandoval and its elderly residents. Staff does not expect noise from the proposed night club to impact the senior apartment building. The building has no balconies on the west side, facing the proposed night club. Most of the units at Casa Sandoval have windows facing the north and south. The conditions of approval require the applicant to post "No Loitering" signs and actively discourage patrons and visitors from loitering in the parking lot and adjacent rights-of-way. The conditions also require the doors and windows of the building to remain closed any time music is provided. Of the four security guards required to be on duty between 8:00 p.m. and 2:00 a.m., one will be required to patrol the parking lot and Russell Way area. Furthermore, any lines that form for admission to the club are required to be at the Foothill Boulevard entrance – not at the rear of the building.

Issues raised by the public at the Planning Commission hearing included the following:

- A representative from California State University Hayward spoke concerning under-age drinking, asserting that the business plan and proposed hours of operation target college-age customers.
- Hayward Citizens for Responsible Liquor Outlets (HCRLO) opposed the project and raised questions about the business plan concerning the method of poling used for the survey mentioned in the plan; the ratio of servers to customers; and whether the bakery would take the form described in the plan.
- Commpre, in addition to the reason stated for the appeal, above, questioned the floor area devoted to the bar versus the area devoted to food. Representatives stated that the proposed tables are too small to eat a meal on and raised the issue of calls for police service at the applicant's club in Fremont (Club Mangos).
- The Friends of San Lorenzo Creek asked the City to require trash removal from the creek. The applicant stated that he would keep the creek clean and the Planning Commission included the trash removal as a condition of approval (condition # 19).

In staff's opinion, the conditions of approval approved by the Planning Commission would ensure that the establishment is operated as proposed by the applicant and as expected by the City. Also, the City, as stated in the conditions, retains the ability to revoke the use permit if the facility has unexpected impacts on the surrounding area. The use would be consistent with the intent of the CC-C zoning district, which is "to establish a mix of business and other activities which will enhance the economic vitality of the downtown area." Furthermore, the General Plan encourages the maintenance of downtown as an integrated living, working, shopping and recreational area and also encourages development that provides venues for cultural vitality and opportunities for a pedestrian friendly environment.

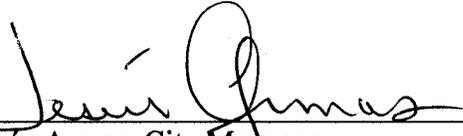
Prepared by:

  
\_\_\_\_\_  
Erik J. Pearson, AICP  
Associate Planner

Recommended by:

  
\_\_\_\_\_  
Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:

  
\_\_\_\_\_  
Jesus Armas, City Manager

- Attachments:
- Exhibit A. Planning Commission Meeting Minutes, dated June 24, 2004
  - Exhibit B. Revised Conditions of Approval
  - Exhibit C. Planning Commission Staff Report, dated June 24, 2004
  - Exhibit D. Appeal Letter
  - Exhibit E. Letter from Castro Valley Community Action Network
  - Exhibit F. Letter from Project Eden
  - Exhibit G. Business Plan  
Draft Resolution

9/08/04

Assistant Planner Koonze explained that a building permit was not issued for the patio room which did not meet the codes at the time it was built.

Planning Manager Anderly added that at the time he purchased the home it was only a patio cover which he enclosed into a room without a permit.

Chairperson Zermeño asked whether staff had been out to his house and how difficult would it be to move the wall.

Assistant Planner Koonze said he would have to destroy the wall and move it back. They might be able to salvage the sliding door and the windows out and reinstall them.

Commissioner Bogue said he thought the building has to be setback. Without the full 5-feet, there are air and safety issue. If the wall is carefully taken down, it probably could be saved. He then moved, seconded by Commissioner Sacks, the staff recommendation to deny the variance.

Commissioner Bogue then added it would be appropriate to keep the 5-foot setback for safety reasons.

Commissioner McKillop said she felt for the applicant since he bought it with the patio cover. However, she could see no findings for the variance.

Commissioner Sacks agreed, adding she would hope the applicant would follow the suggestion to make it a legal structure. She also wished him luck.

Chairperson Zermeño said he would like to help but cannot. Perhaps the applicant could move the wall without tearing down the addition. He noted that the value of the home would increase with a legal structure.

The motion carried by the following vote:

- AYES: COMMISSIONERS Sacks, McKillop, Bogue  
CHAIRPERSON Zermeño
- NOES: None
- ABSENT: Thnay, Fraas, One Vacancy
- ABSTAIN: None

**3. Use Permit PL-2004-0010 – Alex Aguilar (Applicant) – Jim Morris (Owner) – Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery in the Central City Commercial Zoning District – The Project is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek**

Associate Planner Pearson described the Nightclub/Restaurant proposal. Staff is recommending approval with findings and conditions. The general plan encourages this type of use downtown. The building permit has been issued for the re-facing of the building and the re-facing must be completed prior to the operation of the nightclub. Letters have been received opposing the project for reasons of noise, etc. Staff believes the conditions mitigate these potential problems.



---

Chairperson Zermeño asked when the re-facing would be done.

Associate Planner Pearson said to his knowledge the applicant is waiting for further funding. He said they would complete inside and outside, noting that three windows are proposed on the building exterior facing the creek.

Planning Manager Anderly said when the nightclub was last heard by the Planning Commission, re-facing had not yet been approved.

The public hearing opened at 8:51 p.m.

Alex Aguilar, the applicant, said they want a restaurant with entertainment. He said they feel that this is needed for this area of downtown. He described the entertainment, which would be available, noting that their emphasis would also be on security, which is very important. He said various family members would be working the business. He noted that the Planning Commission approved the former plan last year. However, this plan is a better project. He urged members to support it. It will bring a revival to that area.

Chairperson Zermeño asked whether he was okay with the conditions.

Mr. Aguilar said he would prefer the condition regarding alcohol being served until 1 a.m. be extended until 1:30 a.m. that would be more in keeping with other clubs in the area. As to the condition requiring no music before 9 p.m., he said on Sundays they plan to have dining and dancing so he was asking for 12 p.m. He would also like this available for Thursday, Friday, Saturday and Sunday as well.

Commissioner Bogue said the applicant talked about dining and dancing. If the buffet is on the dance floor, how is that possible?

Mr. Aguilar said they would stop the buffet at 4 p.m. and there would be no dancing before 9 p.m.

Commissioner Sacks said the plans speak favorably about a bakery. However, in looking at the layout there is simply one small circle.

Mr. Aguilar explained that there would be two ovens in the kitchen. It will not be a wholesale bakery. It's merely a customer service so there should be sufficient area.

David Travis, Cal State Assistant for Student Affairs, said they were looking at factors that might have an impact on campus and off-campus. He was concerned by Mr. Aguilar's targeting of students at the college. This becomes a nightclub at 9 p.m. so there is a potential for underage drinking. He does not address how he would handle this. These issues are a concern. Since 98 percent of their students are commuters, they are working to keep drinking down. With the proposal of a 7-day operation and open late, they could not support this application for its negative effect on students.

Elaine Sunday, Hayward Citizens for Responsible Liquor Outlets, said as far as their organization is concerned the current plans have multiple problems. As to the polling that was done, it was done in a casual manner. Most of those polled were customers of Mr. Aguilar's Fremont club. As to the ratio of customers to servers, she thought 50:2 was not adequate. This is a high-risk business, although he claims there will be a restaurant and bakery, in reality it is a full service bar. He is just calling it a bakery is to move it along.

David Cota, Commpre, referred to the business plan as well as looking at the floor plan, commented that it was easy to see how much space would be devoted to food. He noted that 82 percent is located in the bar. He had samples of tables to illustrate that the tables to be used were not food tables.

Linda Pratt, Commpre, asked whether this was a bonafide restaurant or a nightclub. She noted the City definition in the ordinance for a nightclub. This is a request to operate nightclub and bar in conjunction with a restaurant. She then asked why staff was saying this is and is it not inconsistent with the ordinance. She then brought attention to the number of calls for service made to Mr. Aguilar's club in Fremont. From January through April, 2004, there were 10 calls for service. She thought it was disturbing that staff did not do this research and include it in the report.

Dennis Botelho said he had problems with the ordinance not being followed as written. He asked about the requirements for a bonafide restaurant and questioned whether this is a 47 license or 48. The ABC requires a 47 license as a bonafide restaurant.

Howard Beckman, Friends of San Lorenzo Creek, said he sent a letter explaining concern for patrons tossing things into the creek. He said they were asking for this proposed business owner to take responsibility for the creek to some extent. Use Permit process is public hearing. He said it was clear reading the proposal that people would hang out there, noting it is a common condition to put in for places where there might be trash. The Alameda County Clean Water program is pouring a segment of its dollars into Hayward to increase public access.

Commissioner Sacks concurred saying she was taking the same position with all residents and businesses along the creek.

Mr. Beckman indicated that they would be holding meetings with the property owners along the creek.

Chairperson Zermefio said this was a commendable project.

Commissioner Bogue discussed the comments in various letters adding that many of the concerns were not answered. He also asked about a letter from the City of Fremont Police Department that cited a limited need for police calls and service, which is different from the list cited by Ms. Pratt. He asked for further information.

Planning Manager Anderly said she had called the police chief and visited the club. Mr. Aguilar had engaged a promoter who independently carried on these activities, which caused problems. Chief Steckler indicated that in Fremont Mr. Aguilar has been acting responsibly.



---

Chairperson Zermeño asked about the conditions required by the Hayward Police Department.

Acting Chief Lowe noted conditions 39 to 59, saying these conditions have answered most of their concerns. He added that their main concern is the peace and tranquility of Casa Sandoval and its elderly residents. This is why they are requesting the business to stop serving at one a.m., which will give patrons an hour to clear the parking lot and move on.

Commissioner Sacks commented that condition 49 speaks to minors. The applicant is asking for music starting at noon, would that affect this condition.

Acting Chief Lowe said no, their concern is that according to the plan, the actual nightclub entertainment is going to start at 9 p.m., which is why minors need to be out by that time.

Planning Manager Anderly clarified that by having a one a.m. closing time, there will not be that many people exiting the bars at the same time.

Commissioner McKillop asked whether Club Mango is strictly a nightclub. She then asked about Mexicali Rose and what license it operates under.

Acting Chief Lowe explained that it is a type 47 with similar conditions.

Commissioner McKillop asked whether this was supposed to be a 24-7 operation.

Mr. Aguilar said they wanted 24-7 but with conditions they will close at 2 a.m. and then reopen at 6 in the morning.

Chairperson Zermeño asked how they propose to control not serving minors.

Mr. Aguilar explained that after nine p.m., they will isolate the bar area and check id's. He said the wait staff will do training with ABC, plus they will have security id checks.

Commissioner Bogue said it sounds like minor would be allowed in the building.

Mr. Aguilar explained that during the day the facility will act like restaurant so that families can be together. After 9 p.m., they will isolate the areas with no minors allowed in the bar area.

Associate Planner Pearson noted that the condition also says only when there is an event taking place minors are not allowed on the premises.

Commissioner Bogue said it might be difficult to determine on the spot. From noon on, there will be entertainment.

Commissioner Sacks asked when the music becomes an event.

Mr. Aguilar explained that at night after 9 p.m. there would be no minors allowed. He explained that they are spending half a million on this facility so they are the first people interested in not losing their license. He said he has never had problems with underage customers. ABC has training to help identify customers who might be using drugs and seem underage.

Commissioner Sacks brought up the Friends of the Creek and raised a situation regarding cleanliness of the area. She asked what condition the Fremont Club is in, and what kind of condition this one would be kept in as well.

Mr. Aguilar explained that in Fremont the owner of the building has a person who maintains the place. Here they will have their own staff for cleaning as well as picking up any trash in the creek. One of the reason they are adding windows on that side of the building is to look toward the creek. They have a vested interest in keeping the creek clean.

Commissioner Bogue said he had gone to Club Mango's in Fremont but was there early and the club was not opened. He said he was not impressed with the exterior of the Fremont Club. Because of this concern, he stressed the reason for these conditions. He asked staff about condition 19, keeping the premises in a clean, well maintained condition. He noted that it does not mention picking up litter within a certain radius.

Planning Manager Anderly said he was correct that this type of picking up litter within 300 feet is typical of fast food restaurants since people take away their food and use paper products. This is not a typical environment. Mr. Aguilar has indicated a willingness to pick up trash.

Mr. Aguilar explained the incident in Fremont with the Police. The promoter changed the act without his knowledge. He has learned from his mistakes. He went to the Police Department and apologized and fired the promoter that morning.

The public hearing was closed at 9:42 p.m.

Chairperson Zermeño asked how many nightclubs there are in Hayward.

The Police Department said they do not have the number.

Both Chairperson Zermeño and Commissioner Bogue named Mexicali Rose as all they could think of.

Commissioner Sacks said she was looking for reasons not to approve this. Instead what has happened is that she heard excellent questions raised with the roles of the three organizations represented: Commpre, Hayward Citizens for Responsible Liquor Outlets, and Cal State. She said she agreed about concern with minors and alcohol. This is a different area. There are different cultures. College students who might want to drink will find a way to do so. This will not encourage underage customers. She then moved, seconded by Commissioner McKillop, to support the staff recommendation with the findings and conditions.

Commissioner Bogue expressed further concern about the operation. He fully supported closing at one p.m., and asked for friendly amendment to Condition 41 to include opening at 8 a.m. Condition 19 should also include the creek area. He said he was leery about some of the proposals for the Club. He then stressed conditions 60 and 61 regarding revocation.



Commissioner McKillop said she was excited to see new businesses in Hayward, particularly entertainment. She said she has reservations but with a lot of monitoring as a community, we can make this work. We will have to all work together. Mr. Aguilar says he is committed to creating a fine establishment. She addressed Mr. Aguilar saying he has a lot of work ahead of him.

Chairperson Zermefio said he was excited about the proposal, but there are safeguards. He thought supporting this business would work since none of the commissioners could come up with the name of more than one other nightclubs in Hayward. Our downtown will have an increase of places serving alcohol. This is because the downtown is being developed as a destination. The task for the non-alcohol groups is daunting but this is good for Hayward.

Commissioner Bogue emphasized that it will take the work of everyone not just the several groups in the City of Hayward. The four commissioners have to bear much of the responsibility for monitoring as well.

Commissioner Sacks thanked Commissioner Bogue for this reminder adding that the members live in Hayward and take their responsibility seriously in these matters.

The motion carried by the following vote:

- AYES: COMMISSIONERS Sacks, McKillop, Bogue  
CHAIRPERSON Zermefio
- NOES: None
- ABSENT: Thnay, Fraas, One Vacancy
- ABSTAIN: None

~~ADDITIONAL MATTERS~~

~~4. Oral Report on Planning and Zoning Matters~~

~~Planning Manager Anderly noted that the meeting on July 1 would be primarily for the downtown theatre project. She added that the City Council would also be interviewing candidates to fill the vacancy on the commission with the goal of having a new Planning Commission member seated by July 8.~~

**CONDITIONS OF APPROVAL**

**USE PERMIT APPLICATION NO. PL-2004-0010**

**Alex Aguilar (Applicant); Jim Morris (Owner)**

**22380 Foothill Boulevard**

**Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery.**

**General:**

1. Application No. PL-2004-0010 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a building permit has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
2. If a building permit is issued for construction of improvements authorized by the use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the use permit approval.
3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
4. Any proposal for alterations to the proposed floor plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
5. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
6. The establishment shall operate only as a License Type 47 per the state Department of Alcoholic Beverage Control regulations.
7. All improvements indicated on Exhibit "A", are hereby approved and must be installed prior to authorization for final building occupancy. In addition, all improvements shown on Exhibit "A" of SPR-PL-2003-0503 (exterior reface of the building) shall be completed prior to occupancy.
8. Prior to application for a Building Permit, the following changes shall be made to the plans:
  - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
  - b) A host/hostess bar for customers entering at the rear of the building shall be incorporated into the floor plans.
  - c) The floor plan at the rear restaurant entrance shall be revised to match the exterior improvements for which a building permit has already been issued.

- d) The door at the rear of the building labeled as "exit" for the entertainment area shall be modified to also serve as an entrance to the entertainment area.
  - e) A landscape plan prepared by a licensed landscape architect shall be included showing how the new sidewalk along the rear side of the building will be accommodated.
9. Any lines for admission to the facility shall be formed at the Foothill entrance. No congregation of patrons shall be permitted at the rear of the building.
  10. A steel tubular fence shall be erected around the piers of the building to prevent access under the building from the creek channel. The plans submitted for a building permit shall include details of the fence for review and approval by the Planning Director.
  11. The existing trash enclosure shall be covered. Doors on the trash enclosure shall be repaired with new hinges and the door shall be repainted. Plans submitted for a building permit shall include details of the new roof on the enclosure.
  12. All signs shall comply with the Sign Ordinance regulations for the Central City-Commercial Zone District and the sign program approved by SPR-PL-2003-0503. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director.
  13. 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.
  14. The permittee shall obtain and maintain a valid Dance Permit pursuant to §6-2.10 et seq of the Hayward Municipal Code at all times dancing is allowed inside the establishment and the permittee shall at all times conduct such dances in accordance with the regulations established in the Hayward Municipal Code. The Dance Rules & Regulations pursuant to Hayward Municipal Code §6-2.15 shall be observed and posted in a conspicuous place within the premises.
  15. No minimum drink purchase or similar charge or minimum purchase shall be imposed on or required of customers entering the establishment. An admission charge or cover charge is permitted.
  16. There shall be no more than two billiard tables in the facility. Coin operated games (other than billiard tables) shall be limited to the small room as shown on the approved floor plan.
  17. At no time shall the occupancy level of 412 patrons (as noted on the approved floor plans) for the establishment be exceeded.
  18. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend the Department of Alcoholic Beverage Control's LEAD Training within six months of approval of this permit. Any employee hired after this permit is approved shall attend such Training within six months of his/her date of hire. The applicant may contact Detective William Kelly at the Hayward Police Department at 510-293-7272 for information regarding class scheduling.

19. The premises shall be kept in a clean, well maintained condition. Paint and windows shall be clean and cracked or broken glass shall be replaced promptly. Public and private sidewalks shall be free of litter (including chewing gum). The management shall endeavor to see that no trash or litter originating from the establishment is deposited on neighboring properties (including the creek channel) or rights of way.
20. Landscaping shall be maintained in a healthy, weed-free condition at all times with replacement plants provided where necessary. Required street and parking lot trees that are severely topped or pruned shall be immediately replaced as determined by the City Landscape Architect.
21. No mechanical equipment, or solar collectors, may be placed on the roof unless it is adequately screened from view by the proposed roof structure. Prior to construction, documentation shall be provided that the roof-mounted mechanical equipment is adequately screened.
22. All television or satellite reception antennas shall be completely screened from view by the roof structure.

**Solid Waste & Recycling:**

23. This approval is subject to the requirements contained in the memo from the Solid Waste and Recycling Division of the Public Works Department dated 1/28/04.
24. The establishment shall utilize the existing trash enclosure located in the parking lot. Frequency of trash and recyclable collection shall be sufficient to prevent overflow from the enclosure.
25. No materials of any kind may be stored outside the trash enclosure or outside the building.

**Engineering:**

26. Any broken sidewalk along the property frontage that creates a tripping hazard shall be removed and replaced.

**Fire Department:**

27. A fire sprinkler system (Light Hazard for seating area and Ordinary Hazard Group 1 for service areas), shall be installed per NFPA 13 Standards. The buildings' existing fire sprinkler system (within the basement level only) shall also be upgraded to meet current codes and standards.
28. A manual fire alarm system shall be installed throughout the building. Design and installation shall be per CFC, Article 10 and NFPA 72 Standards.
29. Provide fire protection for all commercial cooking equipment (hood and exhaust ducting). Fire protection systems shall meet NFPA 96 Standards for installation.
30. Provide portable fire extinguishers throughout the building with a minimum rating of 2A:10BC. The kitchen shall have Class K type fire extinguisher(s) within 30' of the cooking equipment. Portable fire extinguishers shall be installed in locations as approved by the Fire Department.
31. Interior exiting and exit lighting shall meet the CBC, Chapter 10.

32. Exit plans shall be posted in appropriate locations.
33. Occupant load signage shall be installed in applicable dining areas within the restaurant. Final occupant loads shall be determined on the plans by the architect and shall reflect both a seating factor (15 sq.ft. per person) and a standing factor (7 sq.ft. per person).
34. Interior decorative materials shall be flame treated.
35. Building construction for A2.1 occupancy shall meet the CBC and other applicable city standards and ordinances.
36. An annual permit for Place of Assembly shall be obtained prior to certificate of occupancy.
37. The buildings' fire sprinkler system, fire extinguishing system for the kitchen exhaust hood and cooking equipment, and the fire alarm system shall be monitored by an approved central station monitoring company.
38. The applicant and/or representative thereof shall be responsible for obtaining the appropriate Fire and Building Department permits for construction improvements, fire protection and life safety systems.

**Police:**

39. The permittee shall be responsible for the maintenance of the peace to ensure order on the permittee's property. The Permittee shall take all necessary steps to ensure that permittee's patrons and visitors refrain from incidents of violence and/or intoxication that adversely impact the safety of the community and, therefore, become an increased burden on the limited resources of the Police Department.
40. The sale, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 1:00 AM each day of the week.
41. The facility shall close at 2:00 AM each day of the week. The facility shall not open before 8:00 AM each day of the week.
42. Minors are not allowed in or on any portion of the business under control of licensee(s) after 9:00 PM each day of the week when any event is taking place. This includes all areas of the property including the building, patios and parking lots.
43. There shall be no parking in Municipal Parking Lot # 6 after 2:00 AM. Prior to final building occupancy, the applicant shall contact the Engineering Division of the Public Works Department to have the appropriate signs posted.
44. There shall be no covering of any kind, including signs, on the interior or exterior of the windows of the business, except for one information area with a maximum area of six square feet providing hours of operation, emergency contact numbers, etc. If the glass has tinting to decrease sunlight, it must be so light that anyone can see clearly into the business during daylight or darkness.
45. Music, live or recorded, is permitted between the hours of 9:00 PM until 1:00 AM of the following day, Thursdays, Fridays and Saturdays. No noise from said entertainment shall be audible from the exterior of the premises. Noise generated by the establishment or its patrons shall not exceed ambient noise levels beyond the area under the control of the

licensee. The exterior doors and windows of the establishment shall be kept closed at all times when live entertainment, including a disc jockey playing recorded music, is provided.

46. Between the hours of 8:00 PM through 2:00 AM of the following day every Thursday, Friday and Saturday the licensee(s) shall provide 4 uniformed security guards licensed by the California State Department of Consumer Affairs. This requirement may be increased or decreased at the discretion of the Chief of Police.
47. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
48. The sales of alcoholic beverages shall not exceed 50 percent of the total sales of the restaurant/bar food sales as required by City Code Section 10-1.2735(b)(2)(b) and Section 23038 of the State of California Alcoholic Beverage Control Act.
49. The permittee shall discourage patrons and visitors from loitering and/or consuming alcoholic beverages in adjacent public rights-of-way, parking areas and properties. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

**NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES**

50. Consumption of alcoholic beverages outside of the main building is strictly prohibited. Licensee(s) shall post and maintain on the premises and in the parking lot used in conjunction therewith notices or signs, no less than eighteen inches by twenty-four inches (18"x 24") in size, clearly visible to the patrons of the licensee(s) and parking lot to persons on the public sidewalk stating in 2 inch block lettering the following:

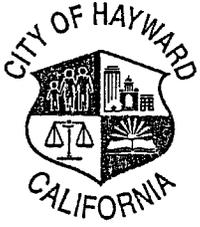
**NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES**

51. The exterior of the premises, including adjacent public sidewalks and all parking lots under control of licensee(s), shall be illuminated during all hours of darkness during, which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel. However, the positioning of such lighting shall not disturb the normal privacy and use of any neighboring residences.
52. Interior illumination shall allow the unaided inspection of personal identification by members of the Hayward Police Department while inside the premises.
53. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application.
54. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.

55. No pay phones shall be permitted on the exterior of the building or premises. Pay telephone(s) maintained on the interior of the premises shall be limited to outgoing calls only.
56. At all times when alcoholic beverages are available, food prepared in the kitchen must also be available to customers. Full meals must be made available from 10:00 a.m. through 10:00 p.m. each day of the week and a light menu consisting of food prepared in the kitchen must be available during all business hours.
57. The front door(s) shall be kept closed at all times during the operation of the premises except in the cases of typical ingress and egress, emergency and to permit deliveries. Said door(s) not to consist solely of a screen or ventilated security door.
58. The owner of the establishment shall be responsible for the hiring of entertainers. The night club facility may not be rented to an outside or independent promoter nor shall entertainment be contracted through any outside or independent promoter. If an entertainer is expected to draw a crowd of over 400 patrons, it shall be the owner(s) responsibility to inform the Community Policing Lieutenant at least two weeks prior to the date of the event providing the type of entertainment and the number of patrons anticipated.
59. There shall be no adult entertainment as defined by Zoning Ordinance Section 10-1.2735 (a). In addition, there shall be no fashion or lingerie shows unless authorized by the Chief of Police and the Planning Director.

**Revocation:**

60. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for revocation of this permit.
61. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 06/24/04  
Agenda Item 3

**TO:** Planning Commission

**FROM:** Erik J. Pearson, AICP, Associate Planner

**SUBJECT:** Use Permit Application No. PL-2004-0010 – Alex Aguilar (Applicant); Jim Morris (Owner): Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery in the CC-C (Central City-Commercial) Zoning District

The Property is Located at 22380 Foothill Boulevard, between Russell Way and San Lorenzo Creek

### RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15332, *Infill Development Projects*; and
2. Adopt a finding that the use is necessary for public convenience or necessity with respect to the sale of alcoholic beverages; and
3. Approve the Use Permit, subject to the attached findings and conditions.

### BACKGROUND

The applicant is proposing a restaurant and bakery with a nightclub and bar within an existing building. The Planning Commission approved a similar use on September 25, 2003, for applicant Rich Pomares. CommPre appealed the approval, but Mr. Pomares withdrew the application before it could be considered by the City Council. The current application was submitted on January 13, 2004, by Alex Aguilar. Mssrs. Pomares and Aguilar were initially partners on the previous application, but Mr. Aguilar was removed from the previous application during the initial review phase.

### DISCUSSION

The applicant intends to use the north half of the building located between Russell Way and San Lorenzo Creek. The northerly portion of the building once housed a J. Magnin department store

and the southerly portion of the space was most recently occupied by a furniture store. The owners of the building are in the early stages of refacing the entire building exterior in an effort to improve leasing interest in this building<sup>1</sup>. The improvements to the building exterior proposed by the building owners include adding new windows to the north side of the building so that patrons would be able to look out over the creek from the entertainment portion of the facility where there would be dining tables. The building owners have also leased land from the City Redevelopment Agency and constructed a parking lot immediately to the rear of the building to serve customers and employees of the building.

The applicant is proposing to use approximately 14,000 square feet of the building for a restaurant which would have two sections. One area is about 10,000 square feet and would be used for dining and entertainment. The smaller area is about 4,000 square feet and would accommodate dining, the kitchen and the bakery. The applicant intends to offer live music, dancing, comedians, etc. It is this nature of live entertainment, coupled with a bar that qualifies the establishment as a nightclub, for which a use permit is required. The business plan states that the *Kumbala Restaurant & Bakery* will resemble *4<sup>th</sup> & B* in San Diego. *4<sup>th</sup> & B*, a large venue with seating for 1,500 people, hosts nationally known entertainers and bands. The applicant expects to attract people working in the downtown area for lunch and a wider clientele during nights and weekends when people may travel farther to see live music or other entertainment. Although the main entrance would be on Foothill Boulevard, the restaurant and nightclub would also have entrances from the parking lot at the rear of the building.

The proposal includes a full service bakery and the restaurant serving "Puerto Vallarta Style" food for breakfast, lunch and dinner with buffets on weekends. The club would provide music, dancing and live entertainment Thursday through Sunday nights. The business plan states that the facility could be used for business meetings, conferences, private parties and fundraisers for nonprofit organizations. Such events would be accommodated by using movable partitions to create the space needed within the large facility. The bakery would be in the area of the kitchen as noted on the floor plan. The retail section for clothing and sports tickets would be located near the entrance of 22380 Foothill Boulevard in the area of the billiard tables.

The proposal is for the facility to be open 24 hours a day, 7 days a week. The plan includes the following: breakfast from 6 a.m. to 11 a.m.; lunch and dinner from 11 a.m. to 12 midnight; and a light menu from 12 midnight to 6 a.m. On weekends there would be a buffet from 9 a.m. to 4 p.m. and dinner from 4 p.m. to 12 midnight; and a light menu from 12 midnight to 9 a.m. In order to prevent loitering and all-night parties, staff is recommending a condition of approval requiring the bar to close at 1 a.m. and the restaurant to close at 2 a.m.

The proposed use would add to the variety of businesses downtown, as there are no similar businesses in the area. The purpose of the CC-C zoning district is "to establish a mix of business and other activities which will enhance the economic vitality of the downtown area." The proposal is consistent with the General Plan designation for the property, which is Retail and Office Commercial. The Plan encourages the maintenance of downtown as an integrated living,

---

<sup>1</sup> The Planning Commission approved a site plan review application on November 4, 2003, to reface the exterior of the building. The building permit was issued in April this year.

working, shopping and recreational area. Land use policies in the General Plan also encourage development that provides venues for cultural vitality and opportunities for a pedestrian friendly environment. The proposed restaurant/nightclub is consistent with these General Plan policies and would provide an amenity for those who live and/or work nearby.

No parking spaces are required for the establishment due to its location in an existing building in the Central Parking District. As this is a discretionary permit, the Planning Commission can consider parking demand and availability for this project. However, staff believes that ample parking is located nearby in the parking lot to the rear of the building (45 spaces) and in Municipal Parking Lot No. 6 (approximately 95 spaces) located on the block between A Street and Russell Way. The use, if in a new building, would require 44 parking spaces. In addition, peak hours associated with the nightclub do not coincide with those of the surrounding daytime businesses.

Public transportation is available to patrons of the establishment. AC Transit bus route 84 (Somerset) which runs between the San Leandro BART station and the Hayward Kaiser Hospital passes by the site and travels through downtown to the Hayward BART station approximately a half-mile away. However, service ends at about 9 p.m. on weekdays and 8 p.m. on weekends.

The applicant intends to obtain a type 47 license from the Department of Alcoholic Beverage Control, which allows the sale of beer, wine and distilled spirits. The license would also require the establishment to maintain a minimum of 51 percent of its gross receipts from the sale of food. The proposed nightclub, defined in Section 10-1.2735(b) of the Zoning Ordinance as an Alcoholic Beverage Outlet, is subject to approval of a use permit. This section of the Ordinance also requires that no on-sale liquor establishment shall be established or maintained within a radius of 100 feet of any off-sale liquor establishment, or of any school, public park, library, playground, recreational center, day care center, or other similar use, and requires that no more than two on-sale liquor establishments shall be permitted per block side or face. There are no on-sale liquor establishments within 100 feet of the site or on the same block face. There are also no schools, parks or other similar uses within 100 feet of the proposed facility.

The State Department of Alcoholic Beverage Control (ABC) has determined that there is an over-concentration of off-sale liquor licenses within this census tract<sup>2</sup>. Their records indicate that there are currently 38 active on-sale licenses where 6 should be allowed by their standards. The number of on-sale licenses is due in part to the large number of restaurants downtown. The downtown area is the part of the City where eating establishments with on-sale licenses should be encouraged. The Downtown Design Plan recognizes that consumption of alcohol in the downtown is part of community life and it affords policy makers the opportunity to review and impose conditions of approval for certain alcohol related outlets to insure such uses are not a detriment to the downtown. ABC uses a per capita ratio to determine the number of licenses that should be issued for a certain census tract. Being located downtown, customers may be attracted from other parts of the City as well as from other cities. Furthermore, many more units of multiple family residential housing are planned or are under construction in the downtown area. As these units are occupied, the number of alcohol establishments per capita will be reduced.

---

<sup>2</sup> Census tract 4354 extends from the northerly side of Jackson Street and E Street to the south side of Grove Way between Fourth Street on the east and the *BART* tracks to the west.

Finally, the Zoning Ordinance requires at least 500 feet between off-sale establishments in other zoning districts, but requires only 100 feet between on-sale establishments within the CC-C district. The intent of the Zoning Ordinance is to have a higher concentration of on-sale licenses within the downtown area.

If the use permit is approved, ABC will ask the City to determine that the sale of alcoholic beverages is necessary for the public convenience or necessity. As the proposed restaurant and nightclub would help to enhance the vibrant atmosphere of downtown, staff supports this determination and has included the necessary finding in Attachment B. The Police Department does not object to the proposal provided that several conditions of approval are included, such as requiring the bar to close at 1 a.m. and the restaurant at 2 a.m.

#### **ENVIRONMENTAL REVIEW:**

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15332, *Infill Development Projects*.

#### **PUBLIC NOTICE:**

On January 16, 2004, a Referral Notice was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Hayward Chamber of Commerce, Hayward Downtown Business Improvement Advisory Board, Hayward Area Planning Association and CommPre. The Referral Notice provided an opportunity for persons to comment on the project. Staff received two letters from CommPre, one from Hayward Citizens for Responsible Liquor Outlets (HCRLO), and one from a resident of Casa Sandoval. Collectively, the letters raised the following questions and concerns: a lack of emphasis in the business plan on the bakery portion of the proposal, the type of ABC license being requested is not in the business plan, the lack of a statement regarding any criminal record, monitoring of people under 21 using the video game room where alcohol may be served, the locations of the bakery and retail outlet on the floor plan, the number of beverage servers, parking, sizes of tables, polls and market studies, the hours, background checks on employees and noise.

The statement regarding the type of ABC license and the applicant's criminal record were submitted under separate cover from the business plan and is attached. Staff believes that all other concerns have been sufficiently addressed in the business plan and the recommended conditions of approval.

A letter from the Friends of San Lorenzo Creek was received asking that the City include a condition requiring the applicant to remove debris from the creek as frequently as is necessary to maintain the creek in a debris-free state. The Alameda County Flood Control Agency supports this condition. In staff's opinion, there is not a clear nexus between the operation of a nightclub and restaurant and trash in the creek. As such, the condition has not been included. The Agency has also requested installation of a fence around the piers of the building to prevent loitering under the building and accumulation of trash in this part of the creek channel. Staff has included the fencing requirement in the conditions of approval.

On June 14, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. In addition, a public notice sign was placed at the site prior to the Public Hearing to help notify neighbors and interested parties residing outside the 300-foot radius.

**CONCLUSION:**

The proposed project is consistent with adopted land use policies of the General Plan. The project also meets all applicable requirements of the Zoning Ordinance and other applicable ordinances. Staff recommends that the Use Permit be approved.

*Prepared by:*



Erik J. Pearson, AICP  
Associate Planner

*Recommended by:*

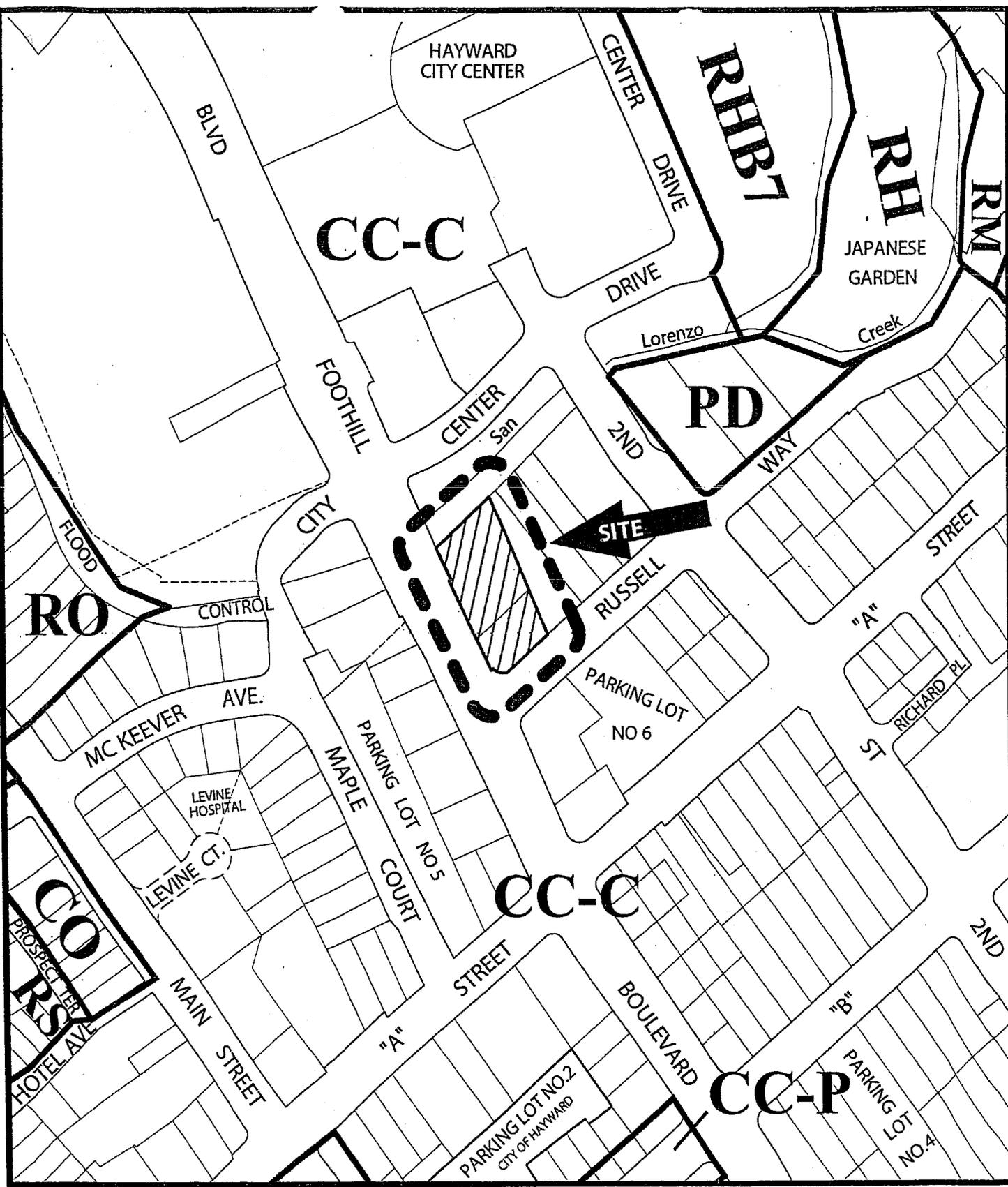


Dyana Anderly, AICP  
Planning Manager

**Attachments:**

- A. Area & Zoning Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Business Plan
- E. Letters from applicant dated January 28, 2004 and June 14, 2004
- F. Letters from interested parties

“Exhibit A” - Floor Plan



**Area & Zoning Map**

PL-2004-0010 UP  
 Address: 22380 & 22386 Foothill Blvd.  
 Applicant: Alejandro Aguilar  
 Owner: James Morris

- CC-C-Central City-Commercial
- CC-P-Central City-Plaza
- CO-Commercial Office
- PD-Planned Development
- RH-High Density Residential RHB 7
- RM-Medium Density Residential RMB 3.5, RMB 4
- RO-Residential Office
- RS-Single-Family Residential,RSB4,RSB6



## FINDINGS FOR APPROVAL

USE PERMIT APPLICATION NO. PL-2004-0010

Alex Aguilar (Applicant); Jim Morris (Owner)

22380 Foothill Boulevard

Request to Operate a Nightclub and Bar in Conjunction with a Restaurant and Bakery.

### General

- A. The approval of Use Permit application No. PL-2004-0010, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15332 of the CEQA Guidelines (*Infill Development Projects*).

### Use Permit

- B. The proposed use, as conditioned, is desirable for the public convenience or welfare in that, with the proximity to downtown and the municipal parking lots, the proposed business would help promote a lively, pedestrian-friendly atmosphere downtown.
- C. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that the conditions imposed on the operation of the nightclub will ensure safe and orderly conduct.
- D. The proposed use, as conditioned, will not be detrimental to the public health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the establishment would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance separation requirements for on-sale licenses.
- E. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Retail and Office Commercial General Plan designation and the Central City-Commercial zoning district both support restaurants and entertainment venues.

### Additional Findings for Alcoholic Beverage Establishments

- F. The proposed use will not result in an undue concentration in the area of establishments dispensing alcoholic beverages in that the nearest on-sale establishment is over 100 feet away.
- G. The proposed use, as conditioned, will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the

following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses. The nearest residential use, Casa Sandoval is over 300 feet from the site.

- H. There is not another alcohol beverage establishment on the block face and the proposal is well over the required 100 feet from the nearest library, park or off-sale establishment.
- I. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of on-sale and off-sale licenses, the proposed use is necessary for public convenience or necessity in that it would provide a high quality eating, drinking, and entertainment establishment in the Downtown.

RECEIVED

JAN 30 2004

Alejandro M Aguilar  
22380 Foothill Blvd..  
Hayward, CA 94544  
Tel. (510) 623-7533 Facsimile (510) 623-7540

PLANNING Dates 1/28/04

---

To: Erik Pearson, associate planner

Subject: Kumbala restaurant and Cantina, 22380 and 22386 Foothill Blvd. Hayward.

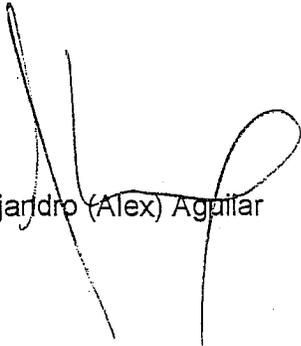
Erik,

In response to your E mail / Letter dated Friday January 23, 2004 this is information you've requested:

- a. The type of alcoholic Beverage control license will be a type 47
- b. The true and complete names of owners are:
  - Alejandro Mario Aguilar, 3072 Belize Way, union City, Ca 94587
  - Angelica Maria Aguilar, 3072 Belize Way, Union City, Ca 94587
- c. In regard to any convictions for crimes other than minor traffic violations:  
  
Angelica M. Aguilar has never been convicted of any crime  
  
Alejandro M. Aguilar, on February 23<sup>rd</sup>. 2000 entered a no contest plea to a misdemeanor charge of domestic violence (penal code section 273.5, 17(b) and was sentenced to three years probation on the condition of participation in a one - year domestic violence counseling program.  
The domestic violence program was completed on 3-28-01 (see attached copy of report) improving my personal life and morals in all aspects.
- d. In respect to The business plan and as I've mention to you, we have plans to host at least three or four events per year to raise money for treatment of cancer and leukemia organizations, where we will be donating all profits from these events.

I hope this is information helps to complete our application and if you shall have any other questions please call me at (510) 406-4271 (cellular number)

Sincerely,

  
Alejandro (Alex) Aguilar

ATTACHMENT E

June 14th, 2004

Hayward Planning Commission  
777 B Street  
Hayward, Ca. 94541

Dear Commissioners:

Our Kumbala restaurant and entertainment center project represents the kind of venture not seen in downtown Hayward in recent times. I have placed a premium on adhering to all city policies. Working within the City's policies and guidelines, we have been able to bring creativity to increase the level activity and improve the appearance of the east side of Foothill Boulevard.

The City of Hayward has placed a great deal of emphasis on bringing restaurants into the downtown area in order to compliment the Cinema Place theatre projected for the former Albertson's site located at Foothill and B Street. The Kumbala Restaurant and Entertainment Center is in total accord with your vision for a pedestrian oriented and flourishing downtown. Along with the other restaurants slated as a part of the theatre complex, Kumbala will be a part of the new Hayward

Last Fall, the Planning Commission approved this project. It is now a better project as we listened to comments from both staff and the public. We also focused on filling a valuable need of this community, which is the lack of community-based group meeting space. We will allow local non-profit groups to use, at no charge, the Kumbala Restaurant and Entertainment Center for their fundraising needs.

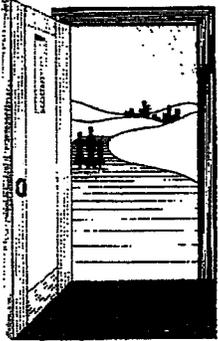
Finally, the Kumbala project will be an attractive addition to the downtown business community that will take into consideration the natural beauty of San Lorenzo Creek, keep a vital corner much safer and compliment the vision of the City's leaders in their quest for attracting people into a classic downtown. I urge your complete support for this innovative project.

Sincerely

Alex Aguilar  
Owner

January 26, 2004

**COMMPRE**



Erik J. Pearson, AICP –Associate Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

**Re: PL-2004-0010 UP, Alejandro Aguilar (Applicant)**

Dear Mr. Pearson:

22652 Second Street  
Hayward, CA 94541  
(510) 247-8207  
(510) 247-8210 fax

The information provided by the Hayward Planning Department is insufficient and lacks required documentation to make an informed decision based on the requirements of a Conditional Use Permit in State, County, and City regulations. It is therefore requested that the applicant be required to supply the following additional documentation:



A program of  
Horizon Services, Inc.

1. The diagram submitted does not show what the business plan states will be part of the facility:
  - a. Location of sports TVs, interactive games, pool tables, board games, ticket outlets, retail outlet;
  - b. Exact layout of Entertainment facility, to include the dance floor, size of stage, number of tables in area, exits, etc.; and
  - c. Exact layout of the restaurant facility, to include number of tables, exits, etc.
  
2. The business plan does not address the issue of minors (persons under 21 years of age) within the entertainment/restaurant facilities.
  
3. City of Hayward Ordinances require that an application for a conditional use permit shall include the type of ABC license the applicant is seeking for the establishment. This was not located in the business plan.
  
4. The business plan states that the entertainment facility will accommodate 1200 people. The plan does not address the number of people to be accommodated by the restaurant facility.
  
5. The business plan talks about surveys conducted to establish marketing strategy and to establish the service business analysis, to include age, etc. Where are these surveys? Again what about minors?

6. The business plan states big name entertainers will appear such as Chris Rock, George Carlin, Willie Nelson and Crosby, Stills & Nash. There is no documentation to support this claim. According to the companies listed in the letters in the business plan, the applicant has only dealt with Hispanic/Latino groups. Two of the letters of reference are from firms that are paid by the applicant to perform an advertisement service.
7. The business plan states that the entertainment area will offer special set-ups, for conference, business meetings, seminars, fundraisers, receptions or private parties, but doesn't explain how this will interact with the already congested area. Will the applicant sublet this facility, as is done with Mango's, (the applicant's club in Fremont,) to accomplish this? Incidentally, Mango's recently had to call in the police and close down after things got out of hand?
8. Under the strategies section, the applicant mentions emphasizing their "exceptional service" by providing a higher service employee to costumer ratios, but does not mention how many beverage servers, would be required.
9. The parking for this type of use must be considered. The Planner states that due to Sec.10-2.200, this facility is not required to provide parking, loading/delivery facilities. When reading that section it states, "except in the Central Parking District". Why the exception? Where is it explained? Public Transportation will not be available to accommodate patrons due to the hours of operation. The 45 spaces in the rear of the building are for joint use, and the parking across the street cannot accommodate the projected numbers by this business plan. If one uses the square foot formula of one space per every 315 sq. ft. then only 48 parking places are required. That would mean that 25 people must share the same parking place, based on the business plan's projected numbers for the Entertainment section only. Using the formula of one space per every 4 seated persons, 300 parking spaces would be needed. Now, how many parking places will the restaurant need? How many parking spaces will the staff need? How many for the conference facility? These questions need to be answered.
10. The Downtown Plan is designed to cater to walking traffic. Although this type of use is conditional within the CC-C zoning, it cannot be considered a walk up business for the following reasons:
  - a. Hours of operation (almost 24 hours)
  - b. Number of projected clientele (1200 plus)

- c. Dress code for this type of use
- d. Show times
- e. The patrons must park somewhere for this type of use

Thank you for your assistance in obtaining this important information. We believe strongly that this cannot go unchecked or unanswered.

Very truly yours,



David Cota  
Prevention Specialist/Community Organizer

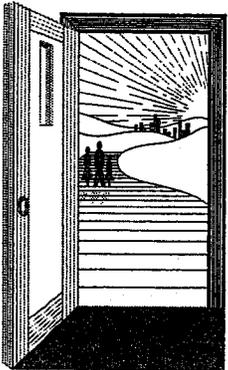
RECEIVED

MAY 24 2004

May 18, 2004

PLANNING DIVISION

COMMPRE



Erik J. Pearson, AICP –Associate Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

Re: PL-2004-0010 UP, Alejandro Aguilar (Applicant)

Dear Mr. Pearson:

This is in response to the “revised” business plan for Kumbala Restaurant & Bakery. In addition to the concerns addressed in my letter dated January 26, 2004, we find additional problems with this plan.

The description of the business still meets the definition of a nightclub. The zoning ordinance of the City of Hayward, defines a nightclub as “*any establishment 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.*”

The ordinance also requires new alcohol establishments, such as this nightclub, to apply for a CUP in which the following information should be included:

- The type of Alcoholic Beverage Control license the applicant is seeking for the establishment;
- 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.

The applicant did not state in the business plan the ABC license type he is seeking, nor a statement indicating the clearance of any criminal record.

The business plan illustrates in detail all the components of the restaurant/bar/nightclub operation such as the food and entertainment. The plan also describes the retail, recreation and other “services” they would like to provide, but *says nothing* about the bakery, except that the “bakery will supply fresh baked goods daily. The bakery will supply our restaurant and

22652 Second Street  
Hayward, CA 94541  
(510) 247-8207  
(510) 247-8210 fax



A program of  
Horizon Services, Inc.

take-out clientele with a wide range of breads, rolls, pastries and south of the border treats." For instance, section 2.0 "Company Summary" describes the various features Kumbala would offer, but fails to describe the bakery operation. This error is repeated several times throughout the business plan under the "Business Description" in section 3.0 and "Service Business Analysis" in section 4.3.

The floor plan presents additional questions. It shows that the interactive video games are located in the back of the entertainment facility, which includes a full-service bar. How will the applicant monitor ages of patrons who are playing? According to the floor plan, the restaurant section has open access to the entertainment facility. Will anyone under 21 be allowed to enter the "video games" section where alcohol would be allowed?

In addition, the floor plan does not point out the location of both the retail outlet and the bakery.

In summary, our position remains the same. We respectfully request that the Planning Commission deny this application.

Very truly yours,

A handwritten signature in cursive script that reads "David Cota".

David Cota  
Prevention Specialist/Community Organizer

RECEIVED

MAY 17 2004

Erik J. Pearson, AICP- Associate Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

PLANNING DIVISION

**Re: PL-2004-0010 UP, Alejandro Aguilar (Applicant)**

Dear Mr. Pearson:

As concerned citizens of Hayward we look forward to economic revitalization and the overall well being of our city of Hayward. As members of Hayward Citizens for Responsible Liquor Outlets (HCRLO), we pay particular attention to alcohol outlets and how they impact our community.

HCRLO has been following Alejandro Aguilar's process for establishing a bar and nightclub in Hayward. We have reviewed his latest proposal for Kumbala Restaurant and Bakery. The plan appears to attempt to be everything to everybody. We have the following questions and concerns:

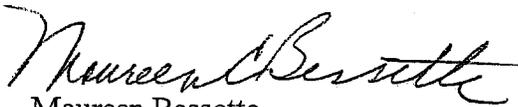
1. What type of background check is management planning? Will finger printing be part of the background check?
2. The plan states service is a high priority. What will be the ratio of wait staff to guests? How many employees (cooks, waiters, bartenders) are they planning on hiring?
3. Tables for at least half of the entertainment section seem too small. If 65% of sales are expected to come from food there does not appear to be enough space for food plates to fit on the tables.
4. Which radio and TV stations are they planning to advertise on?
5. In sections 4.3 and 4.4 studies and polls are mentioned. Who conducted the polls, where were the polls/studies conducted, how many persons were contacted, what questions were used, etc?
6. The size of the kitchen appears small, especially when 400 guests are expected and 65% of sales are to come from food.
7. Where is the bakery operation to be located?
8. What steps are being taken to insure that noise will not affect the residents of Casa Sandoval (senior retirement residence)?
9. Safety is a primary concern. Mr. Aguilar's Club Mango had the following police calls in 2004 – battery on a police officer, stolen vehicles, public drunkenness, and disturbing the peace. This appears to present a safety problem to the retirement residence, as well as the entire neighborhood.
10. Parking – The plan indicates there are 180 parking spaces available for guests. However parking in the area is competitive and it is likely far fewer spaces will be available. Most of the guests will be driving their own personal vehicle. How will the parking issues be addressed?
11. What hours will alcohol be served?

12. The name of the establishment appears to be a misnomer for the proposed business.
13. Finally, we believe that the proposed 24 hours, seven days a week operation will result in a magnet for loitering and other undesirable activities.

In the past, we scheduled an appointment with Mr. Aguilar to address our questions and concerns. However, he failed to show up or to call to cancel the meeting, leaving all of us waiting. We interpret this, as he is not interested in listening to community concerns.

We would appreciate your consideration of our questions and concerns regarding the Kumbala Restaurant and Bakery.

Sincerely,



Maureen Bessette  
HCRLO Member

Hayward Citizens for Responsible Liquor Outlets (HCRLO)  
22652 Second St. Hayward, CA 94541

RECEIVED

Erik J. Pearson, AICP-Associate Planner  
City of Hayward, Planning Division  
777 - "B" Street  
Hayward, CA 94541

JUN 09 2004

PLANNING DIVISION

RE: PL-2004-0010 UP, Alejandro Aguilar (Applicant)

Dear Mr. Pearson,

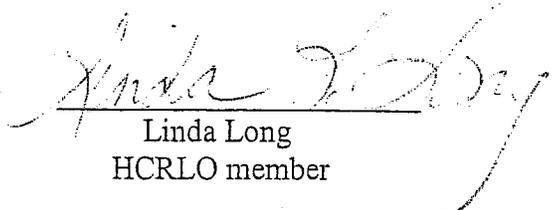
On June 2, 2004, the members of Hayward Citizens for Responsible Liquor Outlets (HCRLO) met with Mr. Aguilar (applicant) and Ed Bullock (agent) to address the questions and concerns submitted to the Planning Department regarding Kumbala Restaurant and Bakery. After this meeting we are even more concerned about the inconsistencies with the submitted plan vs. what Mr. Aguilar said. For instance, the plan calls for dining tables to be 30" in diameter and café tables to be 20" in diameter. When questioned, Mr. Aguilar stated the tables are actually 36" and 30" respectfully. In addition, when asked about the bakery location, operation and size, Mr. Aguilar said no plan had yet been determined. At this point, the "bakery" could be nothing more than a small round case with a few desserts displayed. Finally, the plan states that famous entertainers (headliners) would appear. Now Mr. Aguilar says that the facility is too small to draw the listed headliners. Finally, Mr. Aguilar stated that the Business Plan submitted to Planning Department was not possible as written, and several areas will change.

It appears that the submitted business plan has changed and is no longer the same plan that was submitted to the Planning Commission. We, the Hayward Citizens for Responsible Liquor Outlets, find that it would be impossible to make a responsible decision on the plan submitted for approval.

Therefore, HCRLO requests that the current plan for Kumbala Restaurant and Bakery be denied.

Sincerely,

Hayward Citizens for Responsible Liquor Outlets (HCRLO)

  
Linda Long  
HCRLO member

**FRIENDS OF SAN LORENZO CREEK**

**P.O. Box 582**

**Hayward, California 94543**

**RECEIVED**

MAY 06 2004

PLANNING DIVISION

May 5, 2004

Erik Pearson  
Planning Division  
City of Hayward  
777 B Street  
Hayward 94541

Re: Application PL-2004-0010 UP (Kumbala Restaurant)

Dear Mr. Pearson,

Our initial concern with the subject application is that patrons may toss things into the creek next to the restaurant. Conditions should be imposed on any city operating permit requiring the restaurant operator to remove debris from the creek near the restaurant, as frequently as necessary, in order to maintain the creek in a debris-free state.

Sincerely,



Howard Beckman  
President

278-7238  
hpb@netvista.net

(Mail to 1261 via Dolorosa, San Lorenzo 94580)

Jan 17, 2003

Eric J Pearson AICP Associate Planner  
City of Hayward, Planning Division  
777 B Street  
Hayward Calif 94541

I'm very much against the  
operation of a restaurant + night club so  
close to a home for the elderly.  
(Casa Sandoval) We require a place that  
is quiet + a restaurant + night club  
would be far from quiet.

Sincerely

Glenn Peterson Capt. 418  
1200 Russell Way  
Hayward Calif 94541

RECEIVED

JAN 22 2004

PLANNING DIVISION

# ala Restaurant & Bakery

SAN LORENZO CREEK

VIDEO GAMES

ILL AREA

30' DIA.	31 SEATING (4 & 5/ TABLE)	124 PEOPLE
	13 SEATING (4/ BOOTH)	62 PEOPLE
20' DIA.	44 SEATING (3/ TABLE)	132 PEOPLE
		20 PEOPLE
		<u>338 PEOPLE</u>

ILL AREA

	74 PEOPLE
	<u>412 PEOPLE</u>

Public Parking

	140 CARS
	40 CARS
	<u>180 CARS</u>

TYPE V-1HOUR (CONCRETE, BRICK & WOOD FRAME)

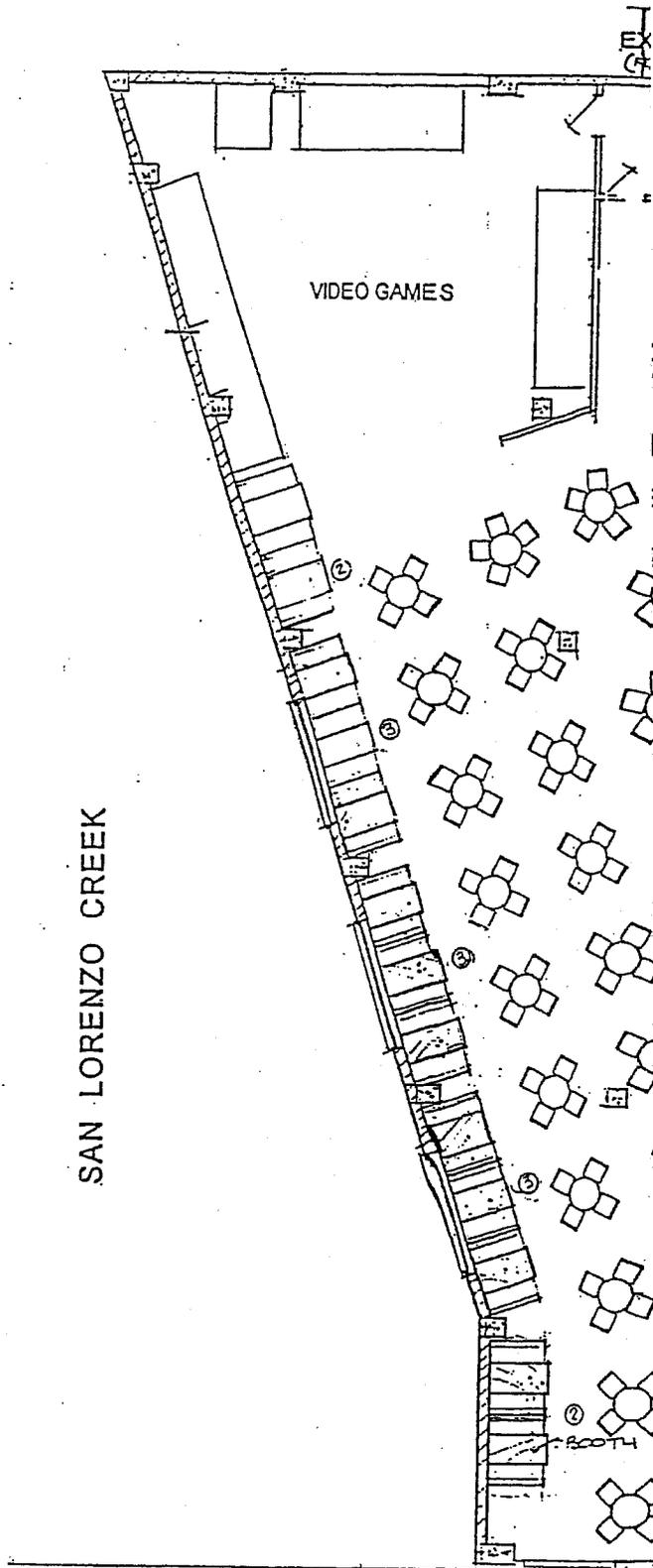
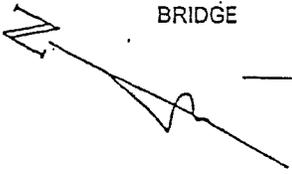
ON: AUTOMATIC FIRE SPRINKLER AND FIRE ALARM EVACUATION SYSTEM

REQUIRED (PER TABLE 10B) .2x403 PEOPLE = 81 INCHES  
 PROVIDED = 262 INCHES

BRIDGE

0  
GR

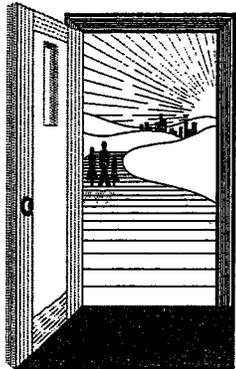
T



JUL 02 2004

PLANNING DIVISION

COMMPRE



July 1, 2004

Erik J. Pearson, AICP, Associate Planner  
Hayward Planning Department  
777 B Street  
Hayward, CA 94541

Re: **Appeal of Planning Commission decision to allow  
PL-2004-0010, Alex Aguilar (Applicant)**

22652 Second Street  
Hayward, CA 94541  
(510) 247-8207  
(510) 247-8210 fax



A program of  
Horizon Services, Inc.

Dear Mr. Pearson,

This represents our appeal of the June 24, 2004 decision of the Planning Commission.

In addition, we are also appealing the decision that this application is for a "Bona Fide" restaurant AND a nightclub, which violates Ordinance Section 10-1.2735.

The Planning Director informed us today that there is a new filing fee of \$50.00. Please let us know how and when to pay the fee.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Pratt". The signature is written in black ink and is positioned above the typed name.

Linda A. Pratt, M.A.  
Program Director



EDUCATING ALL YOUTH FOR EXCELLENCE

# Castro Valley Unified School District

**BOARD OF EDUCATION**

John J. Barbieri  
 Janice Friesen  
 George Granger  
 Jo A.S. Loss  
 Kunio Okui

**SUPERINTENDENT**

James L. Fitzpatrick

P.O. BOX 2146 • CASTRO VALLEY, CALIFORNIA 94546 • (510)537-3000 • FAX (510) 886-8962

**RECEIVED**

AUG 16 2004 11:20 AM

Hayward City Council  
 City of Hayward  
 777 B Street  
 Hayward, CA 94541

Community &amp; Economic Development

**RE: Opposition to Kumbala Restaurant & Bakery, PL-2004-0010 UP**

Dear City Council Members:

On behalf of the Castro Valley Community Action Network (CV-CAN) we would like to state our opposition to the Kumbala Nightclub, PL-2004-0010 UP, on 22380 Foothill Blvd. in Hayward. CV-CAN is a coalition of community members and agencies, who work together to help reduce substance abuse amongst youth, and to promote factors that lead to a drug-free community. CV-CAN was created after surveying youth in the Castro Valley community and finding that there has been an increase in underage drinking and easy accessibility of alcohol for youth. This is not only a concern for Castro Valley youth, but youth from all surrounding communities, including Hayward.

Our greatest concern is the over-concentration of alcohol outlets in the area that Kumbala is to be located in. Kumbala is in census tract 4354, which is highly over-concentrated with alcohol outlets. According to the California Alcohol Beverage Control (ABC) there are currently **37** on-sale active licenses, where only **6** are allowed, and **9** active off-sale licenses where only **4** are allowed.

Another concern that we have with Kumbala Nightclub is that it will adversely affect the quality of life for local residents and businesses. The community will be forced to deal with increases in problems associated with nightclubs, such as: speeding cars, public drunkenness, loitering, public urination, parking shortages and driving under the influence. These problems will not only affect Hayward but it will greatly affect the surrounding communities, like Castro Valley. As a community coalition, we are trying to minimize the amount of alcohol and drug-related problems in our communities, and allowing an establishment, such as Kumbala could only increase these problems.

Therefore, we request the City Council uphold the appeal and deny the Use Permit for the restaurant and nightclub.

Sincerely,

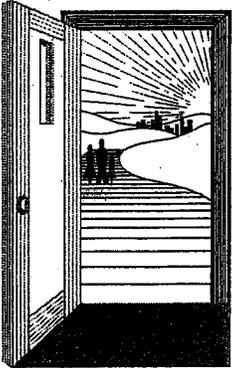
Traci Cross  
 Castro Valley Community Action Network

cc: Mayor, City Council, City Manager, and Dept. <u>CED</u>
Fwd: <u>8/13/04 ml</u>

Hayward City Council  
777 B Street  
Hayward, CA 94541

6/2/04 10:00 AM

## PROJECT EDEN



22646 Second Street  
Hayward, CA 94541  
(510) 247-8200  
(510) 247-8202 Fax



A program of  
Horizon Services, Inc.

RE: Kumbala Restaurant & Nightclub, PL-2004-0010 UP

Dear Honorable Council Members,

On behalf of Project Eden, I am writing in opposition to the proposed Kumbala Restaurant & Nightclub, PL-2004-0010 UP, on 22380 Foothill Blvd. in Hayward.

Project Eden provides services to youth in Alameda County through alcohol and other drugs prevention, intervention, and outpatient treatment programs. Our program has identified an increasing need for services for youth who are already using or abusing alcohol or other drugs, or who are exhibiting behavior which puts them at extremely high risk for abusing alcohol or other drugs.

Alcohol abuse is a rising problem among young people. A recent federal survey shows that by the tenth grade, 39.9% of students report that they have been drunk at least once in the past year. The number of youth between the ages of 12 to 17 being admitted to addiction treatment for alcohol abuse has increased 30% between 1999 and 2003. Most significantly, in the three leading causes of death among young people, alcohol plays a major contributing factor.

This restaurant's main operation will be as a night club offering a full service bar, entertainment (disc jockeys and live bands), dancing, arcade and pool tables open 24 hours seven days a week. Kumbala's Restaurant and Nightclub will adversely affect the quality of life for local residents and businesses including increases in speeding cars, public drunkenness, high potential of saleing alcohol to minors, loitering, public urination, parking shortages and driving under the influence.

In addition to these potential problems associated with a nightclub, Kumbala is to be located at 22380 & 22386 Foothill Blvd. in Hayward, which is less than 5 minutes from 3 children and youth programs.

This neighborhood is enriched with resources such as youth programs, churches, community organizations, and schools, which work together to improve the health and safety of local residents. The community has seen enough problems. The addition of more alcohol in an area that is already over concentrated with alcohol outlets exacerbates the problems.

I urge you to uphold the appeal and deny this proposal. Thank you for your consideration.

Sincerely,

Rochelle U. Collins, MA, MSW  
Program Director

cc: Mayor, City Council,  
City Manager, and  
Dept. Planning Manager  
PD  
Fwd: 9/2/04 ml

**Kumbala Restaurant & Bakery**

*A taste of Puerto Vallarta in The Heart of the Bay*

*Hayward, California*

# Table of Contents

<u>Section</u>	<u>Page</u>
1.0 Proposed Project	1
1.1 Food	1
1.2 Entertainment	3
2.0 Company Summary	4
2.0.1 Entertainment and Dancing Based Themes	4
2.0.2 Distinctive Design Features	4
2.0.3 Location, Location, Location	5
2.0.4 Recreation	5
2.0.5 Quality Food	5
2.0.6 Comedy	6
2.0.7 Live Bands	6
2.0.8 Sports Venue	6
2.0.9 Exceptional Service	6
2.0.10 Retail Outlet	6
2.1 Company Ownership	6
2.1.1 Alejandro M. Aguilar	6
2.1.2 Angelica M. Aguilar	7
2.1.3 Kan Modi	7
2.1.4 Abel Rosales	7
2.2 Start-up Summary	7

## Table of Contents, continued

<u>Section</u>	<u>Page</u>
3.0 Business Description	7
3.1 Ticket Outlet	8
3.2 Sporting Goods	8
3.3 Product Line	8
4.0 Market Summary	8
4.1 Market Segmentation	9
4.1.0 Childless Young Professionals	9
4.1.1 Tourists & Business Travelers	10
4.2 Target Market Strategy	10
4.3 Service Business Analysis	10
4.4 Main Competition	11
5.0 Strategies and Implementation Summary	11
6.0 Marketing Strategy	12
7.0 Management Summary	12
7.1 Management Team	12
7.2 Personnel Plan	13
Addendum 1, Floor Plan	14
Addendum 2, Breakfast Menu	15
Addendum 3, Lunch & Dinner Menu	16
Addendum 4, Letter from Fremont Police Department	17
Addendum 5, Letters of appreciation	18

1.0 Proposed Project:

## *Kumbala Restaurant & Bakery*

22380 Foothill Boulevard  
Hayward, California

*Kumbala Restaurant & Bakery*, named after a fabulous Caribbean restaurant, will present an exciting new entertainment venue. *Kumbala Restaurant & Bakery* will have a Puerto Vallarta style food theme and the most exiting entertainment in the Bay Area.

1.1 Food:

*Kumbala Restaurant & Bakery* will be open 7 days a week. Our bakery will provide fresh baked goods daily. The bakery will supply our restaurant and take-out clientele with a wide range of breads, rolls, pastries and south of the border treats. There appears to be shortage of full service retail bakeries in downtown Hayward. Our goal is to address this need. Our restaurant will offer a wide selection of food choices for example:

During the week, from 6AM to 11AM we will serve our Breakfast Menu, Addendum 2 to this Business Plan.

From 11AM to 12 midnight we will serve our Lunch and Dinner Menu, Addendum 3 to this Business Plan.

From 12 midnight to 6AM we will serve a light menu offering snacks, sandwiches, salads, coffee, tea and soft drinks.

On Friday night and Saturday night, our light menu will be offered from 12 midnight to 9AM when we will begin our Weekend Buffet. This buffet will be served from 9AM to 4PM. Our lunch and dinner menu will be served 4PM to 12 midnight.

The Weekend Buffet will include a breakfast buffet that includes but is not limited to the following choices:

**Egg dishes:**

Eggs to Order  
Scrambled Eggs  
Eggs Benedict  
Ranchero Eggs  
Chorizo & Eggs  
Pancakes & Eggs

**Meat dishes:**

Roast Beef  
Sausage  
Ham  
Bacon

Chicken and turkey dishes

Various fish dishes

Fresh bread, rolls, tortillas and pastries from our bakery

Various cheeses

Various fruits

Coffee

Tea

Soft drinks

Milk

Juices

This buffet will be presented to our guests in elegant serving ware such as mirror polished stainless steel chafers trimmed with brass and gold. The buffet will be offered from a set of 8-foot tables covered with table clothes, surrounded by skirting and decorated with flowers of the season.



© Peccaro, DineGraphics®

Chefs to assist our guests in those dishes that are prepared to order will staff the buffet serving station.

One or more musicians playing piano, guitar or other suitable instruments to provide a great atmosphere for dining will play live music.

## 1.2 Entertainment:

*Kumbala Restaurant & Bakery* will be a venue like no other in the Bay Area. The restaurant setting will include views of the peaceful and historic San Lorenzo Creek to enhance their dining pleasure.

Thursday nights will be the perfect getaway for Bay Area couples and singles - nights filled with romance, soft music and excellent food. This one of a kind romantic destination will feature sensuous Latin and American music. Our patrons will enjoy live entertainment to include musical trios and piano solo artists creating a magical atmosphere for two.

Fridays will be a night of laughter, song and dance. Well-known comedians and dazzling magicians will be part of the show. Later in the evening, Latin House and Pop rhythms will fill the air, an open invitation for our patrons to enjoy a special evening.

Saturdays bring the opportunity to dance to the hot Latin beat of popular bands that attract people from all over the Bay Area. Dance formats will include Salsa dancing, Mexican regional music, Romantica, Latin House and other spicy Latin rhythms.

Sundays present a time to dine and dance. Patrons will come to enjoy our Weekend Buffet and take pleasure in the music of Latin Trios or Mariachis from Noon until 8:00 PM. Our guests may also enjoy dinner while they get pleasure from the music of a famous singer. Sundays will be a day to relax and enjoy food and favorite music.

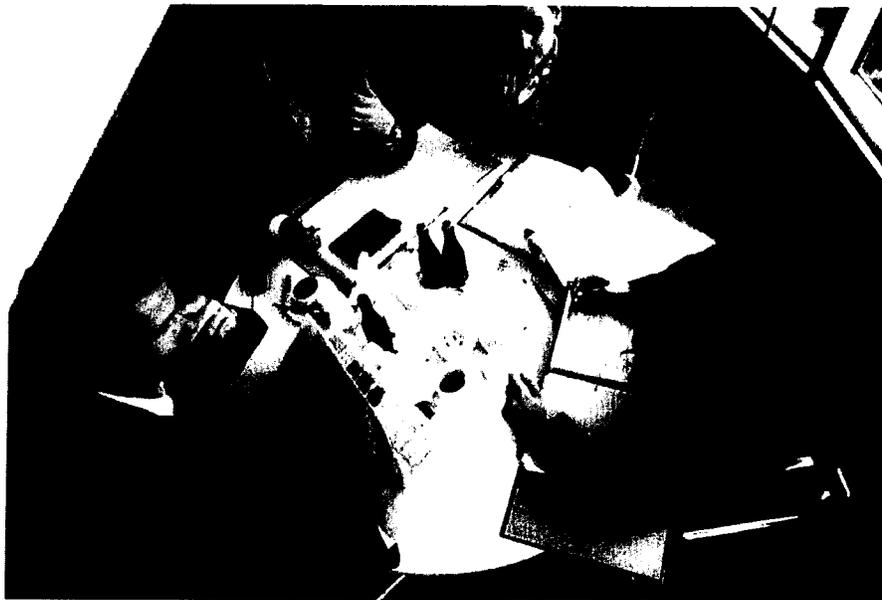


## 2.0 Company Summary

*Kumbala Restaurant & Bakery* will have the following elements:

**2.0.1 Entertainment and Dancing Based Themes:** *Kumbala Restaurant & Bakery Restaurant* will focus on themes that have mass appeal. These themes will be reflected in our food, décor, games and in the selection of individuals or groups brought to the venue to entertain our guests.

**2.0.2 Distinctive Design Features:** We will be characterized by an elaborate sit down restaurant facility, situated in a spectacular setting which comfortably accommodates our guests. Our open kitchen restaurant will present an inviting and relaxing atmosphere where patrons can enjoy “Puerto Vallarta Style” food including some exotic seafood dishes introduced by renowned chef Abel Rosales who has more than 30 years of experience in the restaurant business.



Our unique venue will offer space and support facilities to include food and beverage service, audiovisual equipment and furniture, fixtures and equipment that can be effectively combined for use in for:

- Conferences
- Sales meetings
- Seminars
- Receptions
- Private parties
- Fundraisers for local nonprofit organizations

Alex and Angelica Aguilar have generously supported local nonprofit organizations such as, Faith Fellowship Foursquare Church, San Leandro, California,

*Kumbala Restaurant & Bakery* will resemble the venue of the very popular 4<sup>th</sup> & B in San Diego, California shown below.



**2.0.3 Location, Location, Location:** One of the major advantages that we will have over competition will be its location. *Kumbala Restaurant & Bakery* will be a key element in the resurgence of downtown Hayward.

**2.0.4 Recreation:** *Kumbala Restaurant & Bakery* will implement several interactive games and pool tables, as well as boards for additional entertainment.

**2.0.5 Quality Food:** All would be lost without special attention being paid to the variety and quality of the food we serve. We offer a menu of foods similar to those found in premier restaurants in the city of Puerto Vallarta,

Mexico because Puerto Vallarta attracts a very cosmopolitan type of clientele. Guests in Puerto Vallarta expect to find restaurants that provide quality food for a wide range of tastes and cultures. It is our goal to reproduce the Puerto Vallarta offerings in a local setting.

2.0.6 Comedy: We will create a premier entertainment experience. We will offer the best and brightest entertainers we can book. Years ago, stars on the rise such as Whoopy Goldberg and Huey Lewis & The News appeared in the same building. Who knows what future top name performers will entertain our guests? This will help create name recognition in this special niche market.

2.0.7 Live Bands: On certain nights we will have bands and groups to entertain our guests. Some of our bands have followings that will travel substantial distances to see them perform. Our musical offerings will range from Willie Nelson to Harry Connick, Jr., Crosby, Stills & Nash to Duran Duran. Top quality acts such as these are possible because of our venue.

2.0.8 Sports Venue: We will create a sports palace like no other in the Bay Area. This venue will attract people who want to watch their favorite sports and teams, while enjoying great food and drink.

2.0.9 Exceptional Service: In order to establish and maintain a unique reputation for quality service, we will provide attentive and friendly service through a high ratio of service personality to customer. We will also invest in the training and supervision of our employees.

2.0.10 Retail Outlet: *Kumbala Restaurant & Bakery* will also have a retail section in the facility. Our retail outlet will sell products with our logos, clothing of all sorts. We will also sell Raiders, 49 Niners, Giants, A's and Warriors tickets in addition to our logo items. A number of the professional players in the area are friends with Alex and Angelica Aguilar.

## 2.1 Company Ownership

*Kumbala Restaurant & Bakery* will be owned and managed by A and A Entertainment, Inc. This corporation has the following officers: President, Mr. Alejandro "Alex" M. Aguilar, Secretary, Mrs. Angelica M. Aguilar, and Chief Financial Officer, Mr. Ken Modi. Alex and Angelica Aguilar, his wife, own 100 % of the corporate stock.

2.1.1 Alejandro M. Aguilar – Alex will bring to this project 10 years of experience with the Latin Music Industry where he has worked with some of the biggest shows and events throughout the United States including: The Broadway Street - L. A., 55,000 people attended, La Calle 8 – Miami, 70,000 people attended, KSOL Radio - yearly event – San Jose, CA, 45,000

people attended just to name a few. Alex is committed to making *Kumbala Restaurant & Bakery* the most sought after destination in the Bay Area, one the entire family can enjoy for years to come.

2.1.2 Angelica M. Aguilar – Angelica as an experienced Office Manager will bring her administrative organizational skills. She will oversee our Human Resources department and other office related matters in general.

2.1.3 Ken Modi – Mr. Modi will direct our bookkeeping department, Mr. Modi brings over 10 years of experience to ensure finances are always well managed. It is very important that all bills particularly local, state and federal taxes are paid in a timely fashion. Mr. Modi is a salaried employee and while he is a corporate officer, will not own any shares of the corporation.

2.1.4 Abel Rosales – Abel Brings to *Kumbala Restaurant & Bakery* more than 30 years of experience in the restaurant business where he has been in various management positions. Abel will be our Director of Food Services. He will present a menu that includes some exotic Seafood Dishes of his own creation. Mr. Rosales is also a salaried employee and will not own any shares of the corporation.

## 2.2 Start-up Summary

A and A Entertainment Inc. owns the majority of the necessary furniture and equipment including: restaurant furniture, bar equipment, kitchen equipment, plumbing and electric fixtures, lighting fixtures and flooring materials. In addition A and A Entertainment, Inc. has a signed contract with Baines Development to construct the restaurant facility.

## 3.0 Business Description

The re-vitalization of the downtown area in Hayward represents a unique opportunity for this venture. The development's central location, demographics, and lack of direct competition are major advantages to this project. The proposed venue will provide a local solution to the lack of social atmosphere and live sports venue geared primarily toward the 21 and over group in the Bay Area, and will help keep late night entertainment expenditures at home here in Hayward.

Our venue will specialize in high-energy themes. Quality interactive games, board games and pool tables will be located in an area where we will offer beer, wine and an array of liquors and mixed drinks.

The venue will sell also non-alcoholic beverages such as soft drinks, juices milk, coffee, a variety of teas and bottled water, as well as an extensive food menu. Most of our food offerings will be at all hours of operation.

Kumbala Restaurant & Bakery will draw patrons from the greater Hayward market area. *Kumbala Restaurant & Bakery* will have a retail outlet, located in this facility and will sell and distribute an array of marketable items

### 3.1 Ticket Outlet

We will become a ticket outlet for all San Francisco 49ers, Oakland Raiders, San Francisco Giants, Oakland Athletics and Golden State Warriors home games.

### 3.2 Sporting Goods

We are looking at establishing relationships with sporting goods wholesalers who have the capability of providing teams of all sports and ages with uniforms and the necessary equipment to compete in their respective sports.

We expect these relationships can be valuable in our efforts to assist deserving local nonprofit organizations. There is a dire shortage of affordable places that local nonprofit organizations can meet or stage fundraising events in Hayward. We plan to offer the venue to such organizations at no rental cost. If food, beverages or staff were required for a meeting or event, those goods and services would be supplied at our cost. In this way, we can assist local nonprofit organizations in a meaningful way. It is our fervent desire to be an asset to the community.

### 3.3 Product Line

We will carry our own product line that will feature various items and clothing with our own logo.

### 4.0 Market Summary

The concept and the management team of this project have been well received by members of the public. The Greater Hayward Area has an immediate adult trade population of over 150,000 people with a secondary adult trade population, within 30 minutes or so, of over 3 million. Foothill Blvd has an average daily traffic count of 50,000 plus and probably will continue to increase over the years. Within about a mile of the facility there is a freeway connection that enables our patron's easy access to *Kumbala Restaurant & Bakery*. In the near future, there will be a Century Theater opening less than 3 blocks from our venue. The theater activity will help in

the promotion of *Kumbala Restaurant & Bakery* when people will look for a place to have dinner before or after a show.

The project will be about 13,500 square feet, which will also house the company's corporate business office. The entertainment facility will seat approximately 400 people. With Bay Area's rapid growing population, this business would create mass appeal for customers of all ages. *Kumbala Restaurant & Bakery* will be equipped with state-of-the-art audio and video system that surpasses anything in the Bay Area. The general appearance will be clean, open, and pleasing to the customer.

#### 4.1 Market Segmentation

We see this venture appealing to two major market segments. Fortunately, the hours of operation help the project lend itself to multiple segment appeal. Our market segmentation scheme allows us to target the following market segments:

4.1.0 Childless Young Professionals: Due to our proximity to the new Theater, we must appeal to single adults and young couples. Whether it is a group of friends or a couple out to see a movie together, these people will need a place to relax either before and/or after their movie.



**4.1.1 Tourists & Business Travelers:** More and more business travelers and tourists are finding their way to and through Hayward as they visit the Bay Area every year. We plan to reach motel patrons. We anticipate a 10 to 15 percent annual growth rate in this segment. As our relationship grows with the local motels and hotels, so too will the word of mouth recommendations from the motel or hotel staff. We will encourage the staff, to include their families, to patronize our *Kumbala Restaurant & Bakery*. Our plan is to publish an extensive website in order to create awareness to any traveler who wants to take a look at the facility before they visit. *Kumbala Restaurant & Bakery* will market this facility to people of all ages, with the three listed above being the most likely to visit more than one or two times a week.

#### **4.2 Target Market Strategy:**

Our strategy is based on serving our niche markets exceptionally well. The nighttime enthusiast, the tourist, business traveler, the local restaurant crowd, the local service industry, and the groups going out together can all enjoy and be a part of the *Kumbala Restaurant & Bakery* experience. Our basic business approach provides the material for our marketing strategy, i.e.,

- Emphasize exceptional service
- Create awareness of our unique features
- Focus on our target markets
- Create a "Friendly Neighbor" discount card for people that live or work in Hayward so they can come and enjoy our dishes.

While we must charge appropriately for high-quality food and service these charges will be actually be very affordable. We view affordability as being key to our success. Our revenue structure is based on volume. In order to achieve the volume of business needed, we must deliver an overall premier experience. That means top wages and extensive training for our employees. It means providing top quality food service and entertainment at prices that will attract guests to *Kumbala Restaurant & Bakery*.

Part of the superb experience we will offer is the creativity and simplicity of the food menu. While being unique, our food selections will be relatively inexpensive and easy to prepare. All menu items will be moderately priced. We expect average guest expenditures to be approximately 65% for food and 35% for beverages.

#### **4.3 Service Business Analysis**

Sports themed and live entertainment, such as live bands, comedy shows, karaoke, and even interactive event venues has significantly impacted cities

from coast to coast in the 90's and early into the new millennium. Our studies show that the average person will spend 3 to 4 hours per weekend in this type of environment.

Simple concepts are still popular today, however, these concepts have greatly evolved with society. In recent years that industry has become more sophisticated with the availability of new technology. Venues like ours have taken this technology to new heights with, video, and interactive designs that create an exciting and memorable experience. Fortunately for us, no one in the Bay Area has pioneered this specific segment of the industry.

#### 4.4 Main Competition

The entertainment competition lies mainly with other casual facilities and less with the conventional and chain entertainment establishments. We need to compete with the idea that is difficult to get good service, while maintaining the idea that being out can be a lot of fun. Our polling has indicated that consumers think of atmosphere, price, and quality respectively. Price was frequently mentioned by pointing out that if the above concerns are properly dealt with, customers are willing to pay for a pleasant experience.

There are currently no facilities within direct competition with *Kumbala Restaurant & Bakery*. Several are located over 20 minutes from our location. None of those have the capability to provide all the different options that we have to offer the public. All other facilities are mainly just nightclubs, which mean that they are only open after 9:00 pm and only on the weekends or simply restaurants that lack any kind of entertainment to their patrons. We will be open 7 days a week, and in essence there is no competition. We offer a wide array of marketable choices for the public to enjoy.

#### 5.0 Strategies and Implementation Summary:

In order to create more popularity in the place we must emphasize exceptional service. Our main tactics are monthly service training, employee recognition, and a higher ratio of service employee to customers. To achieve higher service employee to customer ratios, we must separate beverage servers and bussing personnel, while we maintain an appropriate table count for the wait staff.

Our second strategy is emphasizing entertainment. The tactics are interactive entertainment, constant sensory appeal, and unique event viewing. Our specific programs for interactive entertainment and constant sensory appeal are frequent contests, games, and music. Our promise fulfillment strategy may be our most important. The necessary strategy is

ongoing value based training, maintenance, and attention to details, particularly after popularity has been established. Through empowerment of service employees to solve problems without making a customer wait for management consultation, we create a win-win situation for the customer and the facility. Continuous and never-ending improvement is the order of the day through our regular training sessions and meetings. Since value is equal to goods and service rendered minus the price charged, it is crucial to go beyond the mere serving of food in a room full of customers, you have to create a long lasting positive impression.

#### 6.0 Marketing Strategy:

In high growth areas such as Hayward and the Bay Area, there is an annual influx of new residents from many other parts of the county. This trend is generally true of all places in California. Advertising budgets and event promotions are ongoing processes of management geared to promote the brand name and keep *Kumbala Restaurant & Bakery* at the forefront of the entertainment themed facilities in the Bay Area. We depend on radio and television advertising as our main way to reach new customers. Our commitment to our customers will remain constant. That is the best way to promote our business.

*Kumbala Restaurant & Bakery* will create a bigger identity-oriented marketing strategy with executions particularly in radio and television media, alongside of print ads, and in-store promotions.

#### 7.0 Management Summary:

Proper management will be important for the success of *Kumbala Restaurant & Bakery*. It is imperative that we maintain a team that can produce and sustain the level of service that *Kumbala Restaurant & Bakery* will reach. As additional management is hired, they will receive training similar to the training our other employees receive. This effort is to guarantee a constant level of productivity and leadership.

#### 7.1 Management Team:

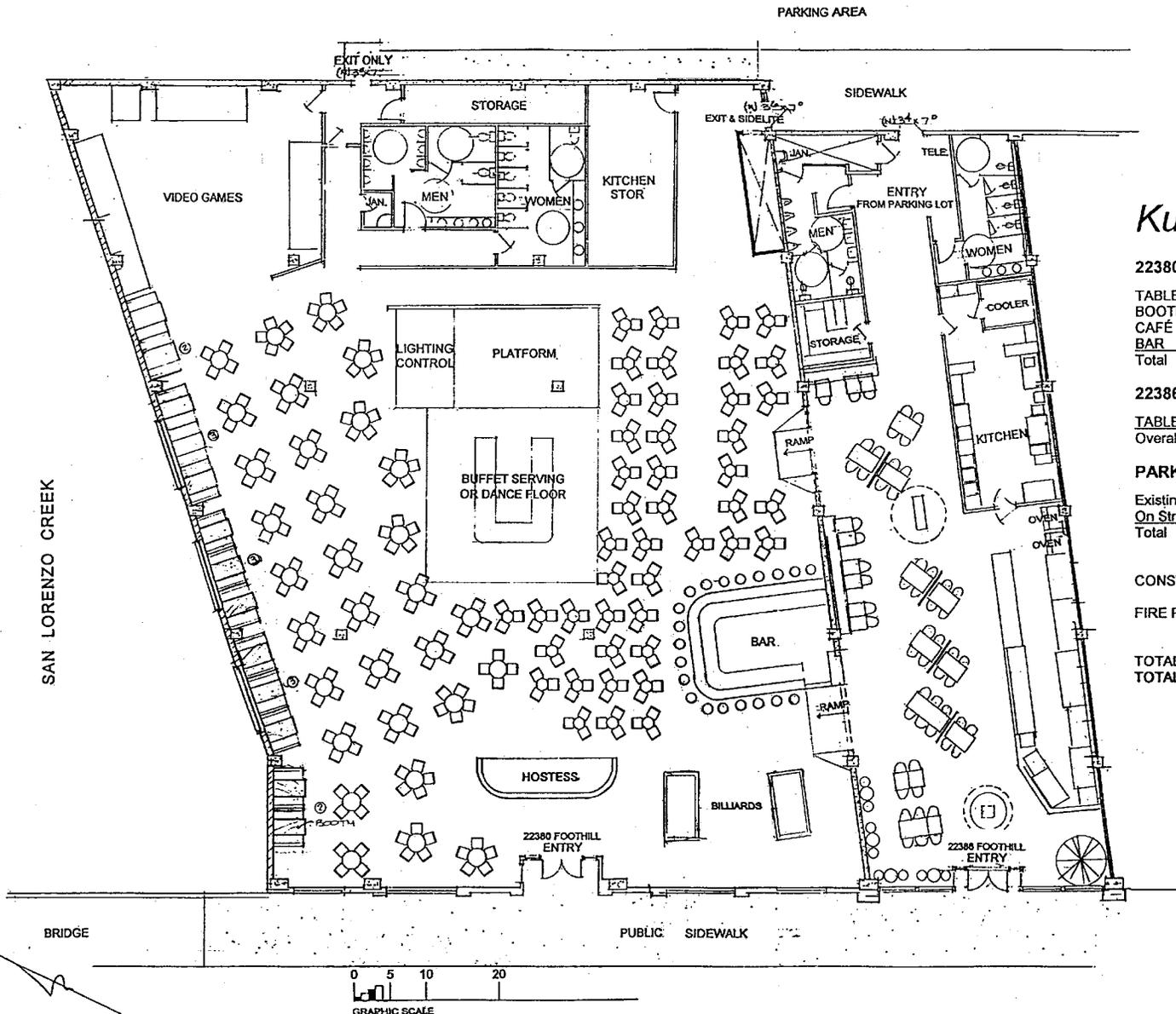
- a. Alejandro M. Aguilar - Director of Operations.
- b. Abel Rosales - Director of Food Services
- c. Angelica M. Aguilar - Office Manager
- d. Kan Modi - Bookkeeper
- E. Manpreet Chagger - Office Manager Assistant
- F. Oscar Lugo - Event Coordinator

## 7.2 Personnel plan

Our staff shall hire all necessary employees for the day-to-day operations of *Kumbala Restaurant & Bakery* at least 30 days before opening. All employees shall go through a comprehensive interview process and a thorough background check by our security consultant.

The majority of our staff will be hired locally. We will have jobs for both part-time and full time employees. Scheduling for part time employees can be arranged to accommodate class schedules so we can provide employment for those who desire to continue their education.





# Kumbala Restaurant & Bakery

## 22380 FOOHILL AREA

TABLES	30" DIA.	31 SEATING (4 & 5/ TABLE)	124 PEOPLE
BOOTHS		13 SEATING (4/ BOOTH)	62 PEOPLE
CAFÉ TABLES	20" DIA	44 SEATING (3/ TABLE)	132 PEOPLE
BAR			20 PEOPLE
<b>Total</b>			<b>338 PEOPLE</b>

## 22386 FOOHILL AREA

TABLES SEATING		74 PEOPLE
Overall Seating		412 PEOPLE

## PARKING

Existing adjacent Public Parking	140 CARS
On Street Parking	40 CARS
<b>Total</b>	<b>180 CARS</b>

CONSTRUCTION TYPE V-1 HOUR (CONCRETE, BRICK & WOOD FRAME)

FIRE PROTECTION: AUTOMATIC FIRE SPRINKLER AND FIRE ALARM EVACUATION SYSTEM

TOTAL WIDTH REQUIRED (PER TABLE 10B) .2x403 PEOPLE = 81 INCHES  
 TOTAL WIDTH PROVIDED = 262 INCHES

TENANT AREA FLOOR PLAN



## AUTHENTIC MEXICAN BREAKFAST



### **ABEL'S STYLE EL CHICANO**

SLICED RIB EYE STEAK (8 OZ) WITH FRESH TOMATOES, SLICED MUSHROOMS, RED ONION, GREEN ONION, BELL PEPPER, JALAPENOS, SAUTEED IN HOUSE HOT SAUCE, TOPPED WITH CHEESE & THREE (ANY STYLE)

### **CHEDDAR SCRAMBLE**

THREE EGGS SCRAMBLED WITH DICED TOMATOES, ORTEGA CHILI AND CHEDDAR CHEESE; SERVED WITH SALSA

### **BREAKFAST BURRITO**

TWO BURRITOS STUFFED WITH SCRAMBLED EGGS, CHEDDAR CHEESE, TOMATOES AND JALAPENOS; SERVED WITH SALSA AND AVOCADOS

### **MEXICAN OMELET**

MILD CHILIES, GREEN ONIONS, TOMATO, SAUTEED IN BUTTER, TOPPED WITH CHEESE AND AVOCADO

### **MEXICAN SCRAMBLE**

TOMATOES, GREEN ONIONS, GREEN BEANS, ORTEGA CHILI, TOPPED WITH JACK CHEESE



### **CHORIZO CON HUEVOS**

MEXICAN SAUSAGE SCRAMBLED WITH EGGS

### **HUEVOS RANCHEROS**

SUNNYSIDE EGGS COVERED WITH RANCHERO SAUCE

### **SIRLOIN STEAK AND EGGS**

BRAISED IN BUTTER WITH TOMATO, BELL PEPPERS, ONIONS AND POTATOES

### **QUESADILLA BREAKFAST**

FLOUR TORTILLA STUFFED WITH EGG, BACON, AVOCADO, AND JACK CHEESE

### **MACHACA CON HUEVOS**

SHREDDED BEEF SCRAMBLED WITH EGGS, TOMATOES, BELL PEPPERS AND ONIONS

### **CARNE ASADA AND THREE EGGS**

THINLY SLICED TOP SIRLOIN STEAK, PAN FRIED IN BUTTER AND TOPPED WITH SAUTÉED ONIONS, TOMATOES AND MUSHROOMS



### **EL VAQUERO'S FEAST (TOTALLY UNIQUE)**

A MIXTURE OF BITE SIZE STEAK, BACON, SAUSAGE, TOMATOES AND ONIONS TOPPED WITH JACK CHEESE SERVED WITH THREE EGGS ANY WAY YOU WANT, FLOWER OR CORN TORTILLAS ON THE SIDE

## DINNER PLATES

(WITH RICE, BEANS, SALAD, & TORTILLA)

**CARNE ASADA** (CHARBROILED STEAK)  
**POLLO ASADA** (CHARBROILED CHICKEN)  
**CARNITAS** (ROASTED PORK)  
**SPICY CHICKEN** RED SAUCE  
**CHILE VERDE CHICKEN** GREEN TOMATILLO SAUCE  
**TOFU RANCHERO** (SOY BEAN CAKE)  
**AL PASTER** (B.B.Q PORK)  
**CHICKEN MOLE SAUCE**  
**LENGUA** (BEEF TONGUE) EN SALSA ROJA  
**CHILE VERDE** (PORK, GREEN SAUCE)  
**VEGETARIAN DINNER**  
**TACO DINNER** ONE TACO, RICE & BEANS



## SUPER COMBINATION DINNER PLATES

(WITH RICE, BEANS, SALAD & TORTILLAS)

- #1 ENCHILADA, FLAUTA & CHILE RELLENO
- #2 TAMAI, FLAUTA & GARLIC PRAWN
- #3 CORN QUESADILLA, GARLIC PRAWNS & TACO
- #4 ASADA STEAK OR CHICKEN & PRAWNS
- #5 CARNE ASADA, CHICKEN ASADA & PRAWNS
- #6 SPICY CHICKEN, GARLIC PRAWNS & ENCHILADA
- #7 QUESADILLA SUIZA, PRAWNS & PARRILLA MUSHROOMS
- #8 GARLIC PRAWNS, PRAWNS COCKTAIL STEAK TACO & CEBOLLITAS ASADAS
- #9 ASADA STEAK, GRILLED SALMON & GARLIC PRAWNS



## SEAFOOD SPECIALTIES

**GARLIC PRAWNS** AL MOJO DE AJO RICE & BEANS  
**HOT & SPICY PRAWNS** AL CHILE DE ARBOL RICE & BEANS  
**ABEL'S TEQUILA PRAWNS** CAMARONES BORRACHOS  
**ABEL'S CHIPOTLE PRAWNS** CAMARONES AL CHILE CHIPOTLE  
**FAJITA PRAWNS**  
**PRAWN COCKTAIL** COCTEL DE CAMARONES  
**PRAWN TOSTADA SALAD**  
**ABEL'S RED SNAPPER** HUACHINANGO  
**ABEL'S SALMON DORADO**  
**PRAWN TACO**  
**PRAWN BURRITO**

## MEXICAN- SPECIALTIES

**ENCHILADA** CHOICE OF MEAT OR CHEESE  
**CHILE RELLENO** (STUFFED PEPPER W/ CHEESE)  
**FLAUTAS** (ROLLED CHICKEN TAQUITOS)  
**TAMALES** (PORK OR CHICKEN)  
**TOSTADA SALAD** (TACO SALAD)  
**FAJITAS BEEF OR CHICKEN**

## APPETIZERS

**FLOUR QUESADILLA** TORTILLA, CHEESE & SALSA  
**MUSHROOM QUESADILLA**  
**SUIZA QUESADILLA** W/ CHOICE OF MEAT  
**SUPER QUESADILLA**  
MEAT, CHEESE, GUACAMOLE, SOUR CREAM, LETTUCE, TOMATO & SALSA  
**PRAWN QUESADILLA**  
**STEAK & PRAWN QUESADILLA**  
**SUPER NACHOS**  
CHIPS, BEANS, MEAT, CHEESE, LETTUCE, SOUR CREAM & GUACAMOLE  
**MEXICAN POTATO SKIN**



*Police Department*

2000 Stevenson Boulevard, P.O. Box 5007, Fremont, CA 94537-5007

510 790-6800 ph | [www.fremontpolice.org](http://www.fremontpolice.org)

December 18, 2003

Chief Dwyer,

I am writing this letter on behalf of Alex Aguilar, current owner/operator of a night club here in Fremont called "Club Mango's". It is my understanding that he is now trying to open an establishment in your fair city.

Mr. Aguilar has operated Club Mango's for the past six years with a limited need for police calls for service (This in comparison with other bars/clubs in the city). Mr. Aguilar has always given us a "heads up" when he expected a larger than usual crowd, and I would consider his working relationship with the Police Department here as positive. I expect the City of Hayward will have a similar experience.

Thank you,

A handwritten signature in black ink, appearing to read "W. A. Veteran".

Det. Bill Veteran  
Special Investigator

# Alcance

**COMMUNITY SERVICES**

1376 N. Fourth St. Suite 201, San Jose, CA. 95112

Phone (408) 441-0186

[www.alcance-cs.org](http://www.alcance-cs.org)

April 06, 2004

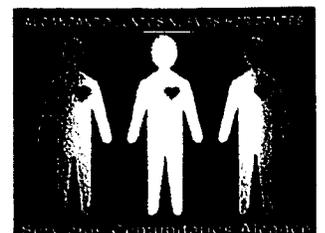
To Whom It May Concern:

On behalf of the company we would like to express our thanks to the staff at Club Mangos in the city of Fremont California, specially to Alejandro and Angelica Aguilar the proprietors of the establishment, for the excellent support that they have given towards our organization to continue with the outreach programs that we offer towards our community.

Gracious people like them need our society so that they could continue to help others with necessity, knowing that the aid will continue for them so that they continue to strive forward.

Attentively

Angel Angeles  
Executive Director



April 7, 2004

Alex and Angelica Aguilar  
3072 Belize Way  
Union city, CA 94587-1534



Mr. And Mrs. Aguilar,

This letter is to acknowledge and thank you for your donation of countertops for the lobby of our new sanctuary. As you know these two counter tops were installed at our new building located at 577 Manor Blvd. in San Leandro, CA.

I have to say the quality and over-all appearance of the counters is very nice. Without your generous gift the lobby would look bare and incomplete. Thank you so very much!

Your gift has added so much to the vision God has given us here at Faith Fellowship. May God bless you and prosper you.

Thank You,

A handwritten signature in black ink that reads "Ron Gillette". The signature is written in a fluid, cursive style with a prominent initial "R".

Ron Gillette  
Church Administrator  
Faith Fellowship Foursquare Church  
San Leandro, CA 94579

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 04-

Introduced by Council Member \_\_\_\_\_

*me*  
9/8/04

## RESOLUTION DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF USE PERMIT PL-2004-0010

WHEREAS, on June 24, 2004, the Planning Commission approved (4:0:3) Use Permit PL-2004-0010 of Alex Aguilar (Applicant) and Jim Morris (Owner) to operate a nightclub in conjunction with a restaurant in the CC-C (Central City-Commercial) zoning district located at 22380 Foothill Blvd. between Russell Way and San Lorenzo Creek; and

WHEREAS, on July 1, 2004, the City received an appeal from Community Prevention of Alcohol Related Problems (Commpre) asserting that the applicant's proposal for both a restaurant and nightclub is a violation of the City's Zoning Ordinance; and

WHEREAS, the City's Zoning Ordinance does not prohibit a night club and a restaurant from co-existing as part of a single business and explicitly recognizes that a nightclub may offer full meals; and

WHEREAS, the City Council of the City of Hayward hereby finds and determines:

### General

1. The approval of Use Permit application No. PL-2004-0010, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15332, Class 32, (Infill Development Projects).

### Use Permit

2. The proposed use, as conditioned, is desirable for the public convenience or welfare in that, with the proximity to downtown and the municipal parking lots, the proposed business would help promote a lively, pedestrian-friendly atmosphere downtown.
3. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that the conditions imposed on the operation of the nightclub will ensure safe and orderly conduct.

4. The proposed use, as conditioned, will not be detrimental to the public health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the establishment would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance separation requirements for on-sale licenses.
5. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Retail and Office Commercial General Plan designation and the Central-City Commercial zoning district both support restaurants and entertainment venues.

Additional Findings for Alcoholic Beverage Establishments

6. The proposed use will not result in an undue concentration in that area of establishments dispensing alcoholic beverages in that the nearest on-sale establishment is over 100 feet away.
7. The proposed use, as conditioned, will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses. The nearest residential use, Casa Sandoval, is more than 300 feet from the site.
8. There is not another alcohol beverage establishment on the block face and the proposed use is well over the required 100 feet from the nearest library, park or off-sale establishment.
9. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of on-sale and off-sale licenses, the proposed use is necessary for public convenience or necessity in that it would provide a high quality eating, drinking, and entertainment establishment in the Downtown area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the appeal of the Planning Commission's approval of Use Permit Application No. PL-2004-0010, regarding the request to operate a nightclub in conjunction with a restaurant is denied, and the Planning Commission's approval of the project is upheld, subject to the attached conditions of approval.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2004

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS: None

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward