

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/25/06
AGENDA ITEM 9
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Use Permit Application No. PL-2004-0010 – Six-Month Review of Kumbala Restaurant and Nightclub – The Property is Located at 22380 Foothill Boulevard

RECOMMENDATION:

It is recommended that the City Council review and accept this report.

DISCUSSION:

In September 2004, the Council approved a conditional use permit for the Kumbala Restaurant and Bakery. To ensure adherence to the conditions, the Council required a review of the permit after the first six months of operation.

After completing significant remodeling of the building, the facility opened for business on February 17, 2006. In March, the Hayward Police Department (HPD) contacted the owner, Alex Aguilar, regarding excessive window coverage by signs and blinds, which is a violation of condition 44. On April 8, HPD responded to the attempted murder of a man who was reportedly a Kumbala patron. When an officer, attempting to find witnesses, went to the club, he arrested a Kumbala customer (not a suspect) for being drunk in public and for resisting arrest.

On April 22, over 500 people were present inside the facility (the use permit allows 412) when fighting broke out inside and outside the club. All on-duty officers, two CSUEB officers, one reserve officer and two community service officers, as well as the Fire Department responded, to control the scene. Ten people were arrested for being drunk in public and several were under the age of 21. The head of security stated there were 10 security guards on duty that night. The use permit requires only four guards between 8 p.m. and 2 a.m.

On May 12, Aguilar was served with a Disorderly House notice by the Department of Alcoholic Beverage Control (ABC).

On May 13, it was discovered that minors were being let into the club and kept in an area segregated from the bar area by a low barrier. The owner stated he thought it was legal to have minors in the club based on a conversation with agents from the Alcoholic Beverage Control. When Mr. Aguilar met with HPD and ABC in December 2005, he was notified that minors would be individuals under the age of 21 and that no minors are allowed in any portion of the establishment after 9 p.m. However, the conditions of approval are ambiguous on this point. Still, in May, Mr. Aguilar notified the ABC that he had instituted a "21-and-older-only" policy for attendance to the nightclub. To rectify the ambiguity in the conditions of approval and in light of the policy adopted by Mr. Aguilar, staff recommends that condition number 43 be modified accordingly.

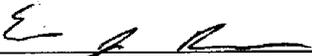
Two separate incidents that night involved assaults on minors. Police arrested one woman for assault with a deadly weapon.

In addition, staff has observed other nuisance-type violations, including such things as littering, patrons congregating in the rear parking lot, and the front doors remaining open while music is being played, causing a noise problem outside. On a number of occasions, officers have observed patrons exiting the club carrying open bottles of beer and other alcoholic beverages.

Soon after the May 13 incident, the Kumbala management began only allowing people over the age of 21 into the club after 9 p.m. Since that time, there has been a decrease in violence and general police calls for service. However, there have been two incidents since the middle of May. On May 25, a radio station set up a tent and radio broadcast trailer in front of the establishment, violating conditions of approval regarding noise. On June 18, police found approximately 400 to 500 persons, allegedly Kumbala patrons, in surrounding parking lots. A crowd of approximately 20 people were found yelling with some people attempting to start a fight. Security guards moved these people away from the establishment. One man was arrested for being drunk in public.

The owner has submitted a letter (see Exhibit B) proposing longer hours, a higher occupancy limit and other modifications to the conditions of approval. In light of some the problems described above, and the potential for extraordinary demand on City police services, at this time staff cannot recommend modifying the conditions of approval with regard to hours of operation or occupancy levels. The adoption of the adult-only policy appears to have alleviated some of the more significant problems, although this policy has been in effect for just a limited period of time. Consequently, staff suggest that we continue to monitor the situation for the balance of the year and return to the Council with a report in January, at which time a determination can be made whether modification to the hours or occupancy levels are appropriate. In the meantime, we would suggest that staff work with Mr. Aguilar to determine if the other modifications requested in his letter can be accommodated and present a recommendation to you following your August recess.

Prepared by:



Erik J. Pearson, AICP
Associate Planner

Recommended by:



Sylvia Ehrental
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Attachments: Exhibit A. Conditions of Approval
Exhibit B. Proposal for Modification of Conditions of Approval by Alejandro
Aguilar, dated July 18, 2006

7/21/06

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. The rear door shall only be used as an entrance before 9 p.m.
 - 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 adjacent to the building and the parking lot to the rear) 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.
23. The City Council shall review the use permit and the facility's conformance with the conditions of approval after the first six months of operation.

Solid Waste & Recycling:

24. 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.
25. 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.
26. No materials of any kind may be stored outside the trash enclosure or outside the building.

Engineering:

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

Fire Department:

28. 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.
29. A manual fire alarm system shall be installed throughout the building. Design and installation shall be per CFC, Article 10 and NFPA 72 Standards.
30. Provide fire protection for all commercial cooking equipment (hood and exhaust ducting). Fire protection systems shall meet NFPA 96 Standards for installation.

31. 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.
32. Interior exiting and exit lighting shall meet the CBC, Chapter 10.
33. Exit plans shall be posted in appropriate locations.
34. 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).
35. Interior decorative materials shall be flame treated.
36. Building construction for A2.1 occupancy shall meet the CBC and other applicable city standards and ordinances.
37. An annual permit for Place of Assembly shall be obtained prior to certificate of occupancy.
38. 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.
39. 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:

40. 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.
41. 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.
42. 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.
43. 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.
44. 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.
45. 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

tinging to decrease sunlight, it must be so light that anyone can see clearly into the business during daylight or darkness.

46. 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.
47. 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.
48. 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.
49. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
50. 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.
51. 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

52. 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

53. 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.

54. Interior illumination shall allow the unaided inspection of personal identification by members of the Hayward Police Department while inside the premises.
55. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application.
56. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.
57. 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.
58. 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.
59. 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.
60. 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.
61. 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:

62. 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.
63. 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.

Alejandro M. Aguilar
Kumbala Restaurant and Bakery
22380 Foothill Blvd.
Hayward CA 94541

To: Hayward City Council

Date: July 18, 2006

Re: Modification to original conditions of approval for night club and Restaurant.

Dear Council members,

During the last six months we've experienced some problems with our initial conditions of approval.

Item 17 limits our occupancy load to 412 patrons only. Our facility can easily serve more patrons than 412 we respectfully request that our occupancy load be consistent with the Hayward Fire Department's recommendations as per approved plans.

Item 41 limits our hours of service to the hours of 10 am to 1 am. We respectfully request that we be allowed to operate the same hours as similar establishments, i.e. 10 am to 2 am.

Item 45 the prohibitions against window coverings, prohibit us from protecting our patrons from the effects of the sun.

Item 46 limits our entertainment to Thursday, Friday and Saturday. We respectfully request to have Sunday also since this is the day we bring our mariachis to entertain. Further item 46 requires us to stop music at 1 am, this present numerous problem when we need to explain to patrons that we can not operate as similar establishments.

Item 47. Some of our live entertainers use amplifiers in their equipment. It will also assist our patrons and performers if the entertainers could occasionally use the stage.

Please consider revising the above existing conditions as what we are asking is basically that we be treated the same as other businesses.

Respectfully submitted,

Alejandro (Alex) Aguilar.
Kumbala Restaurant.

Exhibit B