

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

AGENDA DATE 09/19/06

AGENDA ITEM 7

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Amendments to Conditions of Approval for Kumbala Restaurant and Nightclub

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached Resolution modifying a limited number of Conditions of Approval concerning the Kumbala Restaurant and Nightclub

**BACKGROUND:**

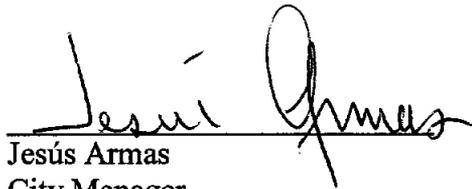
At its meeting of July 25, the City Council conducted a six-month review of Kumbala Restaurant and Nightclub. The report presented to the Council outlined the City's experience with the establishment and noted the need to clarify certain conditions of approval. The staff was unable to recommend modifying two conditions requested by the owner, Alex Aguilar, pertaining to increasing the occupancy limit and establishing later operating hours. Instead, staff indicated that consideration of the requested changes be continued until January 2007, pending further review of the impact on City services, particularly public safety functions. Staff did note that a few of the conditions of approval should be modified to make them clearer, and that such modifications would be presented to you in September for your consideration.

Following public testimony and Council deliberations, the Council indicated concurrence with staff's recommendation. Additionally, based on input provided by the owner that the occupancy limit impaired his ability to accommodate certain events or banquets, the Council asked staff to evaluate whether a change in the occupancy limit is appropriate for nights other than Thursday, Friday or Saturday.

Based on Council direction, the Police Chief and I met with Mr. Alex Aguilar. Exhibit A contains the conditions of approval staff recommends be modified. (The exhibit contains the existing condition in regular type, and the recommended change in bold.) As noted in July, the suggested revisions are intended to clarify existing conditions with respect to the definition of minors, window coverings, and uniformed security personnel. Also included in the exhibit is a new condition, number 17.1. This condition establishes a higher occupancy limit during the days of the week when banquets or events might be scheduled, without creating confusion with respect to the operation of the nightclub. Associated with this higher limit is a curfew, if you will, of 11:00 PM. Both the increased occupancy and the time limit were structured in response

to Council direction following comments expressed by Mr. Aguilar for the need for some flexibility in order to accommodate group events or banquets. As written, condition number 17.1 is designed to enhance the viability of the restaurant function but not the nightclub operation. As sit-down functions tend to create few public safety issues, we believe this change will not create an unusual burden on public services. If, however, based on actual experience this proves to be incorrect, staff will not hesitate to recommend to you that this condition be deleted.

As noted at the July meeting, if managed and operated properly, Kumbala could have a positive effect in the revitalization of the downtown area. At the same time, though, it cannot be allowed to place an undue burden on public safety services. The changes noted above strike a balance between what the establishment needs to operate a successful business, while not creating an unacceptable demand on police personnel. Therefore, staff recommends approval of the changes to the conditions of approval described in this report.



Jesús Armas  
City Manager

Exhibit A: Suggested Revisions to Conditions of Approval  
Resolution

**SUGGESTED REVISIONS TO  
CONDITIONS OF APPROVAL****Kumbala Restaurant and Nightclub**

17. At no time shall the occupancy level of 412 patrons (as noted on the approved floor plans) for the establishment be exceeded.

*On Thursday, Friday and Saturday, at no time shall the occupancy level of 412 patrons (as noted on the approved floor plans) for the establishment be exceeded.*

- 17.1 *On Sunday, Monday, Tuesday and Wednesday the occupancy level may increase to 550 patrons, provided the entire premises is being used as a restaurant or banquet facility during the period of increased occupancy. The higher occupancy is allowed only until 11:00 PM.*

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.

*No person under 21 years of age shall be allowed in or on any portion of the premises under the control of the licensee after 9 p.m. on Thursday, Friday, or Saturday. No person under 21 years of age shall be allowed in or on any portion of the premises under the control of the licensee after 9 p.m. on any other day of the week unless such person is a guest at a scheduled banquet and then such person must leave the premises before 11 p.m.*

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

*There shall be no signs of any kind 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 information, etc. If the glass is tinted it must be so light that anyone can see clearly into the business during daylight or darkness. Blinds or shades may be used on the interior of the west facing windows from noon to sunset on any day, and after sunset the blinds or shades must be open to allow a clear and unobstructed view of the interior of the premises.*

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.

*Between the hours of 8 p.m. and 2 a.m. of the following day every Thursday, Friday, and Saturday the permittee/licensee shall provide four uniformed security guards licensed by the State of California who are employees of and acting under the direction of a Private Patrol Operator duly licensed as such by the State of California. The starting hour or the required number of licensed uniformed security guards may be adjusted at the discretion of the Chief of Police.*

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

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

*me  
9/14/06*

**RESOLUTION MODIFYING A LIMITED NUMBER OF  
CONDITIONS OF APPROVAL IN CONNECTION WITH USE  
PERMIT NO. PL-2004-0010 CONCERNING KUMBALA  
RESTAURANT AND NIGHTCLUB**

WHEREAS, at its meeting on July 25, 2006, the City Council conducted a six-month review of Kumbala Restaurant and Nightclub, analyzing the City's experience with the operations of the establishment and noting the need to clarify certain conditions of approval; and

WHEREAS, based on the agenda reports, evidence and testimony submitted at the duly noticed meetings on July 25, 2006 and September 19, 2006, the City Council recognized the need to modify a limited number of conditions of approval as noted in the attached Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the conditions of approval in connection with Use Permit No. PL-2004-0010 for Kumbala Restaurant and Nightclub, are hereby modified as set forth in Exhibit A attached hereto and made a part hereof.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

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

APPROVED AS TO FORM:

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