



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 01/23/07
AGENDA ITEM 4
WORK SESSION ITEM _____

TO: Mayor and City Council
FROM: Director of Community and Economic Development
SUBJECT: Use Permit Application PL-2006-0649 – Modification of Use Permit Application PL-2004-0010 – Kumbala Restaurant and Nightclub – The Property is Located at 22380 and 22386 Foothill Boulevard

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding the project Categorically Exempt from the California Environmental Quality Act (CEQA) and conditionally approving the modification request.

DISCUSSION:

Kumbala is a restaurant and night club located on Foothill Boulevard between Russell Way and San Lorenzo Creek that opened in February, 2006. The conditions of approval for the conditional use permit that was approved in 2004 limit the occupancy during nightclub hours to 412 patrons. Alcohol service is required to end at 1 a.m. and live entertainment is permitted only on Thursday through Saturday evenings. After review of the facility in July of 2006, the Council made minor modifications to the conditions of approval in September, 2006. One of those modifications included increasing occupancy from 412 to 550 patrons for Sundays through Wednesdays, when the facility is operating only as a restaurant or banquet hall. This report responds to additional requests by the owner, Alejandro Aguilar, to modify the conditions of approval. One request is to increase the maximum occupancy from 412 to 750 people (condition 17). A revised floor plan (Exhibit B) has been provided to show that the desired occupancy can be accommodated by a combination of seated and standing patrons. This floor plan meets minimum requirements of the Fire Code.

Mr. Aguilar is also asking that the hours when alcohol may be sold or consumed be extended from 1 a.m. to 2 a.m. (condition 41) and that limits on live music and entertainment being allowed only Thursday through Saturday be eliminated (condition 46). The current conditions of approval are attached as Exhibit C.

A six-month review of the conditional use permit was conducted by the Council on July 25, 2006. The associated report and minutes are attached as Exhibit D. Also, the September 19, 2006 Council report and minutes are attached as Exhibit E.

Since the July, 2006 Council meeting, the club has had no reported violent crimes, property crimes or fights. From June to December 2006, Kumbala management has complied with all conditions of approval (with the exception of the window coverings) and police calls for service have been minimal. The Police Department monitored the facility closely during the month of

December 2006. On the nights the establishment was open, the average occupancy was 92 people with the two busiest nights having 120 people and 300 people on Saturday, December 9 and Sunday, December 31 respectively.

With respect to the request to expand the allowed occupancy, staff recommends against allowing 750 people in the establishment because the problems experienced during the first few months of operation are more likely to reoccur with larger crowds. Instead, staff recommends that the conditions be amended as follows:

“At no time shall the occupancy level of 550 patrons for the establishment be exceeded.”

Condition 17.1, approved by Council in September, already allows 550 people on Sunday through Wednesday. The proposed condition would extend that occupancy to weekend nights and allow the additional patrons until closing time. The additional occupancy may provide the opportunity for the establishment to host more entertainers. This would help to improve the viability of the business and would help achieve Council’s previously indicated desire to have more diverse entertainment options and night life available downtown. Staff would encourage the Kumbala management to appeal to a wider audience than it has in the past. Suggestions include offering dancing lessons, salsa lessons and entertainment venues and events that appeal to all audiences.

Staff recommends no change to the hours of operation or hours that alcohol may be served or consumed. The Police Department has shifts ending at 2 a.m. and ending alcohol sales and service at 1 a.m. allows a dispersal of the crowd when officers are more able to respond to any problems. Furthermore, the license that the establishment has with the Department of Alcohol and Beverage Control (ABC) also requires that alcohol service stop at 1 a.m.

Staff also recommends no change to the hours or days that live entertainment may be provided (condition 46). This component tends to draw larger crowds and the Police Department is more able to respond to any related problems on Thursday through Saturday nights. It is expected that the expansion in number of crowds would provide a nightclub opportunity for Downtown Hayward. This may increase business and other activities for this part of downtown. If the establishment monitors its activities to comply with the conditions, the resulting business would be beneficial.

Staff recommends an expansion in the level of occupancy – not to the maximum – but to a reasonable amount given the available space. However, if an undue demand is put on police resources, as determined by the Police Chief, then such a determination would be a reason for the City to proceed with revocation of the Conditional Use Permit. The City, upon notice from the Police Chief, will immediately notice for a revocation hearing that would be set before the City Council at its earliest possible date. This has been included as a recommended condition of approval.

ENVIRONMENTAL REVIEW:

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

PUBLIC NOTICE:

On January 9, 2006, a Notice of Public Hearing for the City Council meeting 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, the Hayward Downtown Business Improvement Advisory Board, the Hayward Area Planning Association, CommPre, the Friends of San Lorenzo Creek, the North Hayward Neighborhood Task Force and the Upper B Street Neighborhood Task Force.

Prepared by:


for Erik J. Pearson, AICP
Associate Planner

Recommended by:


Susan J. Daluddung
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

- | | | |
|--------------|------------|-----------------------------------------------------|
| Attachments: | Exhibit A. | Letter from Mr. Aguilar dated December 28, 2006 |
| | Exhibit B. | Revised Floor Plan |
| | Exhibit C. | Conditions of Approval, with recommended changes |
| | Exhibit D. | Council report and minutes dated July 25, 2006 |
| | Exhibit E. | Council report and minutes dated September 19, 2006 |
| | Exhibit F. | Letter from CommPre dated January 12, 2007 |
| | | Draft Resolution |

01/18/07

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Kumbala

22380-22386 Foothill Blvd.

Hayward, Ca 94545

Tel. 510-733-2244 facsimile 510-733-2223

PLANNING DIVISION

December 28, 2006

Erik Pearson, Planner
City of Hayward.

Re: Conditions of approval.

Dear Erik,

This letter serves to support my application for change of conditions of approval of our business (Kumbala Restaurant and Night Club).

1. Our Business has had a near perfect track record as of March of 2006, where not a single incident has occurred, where police resources had to be drawn to our business.
2. Our Business has complied with the orders from the Hayward Chief of police and we've hired a California licensed and bonded security firm to provide security services at Kumbala.
3. Our business has worked with the local authorities to create an atmosphere of nice and clean business as that planned and envisioned by the City Council.
4. Our business has and will continue to provide the best quality food in our restaurant, and the best possible entertainment.
5. Our business has established a policy where our employees attend the Alcoholic Beverage Control Department's (ABC) classes for alcohol training programs, to ensure that everyone in our business understands and accepts the responsibility of serving distilled spirits.
6. Our business has created a place for people to go in the Downtown area and has become a point of destination for many people from other cities as well.

In addition it is our sentiment and feeling that Kumbala has been and continues to be a great asset and contributor to the vision of the City Council in its plans to revitalize the downtown area.

Kumbala has provided services at no cost to different Non-Profit organizations in order to fulfill our commitment to help others.

Kumbala has been a place where families can go to enjoy nice clean entertainment such as mariachis, comedians and others acts.

Kumbala has provided a venue where families, companies and institutions can celebrate different activities such as weddings, Baptisms, wedding anniversaries, Sports awards

(Cal State) and many other special occasions. Kumbala has been a special place for people to celebrate MOTHERS DAY.

Kumbala's commitment to provide the people of Hayward with the best possible venue and quality has remained intact, however we have been struggling to keep our business afloat due to the existing conditions of approval where it is not possible for us to compete with other similar venues in the area.

Hours of operation. As most similar business operate their dance and entertainment venues from the hours of 8.00 pm until 2.00 am. We are at a disadvantage when competing for the same clientele since they can offer an additional 25% more time for people who go to their venues. We have spent 50% more money than any other venue in order to keep our business open and keep customers coming to our business.

We are asking The City Council that our hours of operation for entertainment be modified from the existing (8pm – 1am) to the **8.00pm until 2.00am** as those enjoyed by similar businesses not only in The City of Hayward but other cities as well (see attached "Similar Businesses" sheet).

Capacity. Per conditions of approval our current occupancy load is 412, The Hayward Fire Department has established an occupancy load of 1200+ people for our building, however, understanding the limitations of parking and concerns from the Chief Of Police, as well as the concerns from the City Manager, a lower occupancy load than 1200 people is workable, our safety tract record justifies an increase in capacity.

We are asking the City Council to modify our occupancy load to 750 people.

Amplified Sound; Our conditions of approval provide that amplified music can be played in our business upon Thursdays, Fridays and Saturdays only. We believe that the intention of limiting these hours and days when amplified music can be played was to establish Night Club or entertainment days but it does affect other activities where amplified music or sound is necessary for example: a fundraiser event needs music and microphones; an award ceremony needs music; a Wedding ceremony needs music; on mother's day it is necessary to have amplified music; most especial events require either amplified music or amplified sound (microphone or video sound system).

We are asking the City Council to remove this limitation or restriction of days when amplified music can be played.

We hope this letter will help the City Council understand our business needs and the problems we have encountered. We hope that The City Council will permit our business survive and achieve its goals by modifying the conditions of approval mentioned above in order for our business to survive and continue to be one of the sought after places in Hayward.

Alejandro M. Aguilar, President
Kumbala Restaurant and B.

\$170,000 Mortgage as low as \$656/month*

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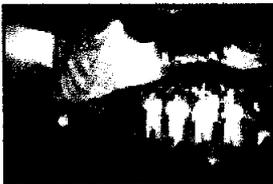
Cafe Cocomo

-- City's Best

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Bar/Club

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(see next page for hours)

From the Editors

Cafe Cocomo is a welcome escape for the claustrophobic rug cutter. This sprawling nightclub with a large patio -- capacity 1000 -- bases its reputation on energetic salsa parties. On Saturday and Thursday nights, the club host lessons beginning at 8PM and often, the entertainment is live, with band members doing those requisite salsa-style synchronized dance moves. On other nights, DJs sometimes throw non-salsa parties, often featuring international pop. Naturally the salsa nights attract impressive dancers. These range from college age to married couples in their later years, often Latino.

Even on the most popular evenings, the club never gets oppressive -- and not because Cocomo is forcing people to wait outside to maintain the appearance of exclusivity. First of all, Cocomo stays low on pretension. The Lava Bar adjoining the main hall feels almost like a rec room, with mismatched wicker furniture and copper cutouts resembling Rorschach blobs. In the main room, the rustic décor, like the fishing net with barnacles, makes one feel like a guest at a backyard Caribbean wedding. (Are those sheets hanging from the ceiling?) Secondly, unlike some dance places where the rhythmically challenged are forced to watch hungrily from a balcony above, Cocomo has enough space to provide many intimate sub-settings. There is still a balcony level but its little tables provide a good view without making someone look desperate, and the inviting outdoor patio goes Middle Eastern with hookahs, allowing the sweet inhalation of flavored tobacco. Overall, Cocomo provides options for many moods -- a good thing, too, because the neighborhood allows for few other options.

Note: The dress code is dressy; no jeans or athletic apparel. (Photo: Esti Iturraide)



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 Best Mexican
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City's Best Nightlife
 Best Bars
 Best Cocktails
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Events

- 01/04 Salsa Dance Lessons With Jake and Techi**
Salsa Dance Lessons With Jake and Techi
8:00PM-9:00PM (Included in admission)
 Add this event to My Calendar
- 01/06 Salsa Dance Lessons With Jake and Techi**
Salsa Dance Lessons With Jake and Techi
8:00PM-9:00PM (Included in admission)
 Add this event to My Calendar
- 01/08 Monday Night Salsa Dance Lessons**
Monday Night Salsa Dance Lessons
7:30PM-8:30PM (\$7)
 Add this event to My Calendar

[View all Events \(40\)](#)

Ratings & User Reviews

Members (12): [View all](#)

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LaHart9833's Review 07/25/2002

Five Stars to the great Tim Price Orch. Would love to hear them again.

tmpMartin's Review 07/17/2001

There's non other like Cocomo! The place is great. Good environment... The dance floor is BIG (nothing like Club Miami in SJ). The bands are always awesome. DJ Henry's the BES...

HRODRIGO's Review 10/19/2000

Great dancing and really professional bands

[View all Ratings & Reviews \(5\)](#)

Details

Hours

- Wed. 8:00 PM-2:00 AM
- Thu. 8:00 PM-2:00 AM
- Fri. 8:00 PM-2:00 AM
- Sat. 8:00 PM-2:00 AM
- Sun. Noon-2:00 AM

Bar/Club

- Dance
-
-
- Latin/salsa
- Live music

- ~~Swing/big band~~
- ~~Swing/big band~~
- Swing/big band

View all details

This listing appears in:

- (All) Restaurants
- Barbecue

If this information is inaccurate or the business has closed, let us know.
Search the Web with AOL Search (enhanced by Google) for Cafe Cocomo.



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The image shows a screenshot of the Club Havana website. At the top left is a circular logo featuring a globe. A horizontal navigation bar contains the links: Home | Events | Contact | Gallery | Venue. Below the navigation bar, the word "Venue" is displayed. To the left of the main content area, there is a vertical list of ten items, each preceded by a right-pointing arrow. To the right of this list is a large, dark photograph of a club interior with many people and palm trees. In the bottom right corner of the website area, there is a logo for "MEADE ASSOCIATIVE G".



NOCHES PIRATAS | ANTRÓS

Aquí se reúnen los mejores bailarines de salsa, merengue y cumbia, y los que no saben o tienen experiencia en el tema, pues preparárense para las clases de salsa que empiezan desde las 9pm.

Aquí el ambiente es tropical, fresco y divertido. Pero no todo es bailar dando vueltas, también aquí se vive la adrenalina del rock en español y la música dance. Total, el ambiente es para todos los gustos, sobre todo para aquellos que buscan a las chicas más guapas y simpáticas. Los varones, pues no cantan mal las rancheras, aquí más vale que lleguen todos bien vestidos, pues la competencia semi-formal está de desfile de modas.

Abierto Jueves, Viernes, Sábado y hasta los Domingos, puertas abren desde las 9pm y hasta la 1:45.

ANTRÓS

BARCELONA CLUB MIAMI PALM BEACH TROPICANA THE VAULT

PORTADA ANTRÓS EVENTOS FOROS FOTOS CONTACTO APUNTADE

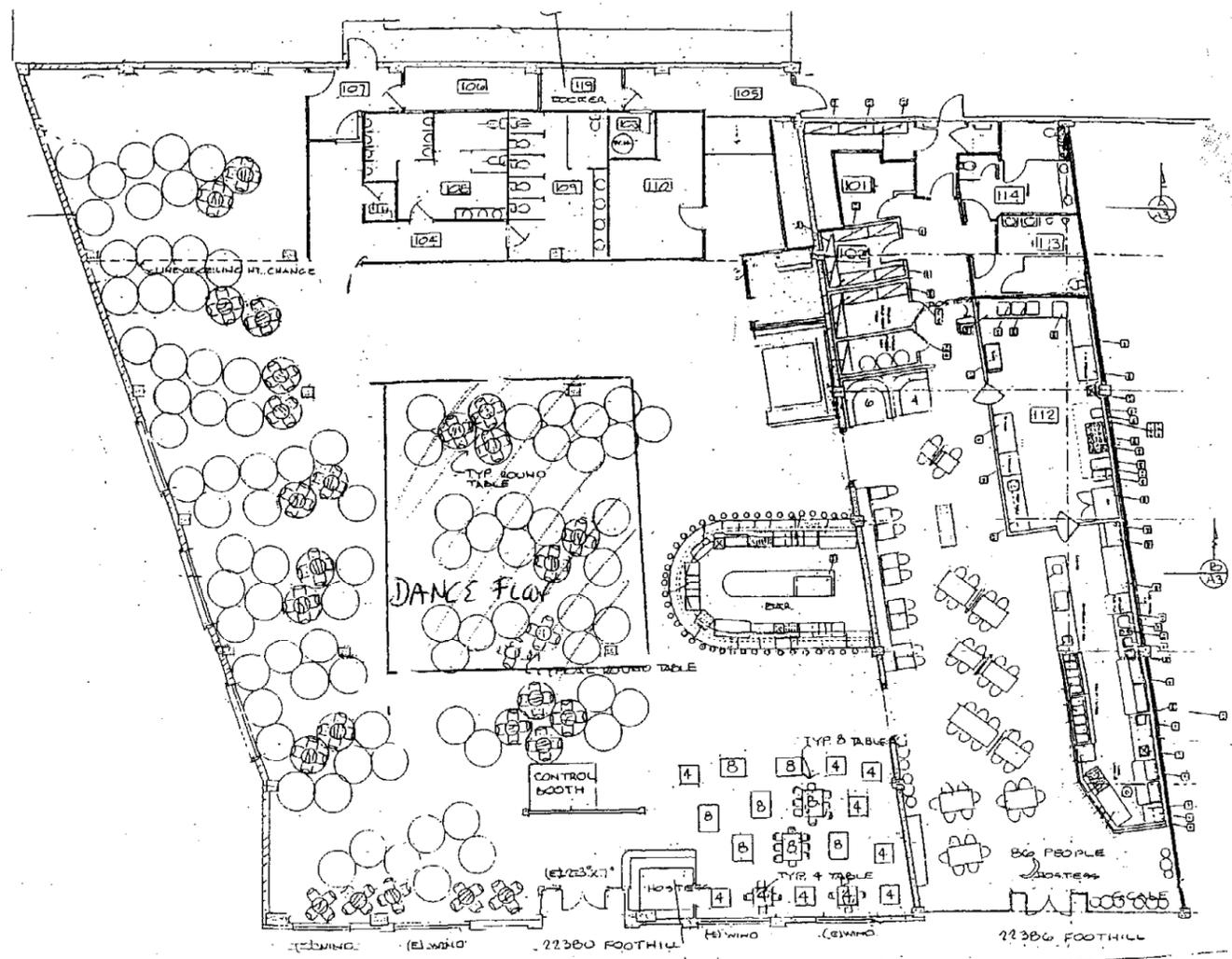


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WEB PRODUCTIONS

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PLANNING DIVISION



of People

146 Dance Floor
 86 Kitchen Area
 20 Booths
 41 Bar

293

115 tables x 4 = 460

753 total

FLOOR PLAN
SCALE: 1" = 10'-0"



DANCE FLOOR AREA 32' X 32'
 = 1024 sq ft

CONDITIONS OF APPROVAL
(Recommended Conditions)

USE PERMIT APPLICATION NO. PL-2004-0010
Alex Aguilar (Applicant/Owner)
22380 Foothill Boulevard
Kumbala Restaurant and Nightclub

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. On Thursday, Friday and Saturday, at no time shall the occupancy level of ■■■ 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 p.m.
 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. 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.

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 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.
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 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.
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.

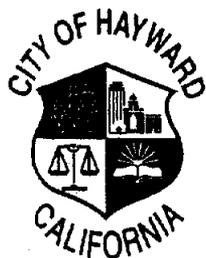
Revocation:

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.

64. If an undue demand is put on police resources, as determined by the Police Chief, then such a determination would be a reason for the City to proceed with revocation of the Conditional Use Permit. The City, upon notice from the Police Chief, will immediately notice for a revocation hearing that would be set before the City Council at its earliest possible date.

**CITY OF HAYWARD****AGENDA REPORT**AGENDA DATE 07/25/06AGENDA 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 might 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.

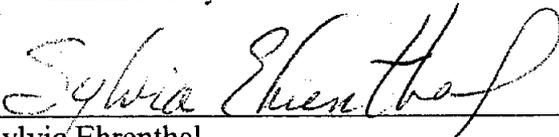
The owner has submitted a letter (see Exhibit B) proposing longer hours, a higher occupancy limit and other modifications to the conditions of approval. In light of some the problems described above, and the potential for extraordinary demand on City police services, at this time staff cannot recommend 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 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 Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

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



**MINUTES OF THE SPECIAL JOINT MEETING OF
THE CITY COUNCIL/REDEVELOPMENT AGENCY
OF THE CITY OF HAYWARD**

**City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 25, 2006, 8:00 p.m.**

Council Member Halliday returned to the dais to participate in the remainder of the City Council meeting.

LEGISLATIVE BUSINESS

9. Approval of Use Permit Application No. PL-2004-0010 – Six Month Review of Kumbala Nightclub and Restaurant – The Property is Located at 22380 Foothill Boulevard

Staff report submitted by Associate Planner Pearson, dated July 25, 2006, was filed.

Acting Planning Manager Patenaude made the report noting that the staff recommendation is to monitor the establishment through the end of this year and return in January to review the requested modifications.

City Manager Armas elaborated that staff is supportive of Kumbala's effort to have a vibrant entertainment establishment in our downtown. He indicated that staff continues to work with Mr. Aguilar to make his establishment a success. He commented that staff is unable to make recommendations that could create severe demand on public resources. City Manager Armas reported that he has met with Mr. Aguilar to discuss staff concerns. He complimented Mr. Aguilar for setting the, "21-years and over only policy," but cautioned that time will tell whether to approve the recommendation to slightly increase the hours of operation and to double the occupancy level. City Manager Armas also stated that the owner has pledged to improve his operations, and staff will continue to monitor and evaluate the measures that he will take.

Police Chief Lowe responded to Council questions related to incidents that were cited in the report. He had documentation of 27 incidents related to that establishment including public drunkenness, disorderly conduct, underage drinking and assaults. Police Chief Lowe reported that there were no State licensed security guards as required in the conditions of approval and the State requires security guards to be licensed. He noted the Mr. Aguilar utilized a security company, but the company quit. He now uses his own security guards, which was allowable in the past. State law currently requires that they must be State licensed.

There was discussion on allowing minors and the separation of minors from the bar area. At the request of Council Member Henson, Police Chief Lowe discussed the definition of minors as defined by the Alcohol Beverage Control (ABC) Board and noted that the owner plans to change the club to a "21 and over only club," which will alleviate some police issues.

Council Member Halliday commented on the owner's request related to the occupancy load as approved by the Fire Department. This building has the capacity for more than the allowable 400 customers, which was an architectural error. She asked Police Chief Lowe about food being served during hours of operation and how the Police Department monitors that. Police Chief Lowe reported that the Conditions of Approval for this establishment mirror ABC regulations, but it has

not been open long enough to monitor that aspect. Council Member Halliday also commented on the advertising "coupon" that was distributed by Kumbala's. COMPREE representatives alerted the Council of this coupon that was in Spanish. It was indicated that under age is not 18 but 21.

Council Member Quirk commented on the difficulty of parking for 800 customers. There was discussion on parking and that it should be addressed at the same time the expansion is considered. Council Member Quirk reported that he met with COMPREE regarding the use permit application and would be asking Mr. Aguilar about their concerns. In regards to the issue of signs obstructing windows, City Manager Armas, in response stated there is glare from the late afternoon sun and staff will be working with the owner to fashion an acceptable solution.

In response to Council Member Dowling's request, Police Chief Lowe characterized some of the police calls to Kumbala's as fights, intoxicated individuals, disturbances of peace, stolen vehicles, assaults and intoxicated minors. Employees and security personnel have assisted police service calls. He discussed the impacts to several Conditions of Approval that need to be resolved as Condition #47 background music that is not amplified and Condition #48 which is a cover charge and dance permit. Mr. Aguilar received his dance permit today.

Council Member Ward asked about the security company issues from Police Chief Lowe, who reiterated the State law requirements for security guards.

Mayor Sweeney opened the public hearing at 9:50 p.m.

Alex Aguilar, owner and operator of Kumbala's thanked the Council for approving his establishment. He opened in February with about 40 employees. He listed the number of organizations that have used his facility. He commented on the issues from the Police Department. He reported that there are 8 licensed security guards as compared to 5 as required in the Conditions of Approval, plus 12 individuals used as "bouncers" that total 20. He discussed the changes made in security and his reasons for releasing the security company. He set up his own security company and trained the guards.

In regards to the issue regarding minors, he discussed the modifications made after discussions and clarifications with ABC. He asked that the occupancy load be raised to 700-800 in the building and an additional half hour in order to have crowd control at closing. He responded to questions from Council.

Council Member Ward thanked him for his hard work to bring this business to Hayward. He emphasized the need for the establishment to adhere to the Conditions of Approval. He did express concern for minors and that there be licensed security.

Mr. Aguilar described his understanding of the Condition of Approval related to the State license requirement, which seemed to be a technicality that he understood differently than staff, but noted that the Condition needs to be clear. On the matter of distributing advertising materials, he responded to Council Member Ward on the "coupon" that marketed to 18 year olds, saying that it was only a marketing effort.



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Tuesday, July 25, 2006, 8:00 p.m.

Council Member Henson reiterated Condition of Approval #48 and was informed by Mr. Aguilar that he was willing to have a licensed company. Mr. Aguilar explained his reason for the additional half hour for crowd control. There would be only music with no food or drink sold after 1 a.m.

Council Member Quirk recommended adding conditions to define a minor as well as that the security company be licensed by the State. Staff noted that this could be done at a meeting in the fall. Food service was also discussed with Mr. Aguilar stating that full meals will be served until closing with a light menu after 9 p.m. Mr. Aguilar noted the training procedures he has developed for dealing with minors and potential intoxication of customers.

Council appreciated his investment and urged Mr. Aguilar to improve in light of the recent police issues. They appreciated his efforts towards non-profits as Women on the Way.

Council Member Dowling asked about the food service and expressed his concern about 400 customers in a night club. He had no problem with a banquet facility use. His main concern was security in this establishment. He urged the owner to continue focus on having a really clean record. It was stated that Mr. Aguilar advertises his restaurant on Sunday as a family night.

Mr. Aguilar asked for a shorter time frame to request the additional review as it has been hard to maintain the restaurant. Discussion ensued and staff urged ample time for potential consideration.

There was also discussion on allowing larger crowds for banquets; however, it was noted that such events occur on Fridays and Saturdays and would still be taxing police resources.

Fiesa Evans, representing Women on the Way Recovering Center, stated that she volunteers as a staff member as well as on the Board of Directors. She thanked Mr. Aguilar for benefiting her organization such as donating the food. She expressed the need for the larger capacity so that fund raising can be increased.

Guillermo Gonzales emphasized that he does the hiring of personnel for Kumbala's and handles the daily operations. He commented on the current restaurant business.

Feliciana Valarte commented that she has had several events at Kumbala's. She noted that Sunday afternoons seem to be always busy. She urged a larger capacity to accommodate larger crowds as she was turned away on Mothers' Day.

Racquel Domingo is a member of the Eden Youth Advisory Council. She stated that her group advocates for policies to reduce risk factors to youth. She noted the under age drinking and opposed the request to expand Kumbala. She commented that as an owner of another night club in Fremont, Mr. Aguilar should know the definition of a minor.

Maria Gloria stated that she is a 20-year resident. She commented on an incident that occurred this past May when a radio station truck was stationed outside the night club. She expressed concerns

for security, especially when walking at night. She felt threatened to shop at Safeway due to the night club.

David Cota, representing COMPREE, discussed the Council's vision for the downtown and felt that Kumbala's current reputation did not merit the increased capacity or the additional time allowance. Mr. Cota reported on a police report on the other establishment in Fremont owned by Mr. Aguilar, Club Mangoes, which has had similar occurrences in Fremont. He felt that Mr. Aguilar was not a responsible operator. He suggested a full service restaurant without the nightclub use. He noted that Mr. Aguilar has seven years of experience in Fremont and should be a responsible operator in Hayward. He urged Mr. Aguilar to comply with the Zoning Ordinance.

Ed Bogue spoke on his support of the establishment while serving on the Planning Commission. He relied on the favorable comments from the Fremont police and that Kumbala's would be closing earlier than the Fremont establishment. He urged Council not to support the requests for expanding or extending hours of operation. Current levels allowed are not controlled. He was not certain, but has heard that the Fremont Police Department intends to close down the Fremont club. He would not want to see Fremont customers who cause trouble to come to Hayward.

Mayor Sweeney closed the public hearing at 10:47 p.m.

Council Member Halliday expressed her concerns, noting Mr. Aguilar's efforts. She did not want to overtax police resources at one establishment. She spoke in favor of monitoring the business and moved to accept the staff recommendation and review in January to consider the operator's requests. Council Member Dowling seconded her motion.

Council Member Quirk expressed his concern about extending the hours for continued drinking. He was most concerned about drinking and driving, but also the restaurant's financial situation. He appreciated the speakers and appreciated the good record on Sunday brunches. He would like staff to return with a recommendation to increase capacity during non-Friday or Saturday hours, the non-night club hours, without straining our police resources. He asked Mr. Aguilar to insure security in the night club and maintain an exemplary record.

There was discussion on this proposal. A friendly amendment to review and consider in the fall the request to extend restaurant capacity during non-night club hours was offered by Council Member Quirk and accepted by both the maker of the motion and the second. Police Chief Lowe would continue to maintain tight restrictions and enforce violations. It was noted that an evaluation could be reviewed in late fall, and a larger evaluation in January. Council urged the applicant to get a licensed security firm.

Council Member Henson commended Mr. Aguilar for his commitment to resolve the issues related to minors. Kumbala has the opportunity to reflect the diversity of this community as he noted at his visit during the World Cup contests. He urged Mr. Aguilar to work with Police Chief Lowe to make this establishment work. Security for the public is the key concern. He agreed with Mr. Quirk's comments to consider the increased capacity at non night club hours. He did not want the establishment to close and urged Mr. Aguilar to continue forward.



**MINUTES OF THE SPECIAL JOINT MEETING OF
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OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 25, 2006, 8:00 p.m.

Council Member Ward stated that he will be supporting the motion with the proviso that if there is a serious incident that Council void this motion. He cautioned against any further violations; and urged Mr. Aguilar to meet with the representatives of COMPREE to promote similar goals of non-alcohol service to minors.

It was moved by Council Member Halliday, seconded by Council Member Dowling, and carried with one vacancy, to approve the staff recommendation with two additional amendments to direct staff to work with the applicant to determine and define some additional capacity in non-night club hours or days as defined and to be reviewed in September or October; and lastly, if any serious incident occurs that the Council revisit the entire use permit. The motion also included the revision of two Conditions of Approval to define "minor" as anyone less than 21 years of age, and that the security company maintain the proper credentials as required by law to the satisfaction of the Police Department. Several other minor violations will be addressed by the operator.

10. Confirm List of Candidates to be Interviewed on July 27 to Fill Council Vacancy, and Confirm Interview and Appointment Process

Staff report submitted by Acting City Clerk Macias, dated July 25, 2006, was filed.

City Clerk Reyes made the report reviewing the application process, the proposed interviewing process and listed those applicants who received three or more Council nominations. She responded to questions and stated that there will be opportunity for public comments prior to the interviews. It was noted that the interviews are not public hearings and public comments about the applicants could be accepted prior to conducting them.

Council Member Ward asked whether there has been a set of questions utilized in past appointment processes to fill the Council vacancy. Staff reported that past appointment processes did not include set questions. He preferred and suggested that Council Members ask independently determined questions to gauge knowledge and experience of those being interviewed. There was further Council discussion on time limits, the presence of other applicants during the interviews and where the interviewing candidate would sit during the interview.

Mayor Sweeney opened and closed the public hearing at 11:18 p.m.

Mayor Sweeney stated that he would make his best effort to maintain the half-hour time limit. Council Members determined that prior to the interviews, all applicants be assembled in the Council's Closed Session conference room and that electronic devices not be utilized in fairness to all. There was also discussion on the use of the substitute motion and there was consensus that any motion for appointment must be seconded. Council Member Dowling moved to confirm the process that would include the televised half-hour time limit, the questions to be at the discretion of each Council Member, that the applicants be assembled and wait in another area, and that the



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:

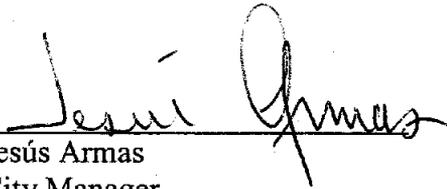
At its meeting of July 25, the City Council conducted a six-month review of Kumbala Restaurant and Nightclub. The report presented to the Council outlined the City's experience with the establishment and noted the need to clarify certain conditions of approval. The staff was unable to recommend modifying 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.

Interim Planning Manager Patenaude suggested that the owner consider building a "granny unit" that could still maintain the character of that neighborhood and would comply with City standards. Council Members agreed.

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

Resolution 06-114, "Resolution Upholding the Planning Commission's Decision to Deny Tentative Parcel Map 9129 and Variance 9129/Variance Application No. PL 2006-0218"

7. Amendments to Conditions of Approval for Kumbala Restaurant and Nightclub

Staff report submitted by City Manager Armas, dated September 19, 2006, was filed.

City Manager Armas made the report, noting the revisions to the Conditions of Approval, and responded to Council questions. Police Chief Lowe assured the Council that security issues have been resolved and police activity has been nil. There was discussion on the signage and window coverings that shade patrons in the late afternoon. There was discussion regarding the issue of marketing to young people. Staff noted that Condition of Approval #43 was revised to address this.

Council Member Ward appreciated Chief of Police Lowe for his involvement in resolving outstanding issues related to security and safety. He also thanked Mr. Aguilar, the restaurant and nightclub owner, for his efforts to make his business safe and viable.

Council Member Rodriguez reported that she had some photos that showed the numerous small signs that crowded the windows of Kumbala Restaurant and provided them to staff to resolve sign issues. She also commented on the unlawful distribution of leaflets in the Chabot College parking lot promoting the other restaurant owned by Mr. Aguilar and expressed her concerns.

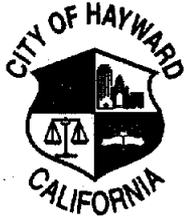
Mayor Sweeney opened the public hearing at 8:50 p.m.

Alex Aguilar thanked the Council for the modifications. In response to Council, he agreed with the 550-occupancy expansion during Sunday, Monday, Tuesday and Wednesday. He also stated that since the age level restricts customers to 21 years old after 9 p.m. on Thursday, Friday, or Saturday, there has been less need for police service. Council appreciated his efforts.

Manuel Garcia, a long time resident, commented favorably on this establishment.

Mayor Sweeney closed the public hearing at 8:57 p.m.

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



**MINUTES OF THE SPECIAL JOINT MEETING OF
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OF THE CITY OF HAYWARD**
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, September 19, 2006, 8:00 p.m.

Resolution 06-115, "Resolution Modifying a Limited Number of Conditions of Approval in Connection with Use Permit No. PL 2004-0010 Concerning Kumbala Restaurant and Nightclub"

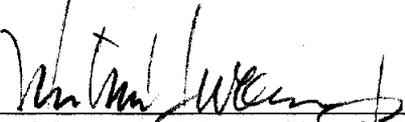
COUNCIL REPORTS

There were no Council Reports.

ADJOURNMENT

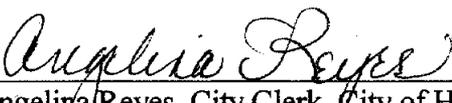
Mayor/Chair Sweeney adjourned the meeting at 8:59 p.m.

APPROVED:



Michael Sweeney, Mayor, City of Hayward
Chair, Redevelopment Agency

ATTEST:



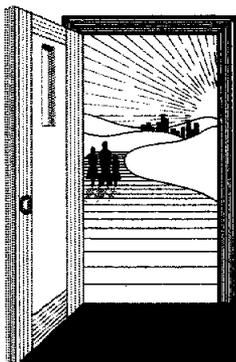
Angelina Reyes, City Clerk, City of Hayward
Secretary, Redevelopment Agency

JAN 16 2007

PLANNING DIVISION

January 12, 2007

COMMPRE



Hayward City Council
777 B Street
Hayward, CA 94541

Subject: CUP NO. PL 2004-0010, Alejandro Aguilar- Kumbala (Applicant)

Honorable City Council Members:

This letter is to request that the City Council deny the requested changes of:
(1) increasing the hours of the nightclub operation to 2:00 am; and (2)
increasing the occupancy load from 412 to 750 people.

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



A program of
Horizon Services, Inc.

In addition we ask the Council to change the following current conditions of approval:

- #6: The nightclub portion of the facility should be required to obtain a License type 48, since it is not operating as a restaurant; and
- #50: "The sales of alcoholic beverages shall not exceed 50 percent of the total sales of the restaurant/bar food sales..." If the Council desires for Kumbala to be a "full-service" restaurant, than the language should be consistent with Hayward's zoning ordinance, which states "*The sales of alcoholic beverages shall not exceed 60 percent of the total sales of the restaurant/bar food sales...*"
- A new condition to be added that prohibits happy hour/cheap drink specials. This activity encourages high consumption of alcoholic beverages, therefore creating a high-risk drinking environment, including resulting problems to the community such as drunk driving, fighting, etc....

In September 2004, the City Council approved Kumbala's application to operate as a license type 47, which is a restaurant that sells beer, wine and distilled spirits. By law, a license type 47 allows minors (under the age of 21) to patronize the restaurant. In addition, the Council approved the application with a set of conditions that created the largest area of the facility as a nightclub. This created ambiguity from an enforcement perspective and in not being in compliance with the Hayward CUP.

In accordance with Zoning Ordinance Section 10-1.2735 (b)(2)(c), a full service restaurant is required to:

- a) maintain a minimum of 60% of its gross receipts from the sale of meals;
- b) should not offer or permit any form of live or recorded entertainment;
- c) shall not offer any type of reduced price promotion for alcoholic beverages served on the premises;

- d) it does not result in jeopardizing or endangering the public health or safety of person residing, visiting, or working in surrounding area;
- e) it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute.

We do not believe that Kumbala is operating (or has the intention in the future to operate) primarily as a "full-service" restaurant. This is evidenced by Mr. Aguilar's request to increase the hours for the sale of alcohol (not restaurant food) and capacity. On one hand Mr. Aguilar states that he wants to provide a venue where families, companies and institutions can celebrate different activities such as weddings, baptisms, wedding anniversaries, and other special occasions. However, these types of events do not occur late into the night to 2:00a.m. His request to change the hours of operation for entertainment to 2:00a.m and to increase the occupancy load from 412 to 750 demonstrates his intention to accommodate the operation of a nightclub where dancing and drinking are the main activities.

Also, since 50% of the revenue comes from alcohol sales, it cannot be said that the majority of his revenue is derived from food sales. Accordingly, it should not be licensed as a "full-service" restaurant. A major enforcement problem is that minors (people under the age of 21) can easily access alcohol in this establishment. Mr. Aguilar has not adequately put into place a program to insure that no minors are accessing alcohol.

Although he states that he is considering city's concern over lack of adequate parking, nevertheless his request of accomodating 750 persons does not solve the parking limitations. If each car carries at least 4 patrons, there would be at least 187 cars. Since there are only 38 parking spots for domestic vehicles and 2 for disabled persons in Kumbala's parking lot, 147 cars would use the street and other public parking spaces. Mr. Aguilar's expansion request will cause an added burden to the City and its already limited parking areas. He has not provided a strategy plan, which is a pivotal concern to CommPre and the community at large.

Mr. Aguilar acknowledges that there has been no problems at Kumbala since he hired a California licensed and bonded security firm to provide security services, worked to draw in more families and created an environment to hold Mother's Day events. We believe therefore, that there should be no changes. His request to bring in more people and expand the drinking and dancing hours will only bring back the problems Kumbala produced prior to the changes he made.

Therefore, CommPre respectfully requests that the City Council makes the changes to Kumbala's permit to be consistent with the City's ordinance, and resolve the ambiguity that exists. Also, we request the denial of Mr. Aguilar's requests to increase capacity and hours for the sale of alcohol.

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a long, sweeping flourish that ends in a small hook.

Alfredo Coria
Prevention Specialist/Community Organizer

Attachments:

ABC definitions of License Types 47 & 48

COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

BEER MANUFACTURER - (Large Brewery) Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.

WINEGROWER - (Winery) Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.

OFF SALE BEER & WINE - (Package Store) Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.

OFF SALE GENERAL - (Package Store) Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.

SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery) Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.

ON SALE BEER - (Bar, Tavern) Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.

ON SALE BEER & WINE - EATING PLACE - (Restaurant) Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.

ON SALE BEER & WINE - PUBLIC PREMISES - (Bar, Tavern) Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.

ON SALE GENERAL - EATING PLACE - (Restaurant) Authorizes the sale of beer, wine and distilled spirits for consumption on the licensed premises. Authorizes the sale of beer and wine for consumption off the licensed premises. Must operate and maintain the licensed premises as a bona fide eating place. Must make actual and substantial sales of meals, during the normal meal hours that they are open, at least five days a week. Normal mealtimes are 6:00 a.m. - 9:00 a.m., 11:00 a.m. - 2:00 p.m., and 6:00 p.m. - 9:00 p.m. Premises that are not open five days a week must serve meals on the days they are open. Minors are allowed on the premises.

ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.

ON SALE GENERAL - SEASONAL - Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



DRAFT 01/19/07

HAYWARD CITY COUNCIL

RESOLUTION NO. 07-

Introduced by Council Member _____

RESOLUTION FINDING THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND CONDITIONALLY APPROVING USE PERMIT APPLICATION PL-2006-0649 REQUESTING MODIFICATION TO THE CONDITIONS OF APPROVAL RELATING TO USE PERMIT NO. PL-2004-0010 - KUMBALA RESTAURANT AND NIGHTCLUB

WHEREAS, Use Permit Application No. PL-2006-0649 concerns a request by Alejandro Aguilar (Owner) to make additional modifications to Use Permit Application No. PL-2004-0010 concerning Kumbala Restaurant and Nightclub located at 22380 and 22386 Foothill Boulevard; and

WHEREAS, at its meeting on July 25, 2006, the City Council conducted a six-month review of Kumbala Restaurant and Nightclub, and on September 19, 2006, approved minor modifications to the conditions of approval; and

WHEREAS, since July 2006 the club has had no reported violent crimes, property crimes or fights, and management has complied with all conditions of approval; and

WHEREAS, the applicant has requested to increase the maximum occupancy from 412 to 750 people (Condition of Approval No. 17); to extend the hours when alcohol may be served from 1 a.m. to 2 a.m. (Condition of Approval No. 41); and that limits on live music and entertainment being allowed only Thursday through Saturday be eliminated (Condition of Approval No. 46); and

WHEREAS, staff recommends against allowing 750 people in the establishment and recommends an amendment to condition 17.1, allowing maximum occupancy of 550 people during all hours of operation. Staff also recommends adding a condition of approval which provides that if the operation of the establishment places an undue burden on the police department, the City, upon notice from the Chief of Police, will immediately begin proceedings for revocation of the use permit. Staff recommends against changes to the hours of operation, the hours that alcohol may be served or to the hours or days that live entertainment may be provided; and

WHEREAS, the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to section 15332, Infill Development Projects.

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 and No. PL-2006-0649 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 _____, 2007

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward