



**CITY OF HAYWARD  
OFFICE OF THE CITY CLERK  
February 9, 2007**

**TO:** Mayor and City Council  
**FROM:** Angelina Reyes, City Clerk *AR*  
**SUBJECT:** Revision to Minutes of January 23, 2007

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Council Member Henson has requested the following change to the draft minutes related to his comments on page 7. He asked to replace:

*"Council Member Henson agreed that the additional hour for amplified music could be permitted and urged that with the added Condition of Approval #64 that provides for revocation measures, Mr. Aguilar be given a chance to succeed."*

with the following:

*"Council Member Henson said that he was of the opinion that Mr. Aguilar should be given a one shot deal to operate and that would include the additional hour of operation, meaning until 2 a.m. He also indicated that the Chief of Police has revocation authority and that one major incident and he could shut down the operation of the club."*

With these revisions, we are recommending approval of the minutes of January 23, 2007.



**MINUTES OF THE CITY COUNCIL MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, January 23, 2007, 8:00 p.m.**

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**MEETING**

The Meeting of the City Council was called to order by Mayor Sweeney at 8:00 p.m., followed by the Pledge of Allegiance led by Mayor Sweeney.

**ROLL CALL**

Present: COUNCIL MEMBERS Rodriquez, Quirk, Halliday, Ward, Dowling,  
Henson  
MAYOR Sweeney  
Absent: COUNCIL MEMBERS None

**PUBLIC COMMENTS**

There were no public comments.

**CONSENT**

1. Approval of Minutes of the Special Joint City Council/Redevelopment Agency/Housing Authority Meeting of January 16, 2007

It was moved by Council/RA/HA Member Dowling, seconded by Council/RA/HA Member Halliday, and unanimously carried, to approve the minutes of the Special Joint City Council/Redevelopment Agency/Housing Authority Meeting of January 16, 2007

2. Appointment of PARS Plan Administrator

Staff report submitted by Human Resources Director Brock-Cohn, dated January 23, 2007, was filed.

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

Resolution 07-008, "Resolution Appointing a PARS Plan Administrator"

**HEARING**

3. Text Amendment No. PL-2006-0544 – Initiated by the Planning Director – Proposal to Amend the City of Hayward Subdivision Ordinance, Sections 10-3.350 through 10-3.395, Condominium Community Apartment, and Stock Cooperative Subdivisions – Governing Conversion of Residential Rental Complexes to Ownership Housing

**DRAFT**

Staff report submitted by Planning Manager Rizk, dated January 23, 2007, was filed.

Planning Manager Rizk made the report highlighting the improvements recommended in this revision including requiring a property management company. He responded to Council questions regarding parking regulations, the \$200 contingency fee, and the formula to be used in determining eligibility for relocation assistance for the elderly, purchasing ability for tenants, and the revised definitions in the ordinance. He reported that there will be no variances or exceptions to this ordinance. Building Official Elliot respond to Council questions related to soft-story conditions, standards for structural improvements, and confirmed that the language related to energy-saving standards for appliances needs to be updated.

Mayor Sweeney opened the public hearing at 8:32 p.m.

Kirk Knight, developer at 25716 Spring Drive, stated that he is also a realtor and develops small property. He commented favorably on the conversion of apartments, but spoke on his concerns with the ordinance. He discussed conversion of small properties with four units, which he stated total about 480 properties of this category in the Hayward area. He addressed issues related to building code standards for seismic upgrades and the undetermined costs for the upgrade, tenant incentives to purchase, protective units for seniors, and parking designations. He responded to Council comments regarding housing for seniors and the disabled.

David Stark, spoke on behalf of realtors, in support of the Planning Commission recommendation that incorporates the concerns of the various stake holders. He stated that property owners want the ordinance to include more flexibility to better serve the special-needs tenants by having the option to offer long-term leases or relocation assistance packages. He noted that the realtors are not opposed to improvements that concern health and safety.

Council Member Dowling commented that addressing the soft-story conditions at conversion is necessary as it may otherwise not be addressed.

At the request of Mayor Sweeney, Mr. Stark commented that the California Housing Finance Agency has a number of mortgage products and uses guidelines for condominium purchases that require a certain percentage to be owner-occupied. He indicated that the City could be compromised in future financing if it sets such requirements.

At the request of Council Member Quirk, Chris Zaballos, Foothill Boulevard, described the process of a conversion, noting that the project upgrades begin in the vacant units and units are sold to tenants who already reside there at a discount as the developer excludes those upgrades. He reported that the revised ordinance is a compromise, is fair, and addresses the need to protect renters, seniors, and those with special needs. Council appreciated his participation in the revisions of this ordinance.

Augusto Cano, a developer on Rex Road, asked that the parking requirement be relaxed for the older and smaller conversions. He is required to have two parking spaces per unit, the driveway does not count.

Council Members Dowling and Ward commented on his specific development that is landlocked and spoke on “grandfathering” exceptions or reducing the parking requirements.



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City Manager Armas discussed options that the Council could consider to address such issues in the less than five-unit conversions. He indicated that once this revised ordinance is adopted, no variances will be permitted.

Rob Simpson, a real estate broker, discussed recommendations he previously submitted to the Planning Commission, including down payment assistance and the recommendation to apply the ordinance to five and above unit projects.

Larry Smith, Trimble Court, commented on his experience with a past conversion. He indicated that parking regulations were strict and maintained by the property management.

Mayor Sweeney closed the public hearing at 9:21 p.m.

In response to Council Member Dowling's question related to seismic improvements, Building Official Elliott reported that the State may impose seismic modifications in the future and it may be more costly to comply. Staff noted that some developers are already addressing the soft story concerns by installing poles in garages that hold up structures with beams or walls.

Council Member Dowling moved, seconded by Council Member Quirk, to move the staff recommendation with a change in the parking requirement. He was concerned for the three and four story units where parking is an issue. He suggested that in particular conversions, where the property was annexed to the City from the County, upgrades or trade-offs could be done in other areas and included in the site plan review. Council Member Quirk seconded his amendment and indicated that he had other suggestions for the ordinance.

Mayor Sweeney also indicated his intention and contemplated holding the ordinance for additional work.

Council Member Rodriguez spoke about the difficulties of seniors and those with disabilities and was in support of the ordinance. She expressed that maintenance issues impact first-time buyers and seniors who, as renters, are not accustomed and may not always be capable of maintaining their homes after purchase.

Council Member Halliday suggested the ordinance be revised to include some exceptions related to parking. She expressed concerns on the relocation assistance for the elderly. She discussed the length of leases and asked for clarification on the Planning Commission recommendation. Staff noted that the Planning Commission staff report did indicate that leases involving the elderly and the disabled contain information for relocation assistance upon vacating the unit. She asked that both the maker of the motion and the second allow a provision in the introduction that would provide relocation assistance when the elderly and disabled determine to move.

Council Member Ward would be supporting the staff recommendation, agreed with the recommendation by Council Member Halliday and asked that some consideration be made for the parking issues, and cautioned on making the ordinance to onerous.

**DRAFT**

Mayor Sweeney stated that he agreed with applying the ordinance to three and four unit conversions. He agreed with Council Member Henson on the practical impacts on senior citizens. He also agreed with Council Member Halliday's amendment. He agreed that the energy language needs to be upgraded to provide high efficiency uses. He noted that the public purpose is to increase home ownership and owner occupied homes. He urged strong home ownership rates for Hayward and asked for legal recommendations.

City Attorney O'Toole commented that staff could amend this ordinance to require the owner occupancy requirement. He cautioned on imposing unreasonable restraints. He noted a strategy to utilize home owner associations that could require such.

With this in mind, Mayor Sweeney suggested his colleagues agree to hold the ordinance introduction so that staff can include the proposed recommendations.

Council Member Dowling withdrew his motion so that the issues on parking, the improvement on the energy language, the relocation assistance language and the assurance of homeownership can be revised by staff. He noted that the bulk of the ordinance has already been discussed. He moved a new motion, seconded by Council Member Rodriguez, to continue this discussion for 30 days or when staff has completed what is being directed.

Council Member Quirk expressed his concern and asked that staff continue discussions with those who will be using the ordinance.

City Manager Armas referred to the public comments already presented by developer, Mr. Zaballos, who finds the revisions to the ordinance an acceptable compromise. He noted that although there have not been any changes in the past 20 years in conversions, there were a number of provisions made to comply with current building codes for health and safety, but do not require older buildings to comply with current codes.

It was moved by Council Member Dowling, seconded by Council Member Rodriguez, and unanimously carried to continue the discussion of this condominium conversion ordinance for 30 days.

## **LEGISLATIVE BUSINESS**

4. Use Permit Application PL-2006-0649, Modification of Use Permit Application PL-2004-0010 – Kumbala Nightclub and Restaurant – Alex Aguilar (Applicant/Owner) – Request to Modify the Use Permit to Change the Hours of Operation and Increase Occupancy Levels - The Property is Located at 22380 and 22386 Foothill Boulevard

Staff report submitted by Associate Planner Pearson, dated January 23, 2007, was filed.

Community and Economic Development Director Daluddung made the report, noting that the original permit allowed for live entertainment and a limit to close at 1 a.m., on Thursday, Friday and Saturday. The applicant is requesting that the hour be extended to 2 a.m., and increase the



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occupancy rate from 412 to 750. She cited the proposed amendments to the conditions of approval and noted no violent police reports since July and the owner has complied. She explained that the Police Department has reported that the requests for service have been minimal since July, noting the attendance at the business has also been minimal. The staff recommendation is not to comply with the request to change the hours of operation. She elaborated on Condition of Approval #64 that provides that the City issue a notice for a revocation hearing should there be undue demand placed on police resources.

Police Chief Lowe displayed reports since the opening and there have been no incidents since March. He discussed that he had met with Mr. Aguilar since 2004. This year, business has been relatively quiet. However, weekend business has been really poor. Business has decreased on the weekend resulting in reduced incidents. There were 300 patrons on New Year's Eve with no incidents. The Chief indicated that he would not support music beyond the hours of serving alcohol. He responded to questions from Council related to the change in the use of a reliable security service. Lastly, he noted a 22 page court document regarding the owner's other establishment in Fremont that is being declared a public nuisance by that city. He does not support the changes as requested by the owner.

There was Council discussion related to the hours of operations. The use permit establishes both a restaurant and a nightclub with the condition of approval that food be the more significant product than alcohol.

Council Member Quirk asked for clarification on "amplified sound." It was noted that the establishment was advertised as a restaurant and there is concern that reasonable limitations be set for the nightclub portion of the business.

Council Member Henson indicated that Mr. Aguilar feels that he has a disadvantage compared to other similar businesses. It was noted that the only other establishment is Mexicali Rose that serves approximately 100 patrons. He was concerned with fairness, but was also concerned for police resources. It was noted that the Alcohol Beverage Control board issues the license.

Council Member Rodriguez commented on the operator's need to conduct business, the amount of alcohol being served and the ownership of the restaurant in Fremont.

Council Member Halliday discussed the operation of the business after 1 a.m. She asked about the occupancy limit for that building.

Mayor Sweeney opened the public hearing at 10:19 p.m.

Alfredo Coria, representing, COMPREE Horizon, referred to a letter he submitted and described his recent experiences at Kumbala, emphasizing that Conditions 45 and 50 were violated. He asked the Council to bring this business to full compliance and suggested that Happy Hour drinks cease.

Guillermo Gonzalez, General Manager of Kumbala, asked for Council support for extending the hours of operation.

Emilia Van Leeuwaarde, spoke in support of Kumbala's. She works in real estate and her colleagues meet weekly there.

Staff clarified that the use of microphones for business lunches is permitted.

Patricia Torres, Hispanic Realtors Association, Alameda, stated that her group meets regularly and spoke in support of Kumbala's.

John Taylor has a business at 22568 Mission Boulevard and an extensive background in security. He runs a security company, works at Kumbala's and discussed his services that have improved the situation including developing a security plan. He asked for a trial approval and indicated his commitment to comply with the law.

Keith Jacobs, 22568 Mission Boulevard, stated that he is a retired Oakland police officer. He indicated that he has extensive experience in crowd control. He offered that experience that could work with patrons at Kumbala's. He responded to questions from Council related to the number of security officers

Larry G. Smith, LNS Properties Inc., owns the building next door to Kumbala's and endorsed the business. He urged support of Alex Aguilar's business effort.

Daniel Delvalle works in Union City with the Pennysaver and spoke on behalf of Mr. Aguilar, who utilizes his business.

Jason Lotz, 22320 Foothill Boulevard, is a facility manager at that Plaza Center where Safeway is located and noted the after hours effects of Kumbala's to his business and his building's parking area that is considered private. He brought in a sign that belonged to Kumbala that had been placed at his parking area and noted the trash and debris that is left at his parking lot after the weekend. He urged the use of proactive management measures to resolve a number of these issues.

Council Member Quirk agreed with Mr. Lotz, noting public parking areas that are available and asked that Mr. Aguilar address Mr. Lotz's concern.

Alex Aguilar, owner of Kumbala's at 22380 Foothill Boulevard, urged the Council to approve his request and responded to questions from Council. He discussed the restaurant capacity and his request for an increase. He noted the hiring of a reputable security company and indicated that the nightclub attendance requirement to enter is no longer 18 years, but 21 years and older. He commented on his commitment to the City and listed the various groups that have used his restaurant. He asked for fairness in allowing the additional hours of operation. He commented about his establishment in Fremont and explained how the lawsuit came about.

In response to Council concerns, Mr. Aguilar explained that the night club is opened for approximately 10 hours in comparison to the restaurant. He indicated that the cover charge is what sustains that establishment and not having that extra hour impacts his income.



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Council Members appreciated Mr. Aguilar's efforts in the downtown, but emphasized the need for Kumbala's to be crime free as the downtown improves. The City's Police Department does not have available staff should there be a call for service at closing with 750 patrons leaving the night club when all other establishments are also closing. For this reason, staff is maintaining the current hours of operation for the nightclub. There was discussion on what was being requested by Mr. Aguilar and it was stated that there be an increased capacity for non-nightclub nights for private events.

Mayor Sweeney closed the public hearing at 11:21 p.m.

Council Member Rodriquez asked Chief Lowe about the security firm that Kumbala's has hired. Chief Lowe stated that this firm has an excellent reputation. The concern is to the limits on the number of patrons and he urged a 550 patron limitation.

Council Member Quirk moved to approve staff recommendation, which was seconded by Council Member Dowling.

Council Member Halliday spoke on the type of music permitted and urged flexibility. She suggested that a special permit could be requested for live and amplified music for special events as weddings and banquets. After discussion and input from staff regarding the impacts to the neighborhood, she withdrew her recommendation.

Council Member Henson said that he was of the opinion that Mr. Aguilar should be given a one shot deal to operate and that would include the additional hour, meaning until 2 a.m. He also indicated that the Chief of Police has revocation authority and that with one major incident he could shut down the operation of the club.

Council Member Rodriquez also expressed her desire for Mr. Aguilar to make his establishment successful.

Council Member Dowling reiterated that Kumbala's license from the Alcohol Beverage Commission is for a restaurant, not a night club. He urged Mr. Aguilar to work towards improving his restaurant business.

Council Member Quirk agreed with not allowing music and alcohol service after 1 a.m. He agreed with Council Member Dowling's comment that 2 a.m., might work in other cities but not in Hayward.

It was moved by Council Member Quirk, seconded by Council Member Dowling, and unanimously carried to adopt the staff recommendation.

Resolution 07-009, "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  
the Use Permit No. PL-2004-0010 – Kumbala Restaurant and Night  
Club”

**COUNCIL REPORTS**

There were no Council Reports.

**ADJOURNMENT**

Mayor Sweeney adjourned the meeting at 11:36 p.m.

**APPROVED:**

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Michael Sweeney, Mayor, City of Hayward

**ATTEST:**

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Angelina Reyes, City Clerk, City of Hayward