



CITY OF  
**HAYWARD**  
HEART OF THE BAY

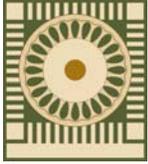
## **PLANNING COMMISSION**

**JANUARY 26, 2012**

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CITY OF HAYWARD  
777 B STREET, HAYWARD, CA 94541-5007  
(510) 583-4205 / [www.hayward-ca.gov](http://www.hayward-ca.gov)  
LIVE BROADCAST – LOCAL CABLE CHANNEL 15

**AGENDA**  
**HAYWARD PLANNING COMMISSION**  
**Thursday, January 26, 2012 , AT 7:00 PM**  
**COUNCIL CHAMBERS**

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**MEMBERS OF THE AUDIENCE WISHING TO ADDRESS THE PLANNING COMMISSION:**

Obtain a speaker's identification card, fill in the requested information, and give the card to the Commission Secretary. The Secretary will give the card to the Commission Chair who will call on you when the item in which you are interested is being considered. When your name is called, walk to the rostrum, state your name and address for the record and proceed with your comments. The Chair may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens for organization. Speakers are expected to honor the allotted time.

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**ROLL CALL**

**SALUTE TO FLAG**

**ELECTION OF OFFICERS**

**PUBLIC COMMENT:** (The PUBLIC COMMENTS section provides an opportunity to address the Planning Commission on items not listed on the agenda. The Commission welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Commission is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff for further action).

**ACTION ITEMS:** (The Commission will permit comment as each item is called for Public Hearing. Please submit a speaker card to the Secretary if you wish to speak on a public hearing item).

**PUBLIC HEARINGS:** For agenda item No. 1 the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

1. Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment - The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

[Staff Report](#)

[Attachment I - Draft PC Minutes 12-15-11](#)

[Attachment II - Findings for Approval](#)

[Attachment III - Conditions of Approval](#)



Assistance will be provided to persons requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons needing accommodation should contact Sonja Dal Bianco 48 hours in advance of the meeting at (510) 583-4204, or by using the TDD line for those with speech and hearing disabilities at (510) 247-3340.

**NON-ACTION ITEMS:** (Work Session items are non-action items. Although the Commission may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda).

**WORK SESSION:**

2. Draft Hayward Airport Land Use Compatibility Plan

[Staff Report](#)

[Attachment I - Public Utilities Code Section 21670](#)

[Attachment II - Hayward Airport Safety Compatibility Zones Map](#)

[Attachment III - Hayward Airport Safety Compatibility Zones-Southland Mall Map](#)

[Attachment IV - Resolution 12-008](#)

[Attachment V - ALUC Staff Report](#)

[Attachment VI - Table 3-2 Draft Hayward Executive ALUCP](#)

[Attachment VII - Letter from Mayor Sweeney](#)

[Attachment VIII - Overruling Procedures](#)

**COMMISSION REPORTS:**

3. Oral Report on Planning and Zoning Matters
4. Commissioners' Announcements, Referrals

**APPROVAL OF MINUTES**

5. Approval of Minutes

[October 20, 2011](#)

[November 3, 2011](#)

[November 17, 2011](#)

**ADJOURNMENT**

**PLEASE TAKE NOTICE** that if you file a lawsuit challenging any final decision on any public hearing item listed in this agenda, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. **PLEASE TAKE FURTHER NOTICE** that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

**NOTE:** Materials related to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the Permit Center, first floor at the above address. Copies of staff reports for agenda items are available from the Commission Secretary and on the City's website the Friday before the meeting.

**DATE:** January 26, 2012

**TO:** Planning Commission

**FROM:** Tim R. Koonze, Associate Planner

**SUBJECT:** **Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment**

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

## **RECOMMENDATION**

That the Planning Commission finds that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities, and approve the conditional use permit, subject to the attached findings and conditions of approval.

## **BACKGROUND**

This application came before the Planning Commission at its meeting on December 15, 2011. During the public hearing portion of the hearing, the property owner stated that personal issues preempted him from adequately working with the applicant and that he would like the application held over until he could work out a new agreement with his prospective tenant. The Planning Commission continued this item to allow for such resolution. On January 6, 2012, the applicant and owner signed an agreement to move forward with the application. A signed letter confirming such agreement from the owner and applicant has been submitted to Planning staff.

The full agenda report, which identifies issues, recommended conditions of approval, and reasons for staff's recommendation for approval, was previously distributed for the meeting on December 15, 2011. That report and its attachments are available on the City's website at:  
<http://www.hayward-ca.gov/citygov/meetings/pca/2011/PCA11PDF/pca121511full.pdf>.

The draft minutes from that meeting are included as Attachment I to this report. As the minutes note, Commissioners were generally supportive of the proposed establishment, as conditioned. The project findings in support of approval and recommended conditions of approval are included as Attachments II and III.

## **PUBLIC OUTREACH**

On September 28, 2011, a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Staff received one response objecting to the proposed due to concerns that the massage establishment would be a business that would have a negative effect on business and the vitality of Downtown.

On December 5, 2011, a Notice of Public Hearing for the December 15, 2011 Planning Commission meeting was mailed to the same recipients as for the Referral Notice. No responses were received as a result of that notice.

On January 10, 2012, a Notice of Public Hearing for this Planning Commission meeting was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. No responses have been received by the time this report was prepared

## **SCHEDULE**

The Planning Commission decision will be subject to a 10-day appeal period. If approved and there is no appeal of the Commission decision to the City Council within that time period, the applicant may proceed with the approved use.

Prepared by: Tim R. Koonze, Associate Planner

Recommended by:



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Richard Patenaude, AICP  
Planning Manager

Approved by:



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David Rizk, AICP  
Development Services Director

Attachments

- Attachment I: Draft Planning Commission Meeting Minutes of December 15, 2011
- Attachment II: Findings in Support of the Project
- Attachment III: Recommended Conditions of Approval



**Attachment I**

**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, December 15, 2011, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Loché.

**ROLL CALL**

Present: COMMISSIONERS: Faria, Lamnin, Lavelle, Márquez, McDermott, Mendall  
CHAIRPERSON: Loché  
Absent: COMMISSIONER:

Commissioner McDermott led in the Pledge of Allegiance.

Staff Members Present: Conneely, Koonze, Philis, Rizk

General Public Present: 4

**PUBLIC COMMENTS**

Leah Rosenbloom, a Marie Drive resident, said she was distressed about a pending 100 foot communication tower to be located in close proximity to Stonebrae Elementary where her son attends school. She said she only recently learned about the tower at a November 16 school board meeting and was disappointed to hear it was already approved by the Planning Commission in September of 2010. She noted that although the tower would greatly impact the 750 children who attend the school, the decision was made without notifying, discussing or gathering input from the parent community. Since learning about the tower, Ms. Rosenbloom said over 100 signatures had been gathered requesting the relocation of the tower. She said she appreciated the Commission's foresight for attempting to provide cell phone coverage for the area in terms of public safety and communication, but said the location of the tower was dangerously close to the school and could compromise the health, welfare and quality of life of the children. She pointed out that the health dangers of cell phone towers had been documented by the medical community even when radiation levels were far below the legal threshold. Understanding the limitations imposed by the 1996 Telecommunications Act, she urged the Commission to engage in discussions with Stonebrae LP and Verizon Wireless to renegotiate the lease of land for the tower. Ms. Rosenbloom noted that there were suitable locations over one mile away from the school that would still provide cell phone coverage to the community and school and those locations were mentioned by the Verizon representative at the September meeting. She concluded by saying the families of Hayward did not have the "deep pockets" of the wireless industry and real estate developers, but they did have public officials, like the Planning Commission, who were charged with the task of ensuring the health, safety and quality of life of the residents, especially the children who were the most vulnerable. She urged the Commission to do right by the kids in Hayward and join the families who want the tower moved to a safer location without compromising cell phone service to the community. Ms. Rosenbloom distributed flyers to all the Commissioners.

Chair Loché asked staff how residents were notified about this issue and Director of Development Services David Rizk explained that the standard procedure was to notify businesses and residents within 300 foot of the proposed project site, and noted he could check the project file and come back to the Commission with a more detailed report of who received notification. Ms. Rosenbloom said she was sure the City had done its due diligence, but said the City could do better.

## **PUBLIC HEARING**

1. Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment - The Property is Located at 22566 Mission Boulevard, Between A and B Streets, in the Central City (CC-C) Zoning District

Associate Planner Tim Koonze gave a brief synopsis of the report.

Commissioner Mendall asked why surveillance cameras were not allowed on the outside of the establishment. Associate Planner Koonze said he didn't know, and he when asked the Police Department they didn't know either, but the City's massage ordinance had that language so that was what staff was adhering to. Commissioner Mendall then asked why the Commission should grant the exception that massage therapists didn't need to be certified with the California Massage Therapy Council (CAMTC) and Mr. Koonze explained that other establishments in Hayward were operating without the certification and were doing just fine. Mr. Koonze noted that technicians still needed a massage therapy technician permit from the City, which renewed every two years, and included a minimum of 500 hours of training and an extensive background check. Commissioner Mendall asked if the City was asking technicians to eventually become certified with the state, and Mr. Koonze said that would be up to the technicians. Commissioner Mendall asked if other establishments have similar requirements and Mr. Koonze said most had the same requirement of renewing the City permit every two years.

Commissioner Lavelle noted that the report indicated there were five establishments in Hayward that provided massage therapy and she asked where they were located. Associate Planner Koonze listed the locations. Commissioner Lavelle confirmed with staff that two of the establishments were located in the Central City Commercial District.

Commissioner Márquez asked Associate Planner Koonze to explain what the police would be looking for when they conducted background checks on the massage technicians. Mr. Koonze explained that police would be looking for criminal records, proof of 500 hours of training, and certification with the City, which he explained, was similar to the State's certification but not as extensive. Commissioner Márquez asked if a background check would be conducted on the applicant as well as the owner and Associate Planner Koonze said that a background check would be conducted on the owner when applying for an establishment permit and later, on anyone doing massage therapy at the establishment. Commissioner Márquez asked if someone with the State's CAMTC certification had to be on-site at all times and Associate Planner Koonze said no, the establishment could be staffed with only City-certified technicians, however, he noted that the business owner, Ms. Huang, would be working as one of the technicians and she was certified with the state.

Commissioner Lamnin asked for clarification about staff's proposed amendments to conditions of approval number 6.(m) and 6.(o), regarding surveillance cameras. Associate Planner Koonze explained that staff wanted to add the word "not" to condition 6.(m), to read "Other surveillance cameras must *not* be maintained or operated...", which he said came directly out of the zoning code. Commissioner Lamnin asked what the rationale was behind condition 6.(o) that added surveillance cameras inside the establishment and Mr. Koonze said that by having cameras inside, if there was an incident with one of the patrons, police would have something on tape, and also, cameras would provide a record of the activities in the establishment.

Commissioner Lamnin asked if the applicant was aware of fees associated with water and utility hook-ups and requirements as listed under condition 11 and Associate Planner Koonze said the eventual cost would be depend on the number of stations, the size of the stations, and the amount of water used. Once that was determined, he said, utility staff could give Ms. Huang an estimated cost.



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Commissioner McDermott asked if the CAMTC certification needed to be renewed or was lifetime. Associate Planner Koonze said he didn't know but indicated the applicant could possibly answer.

Commissioner McDermott asked for more information about a letter received that stated the establishment would be a detriment to the business community; she asked if there were any specific reasons given. Associate Planner Koonze said the same reasons massage parlors were not allowed under the South Hayward BART form-based code was the rationale behind the protest.

Commissioner McDermott asked if the Conditional Use Permit (CUP) could be reviewed every two years, rather than every three years from the effective date of approval, so it coincided with the Massage Establishment Permit filed with police. She pointed out that if all permits were reviewed at the same time every two years, information from the police department would be current. Associate Planner Koonze explained that if the application was approved that evening, Ms. Huang had three years to open the establishment before the CUP became void and she would have to start the process over. He added that once the establishment opened, Ms. Huang would not have to get another CUP, but would have to have a Massage Establishment Permit in place with police and that permit would have to be renewed every two years.

Commissioner McDermott said the report indicated that technicians were certified not to have any communicable or transmittable diseases and she asked how this would be monitored. Associate Planner Koonze said technicians must provide a medical form to the police department as part of the background check.

Regarding the letter of protest, Commissioner Faria asked if any other comments had been received since the Public Hearing Notice went out and Associate Planner Koonze said no.

Chair Loché asked if other establishments had similar business hours (daily from 10 a.m.-10 p.m.) and Associate Planner Koonze said he didn't know. Chair Loché asked staff to provide more information about the difference between the City's technician permit and the State's CAMTC certification and asked if the difference was cost or knowledge. Associate Planner Koonze said he didn't know the level of knowledge and technical skill technicians needed for the state certification, but he thought that was one of the biggest differences. Mr. Koonze noted that the background checks conducted both agencies were thorough and if a technician had State certification, the Hayward police would not conduct another background check.

Commissioner Lamnin asked how the City would monitor that all massage technicians had permits on file with the police. Associate Planner Koonze said the establishment permit required the business to keep information current with police as part of the CUP. Technicians, he said, would have to have a permit on file with police before they could start working.

Commissioner McDermott noted that the business could be open seven days a week and suggested that be made clear under the Conditions of Approval.

Commissioner Faria asked how this business was different from an application that came before the Planning Commission earlier in the year for a spa on Jackson Street. Associate Planner Koonze said Lavender Spa, located at 97 Jackson Street, went through the same application process. Commissioner Faria asked for confirmation that spa and massage businesses fell under the same regulations and Mr. Koonze explained that because massage was going to be provided as part of Lavender Spa's business, they did.

Chair Loché opened the Public Hearing at 7:28 p.m.

Jim Hatland, Cheyenne Place in Fremont and representing the applicant, said that he and Ms. Huang, the applicant and proposed operator of Good Hands Massage Therapy on Mission Boulevard, had reviewed the conditions of the Conditional Use Permit, agreed to them, and would faithfully uphold the requirements. Mr. Hatland said Ms. Huang was pleased to be opening her business in the city of Hayward and hoped to be there for a number of years with the Planning Commission's approval.

Based on business hours of 10 a.m. to 10 p.m., Commissioner Márquez asked if there was a specific time they would take the last client and Mr. Hatland responded it would have to be before 9 p.m.

Commissioner McDermott asked how often the CAMTC certification needed to be renewed and Mr. Hatland said every two years, noting Ms. Huang's certification would be up for renewal in August.

Commissioner Lavelle asked how the business would be marketed and what kind of customers they hoped to attract. Mr. Hatland said Ms. Huang would be marketing to people with back problems, muscle problems due to athletics (or lack of), and noted that most clients tend to come back. He pointed out that if they did not feel better they would not come back. Mr. Hatland said it was all about service with a smile on an as-needed basis. He said most patrons come in once a week or once a month, but it's all about return business.

Commissioner Faria asked if Ms. Huang was a resident of Hayward and Mr. Hatland said she was resident of Castro Valley. Commissioner Faria asked why she chose Hayward to set up her business and Mr. Hatland explained that they had looked at over a 100 locations in the last year and a half before this opportunity had presented itself back in August. He said they saw it had potential with plenty of available parking, a nice location across from Lucky, where she would feel comfortable and her patrons would feel comfortable. Mr. Hatland said he'd known Mr. Huang for 16 years and she had been very steady in that aspect of service.

Commissioner McDermott asked what experience Ms. Huang had, if she'd been a business owner before, how long she'd been in this business, and if she'd owned a business of this type before and if so, was she just expanding. With assistance from Mr. Hatland, Ms. Huang said she had owned businesses in Japan for five years and Taiwan for six years. Commissioner McDermott asked if she'd been in the same industry and Ms. Huang said no, they had been a different type of business. Commissioner McDermott confirmed that Ms. Huang felt confident and comfortable with starting the business with the business experience that she had from Japan and Ms. Huang thanked her.

Commissioner Lamnin thanked Ms. Huang for considering Hayward and asked her what she would do to save energy and water at her business noting that massage could be water waste intensive business. Mr. Hatland said there would be laundry and a personal shower, but said he didn't think there would be more than two loads of laundry a day or about 100 gallons of water at the most, similar to a residence. Regarding power, Mr. Hatland said the building was air conditioned and they had no choice but to use it to move the air around. He said the air conditioning was one of the nice things about the building noting that in the summer time it could get hot but said they would keep it at a "civil" temperature.

Chair Loché asked what the price range would be for the services they offered. Mr. Hatland said \$40 an hour, \$20 for half hour, but Ms. Huang corrected him to \$30 for a half hour. Chair Loché asked if any merchandise would be sold and Mr. Hatland said none whatsoever, just the service. Chair Loché asked how many employees they envisioned having and Mr. Hatland said around six, but noted that some workers might be temporary because the business was open seven days a week. He said six day weeks were typical, but some might work partial weeks, so he estimated maybe eight employees total including temps, with only four working at a time. Chair Loché asked if all eight would be massage therapists and Mr. Hatland said he might be a handyman on occasion, but otherwise, no. Chair Loché asked if Ms. Huang was concerned about the close proximity of other massage establishments. Mr. Hatland said it was better the farther apart, but



**Attachment I**

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reiterated that it would come down to service, providing the proper service that the customer needs, and a good value for the money. He noted that they were not offering high end stuff, just a straight forward type of business with no frills. He said if people want to go to a high end spa, they should go; they were keeping it simple.

Chair Loché closed the Public Hearing at 7:40 p.m.

Salvatore Marino, owner of the building, approached the podium, identified himself and said he'd been in a bad accident and was really sick. Mr. Marino said that Mr. Ed Bullock, the manager of the building and his representative, had his own agenda, had come in when he was very sick, and "so to speak, gave him the bum's rush." Mr. Marino said he suffered from a traumatic brain injury and that Mr. Bullock, in his opinion, was trying to sell the building. Mr. Marino said he'd told Mr. Bullock that wasn't what he wanted from the very beginning but said Mr. Bullock's agenda was to keep rents low. Mr. Marino said he received \$2,500 a month from the UPS Store, had invested over a million dollars into the building, and had received an award from the State Assembly.

Chair Loché asked Mr. Marino if he had any comments or concerns about the proposed massage establishment and Mr. Marino said he was not happy with the deal Mr. Bullock had made. Mr. Marino said Mr. Bullock was working for himself and did not explain the deal properly to him and took a commission that was "over paid." Mr. Marino said the UPS Store next door would paid \$1000 more per month and he'd had three tenants pay him that much in the past. Mr. Marino said Mr. Bullock was trying to lower the value of the building so he could buy it. Mr. Marino apologized for not speaking clearly explaining that he was in the hospital for three and half months. He said he felt Mr. Bullock was taking advantage of his condition, had someone else in the building without his knowledge, was using the building for personal storage without his knowledge, and he said he'd lost trust in him and wasn't doing what he wanted him to do. He said Mr. Bullock was supposed to be managing his building but he wasn't doing it properly.

Chair Loché indicated to Mr. Marino that his time to speak had expired and asked him to conclude his comments. Mr. Marino said he wanted to talk to Ms. Huang because she had money invested and he wanted to pay her back. He concluded by saying he was an honest man, hadn't ever cheated anyone, and he didn't like what his agent did. Mr. Marino said Mr. Bullock hadn't served him, he had served himself.

Chair Loché thanked Mr. Marino and suggested he speak to Ms. Huang after the meeting. Mr. Marino stated that in the meantime, he wanted to put the brakes on the proposal and he apologized to Ms. Huang for the inconvenience. Mr. Marino thanked the Commission for listening.

Commissioner Mendall asked staff if this was new information and Associate Planner Koonze said yes, this was the first he'd heard of it. Mr. Koonze pointed out that Mr. Marino had signed the application, or at least there was a signature of his name on the application. Mr. Marino acknowledged that he did sign it but said he was very ill and that Mr. Bullock didn't explain certain things to him correctly.

Commissioner Mendall said it was a "difficult situation," and yielded the floor to the other commissioners.

Commissioner Lamnin asked if the City Attorneys had any thoughts on the issue. Assistant City Attorney Conneely said general practice when approving a use permit for property was to have both the consent of the owner and the business operator and clearly, she said, they had an owner who was having second thoughts. Under the circumstances, Ms. Conneely suggested the matter be continued to give the applicant and the

property owner an opportunity to resolve the disconnect between them and she pointed out that the application could always come back to the Commission if they resolved their concerns.

Chair Loché asked staff for confirmation that they would need a motion and a vote to continue the application and Assistant City Attorney Conneely said that was correct, and suggested the motion direct staff to work with the applicant and owner to a date uncertain so the City would have to be renote the hearing.

Commissioner Faria made a motion to continue the hearing until the Commission had all the information necessary to move forward. Commissioner Márquez seconded the motion and Chair Loché asked her if she wanted to speak to her second.

Commissioner Márquez said she agreed that the Commission had new information and the situation and dynamics of the initial application had changed and it made sense to postpone the matter to a later date.

Commissioner McDermott said she supported the motion stating it was important to the applicant who wanted to establish a continuous business and not have this issue looming “over her head” when her lease expired; she said continuing the item was in Ms. Huang’s best interest as well.

Chair Loché asked Commissioner Faria to restate the motion.

Commissioner Faria said the motion was to continue the request for this massage business at the Mission Boulevard location until the owner and the applicant had an opportunity to resolve any concerns so the Commission could make a clear judgment.

The motion passed 7:0:0.

AYES: Commissioners Faria, Márquez, Mendall, Lamnin, McDermott, Lavelle  
Chair Loché

NOES:

ABSENT:

ABSTAINED:

## **COMMISSION REPORTS**

### **2. Oral Report on Planning and Zoning Matters**

Director of Development Services Rizk said January would be a work session month with topics such as the draft Hayward Airport Land Use Compatibility Plan, which was currently being considered by the Alameda County Airport Land Use Commission; revisions to the Zoning Ordinance regarding Alcohol Beverage Outlet regulations; and newly adopted South Hayward Form-based code.

Commissioner Mendall requested that a police representative be present for the work session concerning alcohol zoning regulations.

### **3. Commissioners’ Announcements, Referrals**

Commissioner Lamnin thanked staff for managing the community conversation about the ongoing construction and said it was exciting to see the changes and improvements. She asked staff if they thought it would be useful to the community to hold a work session about the status of the construction. Mr. Rizk said that could be brought forward to Planning Commission via a work session or could be provided in summary



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form as a Referral. Mr. Rizk said staff would defer to the Commission's preference. Commissioner Lamnin said perhaps they could start with a summary and go from there. Commissioner Mendall said he had been receiving quite a few questions about construction and an update would be helpful. Director of Development Services Rizk asked if the update would cover construction on new projects in general throughout the City and Commissioner Lamnin said specifically the Route 238 improvements.

Regarding the cell phone tower mentioned during the Public Comments, Commissioner Lamnin noted that a great deal of work went into the positioning of the pole and she asked if a conversation should be held with parents about the safety of their children. Commissioner Lamnin said she knew a lot of research had been done about not only the position of the tower, but about its effect and impact on the surrounding area, and she hoped that information could be shared with the parents.

Commissioner Lavelle wished everyone happy holidays and happy new year.

**APPROVAL OF MINUTES**

4. None

**ADJOURNMENT**

Chair Loché adjourned the meeting at 7:56 p.m.

**APPROVED:**

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Mariellen Faria, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk

**CITY OF HAYWARD  
PLANNING DIVISION**

**CONDITIONAL USE PERMIT**

**January 26, 2012**

**Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment**

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

**FINDINGS FOR APPROVAL**

**A. *The proposed use is desirable for the public convenience or welfare.***

The massage establishment would be desirable for the public convenience in that it would provide convenient hours and location for Hayward residents, particularly downtown residents, to receive traditional Swedish, deep tissue massage, hot stone treatments and facial massages.

**B. *The proposed use will not impair the character and integrity of the zoning district and surrounding areas.***

The massage establishment would not impair the character and integrity of the zoning district and would not impact the surrounding areas in that the business would be conducted entirely within the building and there would be adequate parking as the property is located adjacent to Municipal Parking Lot 1. The operations would be conducted in a safe, sanitary, healthy manner because the operator and massage technicians would be required to obtain permits and are screened by the Police Department in accordance with City regulations. The applicant passed all background, educational and personal checks and obtained a Massage Establishment and Massage Therapy Technician Permit from the Police Department.

**C. *The proposed use will not be detrimental to the public health, safety, or general welfare.***

The proposed use will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the establishment owner are required to meet all the requirements of the Municipal Code, which regulates massage establishments. Each massage therapist is required to obtain a Massage Therapy Technician Permit issued by the Police Department. The applicant is required to obtain a Massage Establishment Permit issued by the Police Department. The applicant has passed the Police Department background check and has obtained the required Massage Establishment and Massage Therapy Technician Permit.

**D. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.***

The proposed use would be in harmony with applicable City policies in that the massage establishment would be consistent with the General Plan Economic Development goal to *undertake adaptive reuse of older commercial structures and create complementary and compatible new development of high quality* in that the business would be located within an older commercial structure and the business would be compatible with the surrounding businesses. The proposed use provides a needed service thereby conforming to the purpose of the Central City-Commercial (CC-C) District which promotes establishing a mixture of business and other activities which will enhance the economic vitality of the downtown area. Permitted uses include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.

**E. The proposed project is categorically exempt from environmental impact analysis of the California Environmental Quality Act (CEQA), pursuant to Section 15301, Existing Facilities, of the CEQA guidelines.**

**CITY OF HAYWARD  
CONDITIONS OF APPROVAL**

**USE PERMIT APPLICATION NO. PL-2011-0305**

**January 26, 2012**

**Conditional Use Permit Application PL-2011-0305 – Good Hands Massage Therapy, Eva C. Huang (Applicant) / Salvatore Marino (Owner) – Request to Operate a Massage Establishment**

The Property is Located at 22566 Mission Boulevard, Between A and B Streets in the Central City Commercial (CC-C) Zoning District

Conditional Use Permit Application PL-2011-0305 approving the operation of a massage establishment is approved subject to the plan labeled “Exhibit A” and the conditions listed below.

This permit becomes void three years after the effective date of approval, unless prior to that time and a Massage Establishment Permit has been approved and operation of the establishment has commenced. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to December 15, 2014.

Any modification to the approved plans or conditions shall require review and approval by the Planning Director. If determined to be necessary for the public safety and general welfare, the City may impose additional conditions or restrictions on this permit.

**CONDITIONS OF APPROVAL**

1. Prior to the commencement of massage services a Massage Establishment Permit shall be obtained from the Hayward Police Department. The permit shall be renewed with the Hayward Police Department at least every two years.
2. Prior to performing any massage therapy, all massage technicians shall obtain a Massage Therapy Technician Permit from the Hayward Police Department. Each permit shall be renewed with the Hayward Police Department at least every two years.
3. Massage therapy shall be provided or given only between the hours of 10:00 am to 10:00 pm. The massage establishment shall not be opened and no client shall be in the establishment between 10:00 pm and 10:00 am.
4. The massage establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.
5. The business owner/operator shall permit City of Hayward officials the right to enter the

premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code, and the Hayward Municipal Code.

6. The massage establishment and every massage therapy technician shall comply with standards established by the Alameda County Public Health Department for such businesses and practitioners and the following facilities and operation requirements:
  - a. The massage establishments premises and facilities shall meet and be maintained in a condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, and the health and cleanliness of the facility.
  - b. The massage establishments and massage therapy technicians shall, at all times, have an adequate supply of clean sanitary towels, covering, and linens. Towels, non-disposable coverings, and linens shall not to be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be disposed in separate receptacles.
  - c. In the massage establishment, the restroom and basin shall be thoroughly cleaned and disinfected as needed, and at least once a day when the premises are opened, with a disinfectant. All walls, ceilings, floors, and other physical facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
  - d. All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
  - e. Toilet facilities shall be provided in a convenient location within the massage establishment and shall consist of at least one unisex toilet with a wash basin provided with soap and both hot and cold running water either in the toilet room or vestibule.
  - f. A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as possible to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.
  - g. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises.
  - h. Controlled substances shall not be consumed in the massage establishment unless the person has a prescription for the substance.
  - i. No permittee or employee of the massage establishment shall place, publish or distribute or cause to be placed, published or distributed by any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that a service is available that is prohibited under the provisions of the Massage Ordinance, nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited by the provisions of the Massage Ordinance.

- j. The use or possession of adult oriented merchandise in any part of the massage establishment is prohibited.
  - k. Condoms shall not be kept on the premises or used for any purpose in the massage establishment.
  - l. No electrical, mechanical or artificial device shall be used by the operator and or manager, massage therapy technician and any employee of the massage establishment for audio and/or recording for monitoring the performance of the massage therapy, or the conversation or other sounds in the massage room without the knowledge and written consent of the patron.
  - m. Surveillance cameras may not be installed on the exterior of the massage establishment. Other surveillance cameras must not be maintained or operated so as to provide surveillance of the exterior of the massage establishment or the surrounding area.
  - n. No massage therapy shall be conducted within any space on the premises of the massage therapy business which is fitted with a lock.
  - o. All entrance and exit doors on the premises of the massage therapy business shall remain unlocked during business hours and shall have interior surveillance cameras installed so as to provide surveillance on of persons entering the establishment.
  - p. All massage services shall be paid for in the reception area. The massage establishment may utilize a system where tip envelopes are provided in the massage area and at each massage station, to be utilized and deposited by the client in the reception area.
  - q. The massage establishment shall not be used for residential or sleeping purposes.
  - r. Massage establishment personnel or any massage technician may not inquire as to whether any client is a police officer.
7. New signs are subject to the City's sign regulation ordinance. A sign permit is required to be approved prior to the installation of any new signs.
8. The owner shall maintain in good repair all building exteriors, walls, lighting, drainage facilities, driveway and parking area. The premises shall be kept clean.
9. Any graffiti painted on the property shall be painted out or removed within 48 hours of occurrence.
9. Adequate exterior lighting shall be provided at the front customer entrance to assure the safety of customers and the employees. The lighting shall comply with the City of Hayward's Security Ordinance. The design of the lighting fixtures shall be approved by the Planning Director prior to installation.
10. If it comes to the attention of the Planning Director that the conditions of approval have been violated, the Planning Director may call the use permit application up to the Planning Commission for consideration of imposing additional conditions or revocation.

### Utilities

## 11. Prior to issuance of a building permit for tenant improvements:

- a. The 5/8" domestic meter is shared by all tenant spaces within the building. If this arrangement is not going to change, the demand for all water fixtures in the building must be taken into account in gallons per minute. As an alternative to providing the domestic demand, show all water fixtures in the building, including those in the all other tenant spaces. If new water services will be installed, then only those fixtures attached to the new water system need to be shown or accounted for. Any modifications needed to the water service and/or water meter (upsized, downsized, relocate, etc.) must be performed by City Water Distribution Personnel at the applicant's/owner's expense. If the existing water meter is not sufficient enough to serve the new tenant and the existing meter cannot be reused, it must be abandoned by City Water Distribution Personnel at the applicant's/owner's expense.
- b. Show on the tenant improvement plans the location of the existing and/or proposed water meters, service lines and Reduced Pressure Backflow Prevention Assemblies which shall be placed on each domestic and irrigation water meter, per City Standard SD-202.
- c. The building currently has an existing commercial sewer service. Show the location and size of the existing sanitary sewer laterals on plans. In addition, the applicant shall submit a completed Industrial/Commercial Sanitary Sewer Connection Fee form that will determine whether or not additional sewer charges would be required for the additional sewage output proposed by the massage establishment. If additional fees are required, the user would be charged at the rates in effect at the time of purchase, prior to discharge.
- d. The following note shall appear on the building plans: "Only City Water Distribution Personnel shall perform operation of valves on the Hayward Water System. "
- e. The following note shall appear on the building plans: "Water and Sewer Services are available and subject to standard conditions and fees in effect at the time of application and payment."
- f. The following note shall appear on the building plans: "The Sewer Capacity Fee is due and payable prior to final inspection."

**DATE:** January 26, 2012  
**TO:** Planning Commission  
**FROM:** Arlynn J. Camire, AICP, Associate Planner  
**SUBJECT:** Draft Hayward Airport Land Use Compatibility Plan

### **RECOMMENDATION**

That Planning Commission review and comment on the report related to concerns with the Draft Hayward Airport Land Use Compatibility Plan (ALUCP).

### **SUMMARY**

Although appropriate revisions have been made to the draft ALUCP due to City staff's input to County staff, City staff still remains concerned with certain provisions in the ALUCP. Specifically, the main concerns are with the infill and nonconforming provisions in Chapter 2 of the ALUCP, since these provisions could impact redevelopment at Southland Mall, including redevelopment of the former Marie Callender's site and the Lucky Supermarket site. Although the City Council will retain ultimate land use authority regarding redevelopment at Southland Mall and other areas within the ALUCP's airport influence area, the current draft ALUCP as written would, without Council taking an override action, result in restrictions on new infill or redevelopment at Southland Mall or, at best, would add several weeks to the development review process for such projects.

Any comments regarding any issues of concern related to the Draft Airport Land Use Compatibility Plan will be transmitted to the County of Alameda staff as part of the 60 day public review period that ends on February 6, 2012.

### **BACKGROUND**

*What is the Alameda County Airport Land Use Commission?* - The Alameda County Airport Land Use Commission (ALUC) is comprised of two commissioners representing the County appointed by board of supervisors; two commissioners representing cities in the County appointed by a committee of all mayors, except that at least one representative must be appointed from among "any cities contiguous or adjacent to the qualifying airport" (Council member Henson is an appointed commissioner); two commissioners with expertise in aviation appointed by a committee of the managers of all public airports within the County; and one commissioner representing the general public appointed by the other six members of the commission. It is an advisory body authorized under the provisions of the California Public Utilities Code, Sections

21670 et seq. (Attachment I), to protect the public health, safety and welfare by promoting the orderly expansion of airports and adoption of land use measures by local public agencies to minimize exposure to excessive noise and safety hazards near airports. This is done by promoting compatibility between airports and surrounding land uses. Public Utilities Code Section 21674(b) gives the ALUC the authority to coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare; and to prepare and adopt airport land use plans; and to review and make recommendations concerning specific plans, regulations and other actions of local agencies and airport operators.

The law does not authorize the ALUC to zone property or apply other land use controls normally exercised by local public agencies. The jurisdiction of the ALUC is limited to new land uses; existing land uses, including those that are in conflict with or affected by existing or anticipated airport operations, are not subject to the policies established by the ALUC. State law does not provide the ALUC with jurisdiction over airport operations.

*What is the Hayward Airport Land Use Compatibility Plan?* - The *Hayward Executive Airport Land Use Compatibility Plan* (ALUCP), available at the County's website at [www.acgov.org/cda/planning/generalplans/airportlandplans.htm](http://www.acgov.org/cda/planning/generalplans/airportlandplans.htm), is an advisory document that influences future land use development in the vicinity of the Hayward Executive Airport (HWD). The ALUCP is the primary document used by the ALUC to help promote compatibility between Hayward Executive Airport (HWD) and its surrounding area. It sets forth regulations to guide specific kinds of development that might occur within the Airport Influence Area (AIA) or ALUC planning area boundary. As shown in Attachment II, the AIA for Hayward Airport extends out in the Bay to the west, to Lewelling Blvd. to the north, approximately to the BART tracks to the east, and to Tennyson Road to the south. It also specifies land uses permitted, allowed conditionally, or prohibited in seven Safety Zones in relationship to potential airport noise impacts, aircraft overflight, safety hazards, and airspace protection (see map of safety zones, Attachment II). The AIA may significantly affect land uses or necessitate restrictions on land uses that could potentially have a negative effect on airport operations. The ALUCP's objective is not to discourage new development in the vicinity of the Hayward Airport, but rather to guide the compatibility of new land uses by limiting the density, intensity, and height of new uses so as to avoid potential conflicts with aircraft operations and to preserve the safety of those living and working around the Airport as well as to those in flight. Once adopted, the ALUCP serves as a framework for reviewing significant proposals for further airport development. ALUC jurisdiction and ALUCP scope are confined to land use-related primary impacts on the area surrounding the airport.

#### *Contents of the Draft Hayward Airport Land Use Compatibility Plan –*

The ALUC is concerned with airport activities that may adversely affect nearby land uses within the Airport Influence Area. The most significant airport-related concerns are:

- Exposure of persons on the ground to accident potential;
- Prevention of obstructions to air navigation (tall objects; objects in safety zones); and
- Prevention of hazards to flight such as wildlife hazards, smoke, flare, lighting, electrical interference and thermal plumes.

For each concern, the ALUC has adopted land use compatibility policies in Chapters 2 and 3 of the ALUCP; these policies address existing and future conditions at Hayward Executive Airport and its environs. The ALUCP is organized as follows:

- Chapter 2 of this ALUCP presents the airport compatibility and review policies that are applicable throughout Alameda County.
- Chapter 3 of this ALUCP Update presents compatibility and review policies and maps specific to Hayward Executive Airport.
- Chapter 4 of this ALUCP Update provides background data for Hayward Executive Airport and its environs.
- Chapter 5 provides references for the data presented in this ALUCP.
- Appendix A through J contains supplemental data and source documents that were used to develop the Hayward Executive Airport ALUCP.

*Review and Consistency Issues and Process* - Any proposed new development or redevelopment of a property within the ALUCP's Airport Influence Area for which the proposed use is consistent with the general plan and/or any specific plan, but does not conform to the specific compatibility criteria set forth in the ALUCP, requires project review by the ALUC (assuming no override action by the legislative body has occurred – see later discussion). In addition, any proposed change or variance to the Zoning Ordinance or Building Code regulations must be submitted to the ALUC for review if issues of noise, safety, airspace protection, and overflight are involved.

State statutes require agencies to make their general plans consistent with the ALUCP within 180 days of ALUCP adoption (State Aeronautics Act Section 21676), unless the agency undertakes an override procedure, which requires a two-thirds majority vote of the legislative body and specific findings that must be supported. Until the ALUC finds that a local jurisdiction's general plan or a specific plan is consistent with the ALUCP, or the local jurisdiction has overruled the ALUC's determination of inconsistency by a two-thirds vote of the City Council, the local jurisdiction shall refer all actions, regulations, and permits involving land within the AIA to the ALUC for review.

After a local jurisdiction has revised its general plan or specific plan for consistency with the ALUCP or has overruled the ALUC by a two-thirds vote of City Council, the ALUC no longer has authority under state law to require that required actions, regulations, and permits be referred for review. However, the City of Hayward can agree that the ALUC should continue to review individual projects in an advisory capacity. In this case, Hayward would not be required to adhere to the overriding process if they elect to approve a project without incorporating design changes or conditions suggested by the ALUC.

*1988 Hayward City Council Action* - It should be noted that the Hayward City Council in 1988 approved an override of the ALUC's September 14, 1983 inconsistency determination related to the ALUCP for Hayward Executive Airport that was last adopted in 1983. This override decision found that the City of Hayward's 1986 General Plan was consistent with the ALUCP and state airport land use law, that the City declined to revise the General Plan, and that the General Plan provisions which applied to private developments in the area surrounding the Hayward Executive Airport and within the safety zones were consistent with State law. It was

also found by the City Council that the 1986 General Plan was consistent with the purposes of state airport land use law of protecting public health, safety, and welfare by ensuring orderly expansion of the airport and adopted General Plan contained land use measures that minimized public exposure to excessive noise and safety hazards within the area around the airport.

January 17, 2012 Hayward City Council Action – On January 17, 2012, the City Council held a public hearing and adopted Resolution No. 12-008 which opposes portions of the draft Hayward Executive Airport Land Use Compatibility Plan (Attachment IV). The main concerns of the Council are that the ALUCP may not have the flexibility to allow development at Southland Mall and prohibit expansion of existing schools. Council stated that they support expansion at Southland Mall and therefore, oppose portions of the draft ALUCP and anticipate that if requested changes are not made to the plan, specifically to the Special Conditions policies, staff will be directed to bring back a resolution that would override the plan to assure local control of development in the City of Hayward.

January 19, 2012 Airport Land Use Commission Meeting – On January 19, 2012, the Airport Land Use Commission held a public hearing to accept comments for the draft Hayward ALUCP and the related draft initial study. Airport Land Use Commission staff accepted public comments however, the ALUC did not formally meet or address public comments. At that meeting, Hayward staff submitted City Council Resolution No. 12-008 as public comment. Veronica Curley, Southland Mall General Manager voiced her opposition to the nonconforming uses policies of the ALUCP which may prohibit mall expansion primarily on the Marie Callender's and Convenience Center sites. She stated that that Southland Mall is 4.8 million square feet in area and of which 3.8 million square feet is open space which would be available for aircraft emergencies. She questioned the rationale for prohibiting the expansion of a restaurant by a few thousand square feet. She stated that the policies of the plan would negatively impact economic development due to the loss of potential retail tenants, retail and construction jobs, sales tax and sales revenue.

## **DISCUSSION**

Hayward staff has worked extensively with Alameda County Airport Land Use Commission (ALUC) staff during the last several months to revise previous draft versions of the ALUCP to better accommodate both urban development while meeting safety requirements of the ALUCP. On November 16, 2011, the ALUC took under advisement the proposed changes requested by the Cities of Hayward and Livermore (Attachment V). However, City staff still has concerns with Chapter 2 *Policies* Section 2.7.5.7: *Special Conditions* (a) Infill and (b) Nonconforming Uses. The concerns relate to not only the future redevelopment of Southland Mall, specifically the former Marie Callender's restaurant and Lucky Supermarket sites, but also future new infill development at the Mall (see safety zones map of Southland Mall area, Attachment III).

Infill - Infill development is defined in the ALUCP as "Development that takes place on vacant property largely surrounded by existing development, especially development that is similar in character." Chapter 2 of the ALUCP states, "Where development not in conformance with this ALUCP already exists, additional infill development of similar land uses may be allowed to occur even if such land uses are to be prohibited elsewhere in the AIA." Specifically, new infill

development, like new restaurants at Southland Mall, could be considered consistent with the ALUCP if the following criteria are met:

- a. The parcel size is 20 acres or less;
- b. The site is at least 65% bound (disregarding roads) by existing uses that are similar to, or more intensive than, those proposed;
- c. The proposed project would not extend the perimeter of the area defined by the surrounding, already developed, incompatible uses;
- d. The area to be developed cannot previously have been set aside as open land in accordance with open land policies presented in Chapter 3 of this ALUCP unless replacement open land is provided within the same compatibility zone;
- e. If the size of the parcel proposed for development is 10 acres or less, the usage intensity (the number of people per acre) of the proposed use shall be no greater than the average intensity of all existing uses that lie fully or partially within a distance of 300 feet from the boundary of the proposed development; and
- f. If the size of the parcel proposed for development is greater than 10 acres (but no larger than 20 acres), the proposed use shall not have an intensity (the number of people per acre) more than 50% above the intensity permitted in accordance with the basic compatibility criteria listed in Table 2-3 [40 people per acre in Zone 2].

Depending on the future interpretation of the ALUC of these criteria, a new stand-alone restaurant at certain locations at Southland Mall could be considered compatible with the ALUCP provisions; however, staff remains concerned with such provisions, given the ambiguity of application of such criteria and subsequent potential ALUC determinations of incompatibility regarding such projects.

*Nonconforming Uses* – The ALUCP defines a nonconforming use as “An existing land use that does not conform to an adopted or subsequently amended airport land use compatibility plan.” The ALUC has no authority over existing land uses, including those that are not compatible with the criteria established in ALUCP. However, proposed changes to an existing nonconforming use are subject to ALUC review and approval if the changes would result in an increase of nonconformity with the ALUCP.

As shown in Attachment III, the former Lucky’s Superstore site is located in Safety Zone 2, and the former Marie Callender’s restaurant site is located within Safety Zones 2 and 6. However, per ALUCP provisions, the intensity of future development of the former restaurant site would be subject to the more restrictive regulations of Zone 2. As shown in Table 3-2 of the ALUCP (Attachment VI), Zone 2 conditionally allows new commercial retail and office uses; however, it does not permit new, or the expansion of, eateries/drinking establishments. Such uses are indicated as not compatible in Zone 2, and would typically be subject to ALUC review, and likely a finding of incompatibility.

Specifically, the ALUCP indicates that nonconforming nonresident land uses may be maintained, altered, or reconstructed provided that there is no expansion, the intensity of land use does not increase as allowed by the safety zone, and the proposed expansion is associated with a public essential service, such as public infrastructure improved to maintain health and safety of the

public. Such projects would be considered on a case-by-case basis. Staff remains concerned with this language that would consider as incompatible an expansion of the former restaurant building, or expansion of other noncompatible uses. Such concerns were stated in a November 15, 2011, letter from Mayor Sweeney to the ALUC (Attachment VII).

*Draft Initial Study on the ALUCP* – An Initial Study has been prepared for the ALUCP as required by the California Environmental Quality Act, and is available on the County’s website at: [www.acgov.org/cda/planning/generalplans/airportlandplans.htm](http://www.acgov.org/cda/planning/generalplans/airportlandplans.htm). The Land Use and Land Use Planning section discussion on pages 19-22 of the Initial Study indicate no significant conflicts of the existing General Plan with the draft ALUCP. The discussion addresses compatibility of the AIA and each safety zone with the General Plan. For Zone 2, the Initial Study states that, “...although the expansion of existing nonconforming land uses within this zone would be permitted by the City of Hayward’s General Plan, such uses would be subject to ALUC review. The purpose of this would be to provide the ALUC the ability to review a proposed expansion and recommend safety measures, or consider other unique circumstances.” Therefore, with this analysis, it appears that the expansion of the Marie Callender’s restaurant *could* be considered by the ALUC to be compatible with the ALUCP, provided appropriate safety measures are incorporated into the design.

*City Council Options* - Once the ALUCP is adopted by the ALUC, the City Council would be required to take action to do one of the following:

1. *Amend the General Plan to be consistent with ALUCP* - Following the adoption of the ALUCP, the City of Hayward has 180 days to determine if the City of Hayward General Plan and any applicable specific plan are compatible with the ALUCP, and to amend the General Plan to be consistent. Such consistency can be achieved in one of the following ways:
  - *Incorporate Policies into Existing General Plan Elements.* This method requires the incorporation of all airport land use compatibility measures into appropriate general plan elements. For example, noise compatibility measures may be incorporated into the city’s general plan noise element. With this approach, direct conflicts between the ALUCP and general plan are eliminated and compliance mechanisms are fully incorporated into the local jurisdiction’s general plan.
  - *Adopt a General Plan Airport Element.* This format may be appropriate when a city’s general plan also needs to address on-airport development or operational issues. Modification of other general plan elements may still be necessary to eliminate conflicts and provide cross-referencing. Given the City has an adopted Airport Master Plan for the Hayward Airport, this option would not be recommended.
  - *Adopt the ALUCP as a Stand-Alone Document.* A city can adopt the ALUCP, and changes to the city’s general plan would be minimal. Policy reference to the separate ALUCP would need to be added to the general plan, and any direct land use or other conflicts with compatibility planning criteria would have to be removed. The compatibility policies would substantially appear only in the stand-alone compatibility plan.
  - *Implement Compatibility Policies through Zoning.* Adoption of an airport combining district or overlay zoning ordinance by a local government is a way of codifying airport compatibility criteria described only conceptually in the ALUCP. A combining district can supplement local land use designations by adding specific noise and/or safety criteria applicable to future development in the airport influence area. Policy reference to airport

compatibility in the general plan could be as simple as stating support of the ALUCP and that policy implementation is by means of the combining zone.

2. *Overrule the ALUCP decision by a two-thirds vote* - The California Department of Transportation, Aeronautics Division's *California Airport Land Use Law Handbook Chapter 5* establishes a procedure by which affected local jurisdictions can overrule the compatibility policies set forth in the plan (see Attachment VIII). The overruling process involves four mandatory steps:
  - a. At least 45 days prior to any decision to overrule the commission, the local agency must provide the local ALUC and the CalTrans State Division of Aeronautics a copy of the proposed decision and findings;
  - b. A public hearing is required to be held;
  - c. The City Council must make specific findings that the action proposed is consistent with the State Aeronautics Act; and
  - d. The City Council must approve such overrule action by a two-thirds vote of the City Council.

The findings that are required to be made to overrule the ALUC must show that the City Council action is consistent with the purpose of Public Utilities Code Section 21670 (Attachment I), which provides for establishment of the ALUC. In addition, the findings are required to be consistent with these two provisions: "(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems; and (2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses."

## **NEXT STEPS**

Staff will forward via letter to the ALUC and County staff any comments from the Planning Commission and the public.

Prepared by: Arlynn J, Camire, AICP, Associate Planner

Recommended by:



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Richard Patenaude, AICP  
Planning Manager

Approved by:



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David Rizk, AICP  
Development Services Director

Attachments:

Attachment I	Public Utilities Code Section 21670
Attachment II	Hayward Airport Safety Compatibility Zones Map
Attachment III	Hayward Airport Safety Compatibility Zones-Southland Mall Area Map
Attachment IV	City Council Resolution No. 12-008
Attachment V	Alameda County Airport Land Use Commission Staff Report dated November 16, 2011 (without attachments)
Attachment VI	Table 3-2 of the Draft Hayward Airport Land Use Compatibility Plan
Attachment VII	Letter from Mayor Sweeney dated November 15, 2011
Attachment VIII	California Airport Land Use Planning Handbook: Section 5.5-Overruling ALUC Decisions

**California Public Utilities Code Section 21670**

(a) The Legislature hereby finds and declares that:

- (1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Section 21669 and to prevent the creation of new noise and safety problems.
- (2) It is the purpose of this article to protect public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county may, after consultation with the appropriate airport operators and affected local entities and after a public hearing, adopt a resolution finding that there are no noise, public safety, or land use issues affecting any airport in the county which require the creation of a commission and declaring the county exempt from that requirement. The board shall, in this event, transmit a copy of the resolution to the Director of Transportation.

For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

- (1) Two representing the cities in the county, appointed by a city selection committee comprised of the mayors of all the cities within that county, except that if there are any cities contiguous or adjacent to the qualifying airport, at least one representative shall be appointed therefrom. If there are no cities within a county, the number of representatives provided for by paragraphs (2) and (3) shall each be increased by one.
- (2) Two representing the county, appointed by the board of supervisors.
- (3) Two having expertise in aviation, appointed by a selection committee comprised of the managers of all of the public airports within that county.
- (4) One representing the general public, appointed by the other six members of the commission.

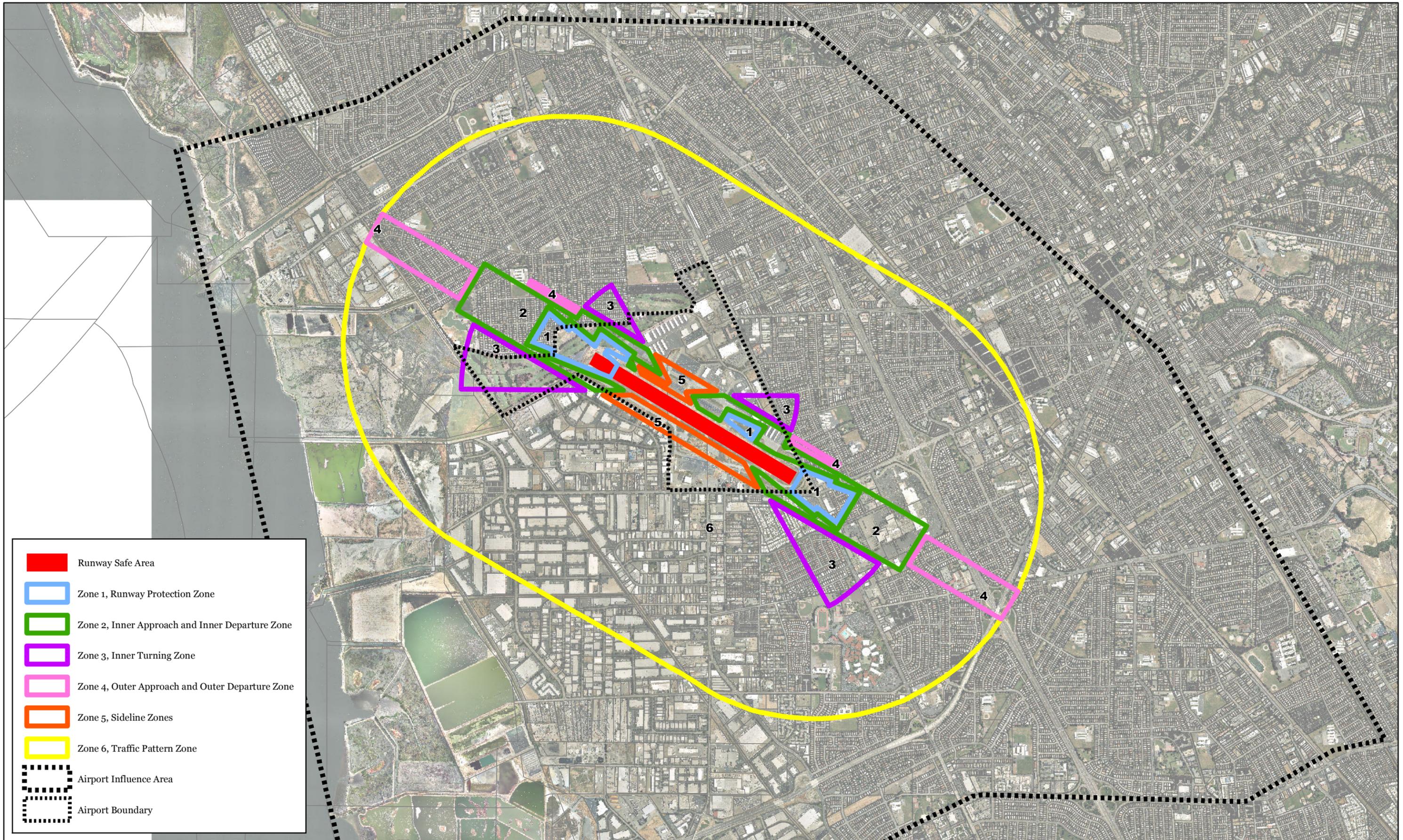
(c) Public officers, whether elected or appointed, may be appointed and serve as members of the commission during their terms of public office.

(d) Each member shall promptly appoint a single proxy to represent him or her in commission affairs and to vote on all matters when the member is not in attendance. The proxy shall be designated in a signed written instrument which shall be kept on file at the commission offices, and the proxy shall serve at the pleasure of the appointing member. A vacancy in the office of proxy shall be filled promptly by appointment of a new proxy.

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports, or is an elected official of a local agency which owns or operates an airport.

(f) It is the intent of the Legislature to clarify that, for the purposes of this article, that special districts, school districts, and community college districts are included among the local agencies that are subject to airport land use laws and other requirements of this article.

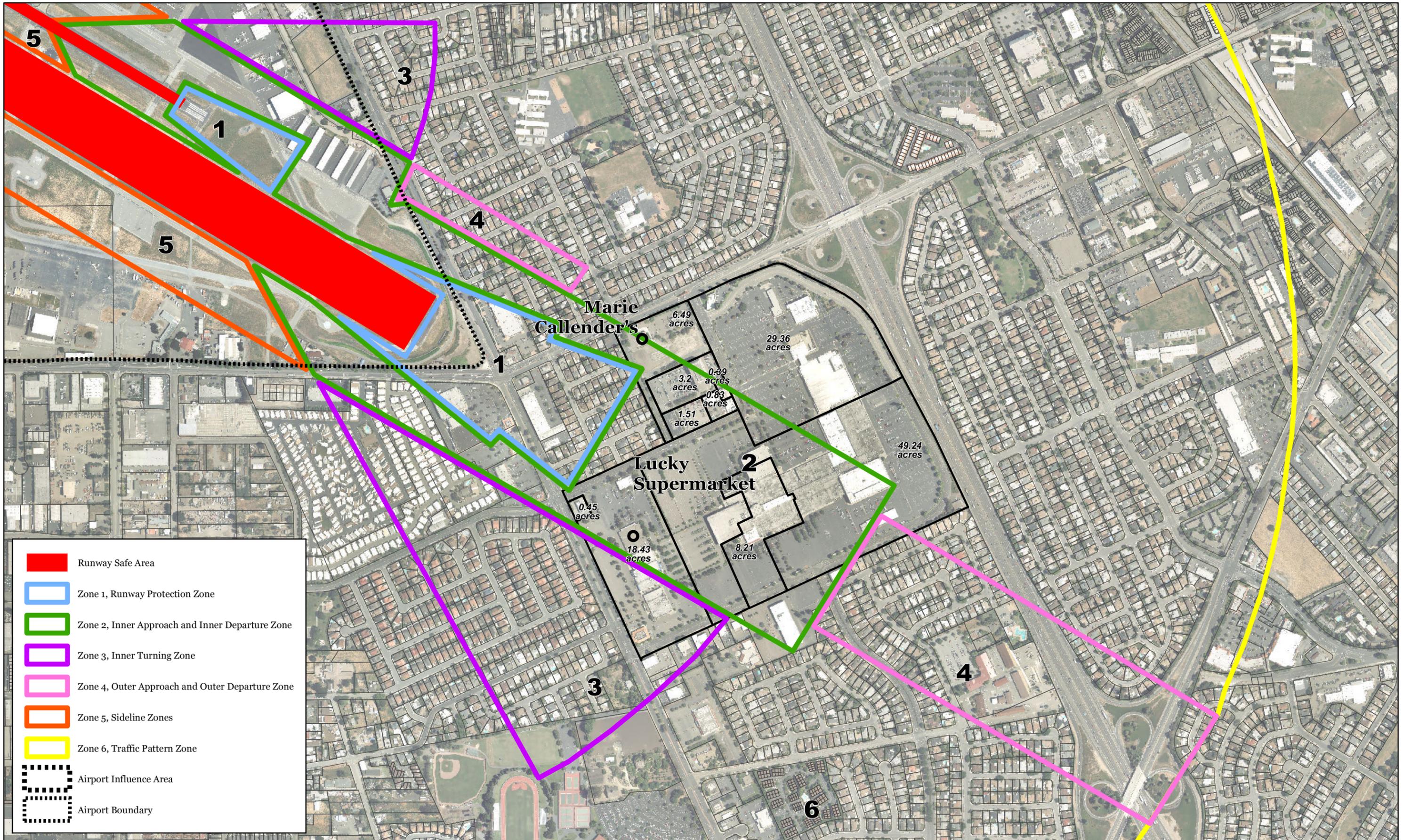
# Hayward Airport Safety Compatibility Zones



-  Runway Safe Area
-  Zone 1, Runway Protection Zone
-  Zone 2, Inner Approach and Inner Departure Zone
-  Zone 3, Inner Turning Zone
-  Zone 4, Outer Approach and Outer Departure Zone
-  Zone 5, Sideline Zones
-  Zone 6, Traffic Pattern Zone
-  Airport Influence Area
-  Airport Boundary



# Hayward Airport Safety Compatibility Zones, Southland Mall Area



- Runway Safe Area
- Zone 1, Runway Protection Zone
- Zone 2, Inner Approach and Inner Departure Zone
- Zone 3, Inner Turning Zone
- Zone 4, Outer Approach and Outer Departure Zone
- Zone 5, Sideline Zones
- Zone 6, Traffic Pattern Zone
- Airport Influence Area
- Airport Boundary

Note: Southland Mall properties are outlined in heavy black.

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-

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

RESOLUTION OPPOSING PORTIONS OF THE DRAFT  
HAYWARD EXECUTIVE AIRPORT LAND USE  
COMPATIBILITY PLAN

WHEREAS, the Alameda County Airport Land Use Commission (ALUC) staff prepared the public, draft Hayward Executive Airport Land Use Compatibility Plan, dated December 2011; and

WHEREAS, the public review period of the draft Hayward Executive Airport Land Use Compatibility Plan ends on February 6, 2012; and

WHEREAS, the City of Hayward has determined that Section 2.7.5.7 - Special Conditions, subsections (a) Infill, (b) Nonconforming Uses, and (e) Parcels Lying within Two or More Compatibility Zones, of the Hayward Executive Airport Land Use Compatibility Plan contain provisions that may limit redevelopment and economic growth at the Southland Mall; and

WHEREAS, the current draft Hayward Executive Airport Land Use Compatibility Plan, absent overrule by the Hayward City Council, has the potential to delay the development review process for certain projects in the Airport Influence Area; and

WHEREAS, policies and strategies of the Economic Development Chapter of the Hayward General Plan were established with the intent to support economic growth and to eliminate cumbersome and unnecessary regulations; however, many of the policies of the draft Hayward Executive Airport Land Use Compatibility Plan are inconsistent with such policies of the General Plan; and

WHEREAS, the Hayward General Plan's Conservation and Environmental Protection Chapter contains a Noise Mitigation Policy that provides "[t]he City will seek to protect the public health, safety and welfare against the adverse effects of excessive noise," and one related strategy states that the City will "[c]ontinue to review new development to assure compatibility with surrounding land uses and compliance with accepted noise standards;" and

WHEREAS, the Hayward City Council has adopted General Plan policies consistent with the purposes of State airport land use law to protect public health, safety, and welfare by ensuring orderly expansion of the airport. Furthermore, the General Plan contains land use measures that minimized public exposure to excessive noise and safety hazards within the Airport Influence Area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City of Hayward opposes those sections of the draft Hayward Executive Airport Land Use Compatibility Plan dated December, 2011, identified hereinabove, for all the aforementioned reasons.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that this resolution be submitted as a public comment during the public review period of the draft Hayward Executive Airport Land Use Compatibility Plan.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

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

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**STAFF RECOMMENDATION:**

That the Airport Land Use Commission review this report, take public testimony, direct staff to incorporate policy recommendations as described herein, and prepare and release the Public Review drafts of the Hayward and Livermore ALUCPs and Initial Studies.

**BACKGROUND AND UPDATE**

At the July 20, 2011 ALUC meeting, the Commission held a Work Session to review work completed by county and agency staff on outstanding items from the March 2011 ALUC meeting. A number of issues and recommended 'fixes' regarding specific policies was presented and discussed at length by ALUC Commissioners, city and county staff, and members of the public. While a number of contentious items had been resolved during the months of collaboration with the cities, there remained others that were not. The Commission directed staff to continue to work with the cities to address remaining concerns on the unresolved policy issues.

This staff report briefly summarizes the outcome of this work between July and November, identifies key issues where agreement was not reached, and makes policy recommendations for your review and consideration. While every effort has been made to ensure that the most current land use information and data for each jurisdiction in the Airport Influence Areas (AIA) for the Hayward and Livermore Airports has been included in these final draft documents, staff understands there may be additional updated information discovered during the coming public review period.

Included with this report are the following attachments:

- Attachment 1: PDF of City of Hayward's recommended changes to Chapter 2
- Attachment 2: Three maps of location of a parcel in Safety Zone's 2 and 6 of Hayward Airport
- Attachment 3: Comments submitted by the City of Livermore staff and staff response.
- Attachment 4: Draft Hayward Airport ALUCP and Initial Study
- Attachment 5: Draft Livermore Airport ALUCP and Initial Study

-----**HAYWARD AIRPORT**-----

**POLICY ISSUES AND RECOMMENDATIONS**

1. Land Uses *Future expansion of Existing Non- Conforming*

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Safety Zones 1 and 2 prohibits mall eateries/drinking establishments (defined as approx. 60 s.f./person). The City of Hayward anticipates that a currently vacant restaurant site (the former Marie Callendar's) will be redeveloped on a parcel that has several other existing restaurants. This parcel is bisected by two Safety Zones, 2 and 6. Policy 2.7.5.7 e) -Parcels Lying within Two or More Compatibility Zones states that:

*If a parcel is split by safety zone boundaries, the intensity of development allowed within the more restricted portion of the parcel should be transferred to the less restricted portion. However, the ALUC can consider less restrictive options on a case-by-case basis if special conditions or design criteria are applied to the proposed project. These special conditions may include:*

1. *Maintaining adequate open space for emergency landings (0.5 acre of parcel);*
2. *Clustering of development; and*
3. *Any other criteria, as identified by the ALUC, and agreed upon by the applicant and/or jurisdiction as a condition of approval.*

Attachment 2 includes three maps that show the exact location of the parcel relative to the Safety Zones in the Draft HWD ALUCP.

**Current Uses on Parcel in Question**

The following table shows the current and anticipated development on this parcel, and includes calculations for maximum occupancy and density of each building, shown as square footage per person. As noted above, the density limit for Safety Zone 2 for these uses is approximately 60 s.f./person.

**Density Calculations for the existing restaurants on parcel in HWD Safety Zone 2 & 6**

Restaurant	Max. Occupancy	Square Feet	Square feet/person
Marie Calendars Site (currently vacant)	TBD	Proposed 6,000 - 9,000	100-150 s.f./person
Panera Bread	115 (15 patio)	4,500	<u>75 s.f./person</u>
Applebee's	200	6,995	117 s.f./person
Elephant Bar	269 (30 patio)	7,800	130 s.f./person
Mimi's Café	264	7,389	123 s.f./person
Vacant market	TBD	47,000	783 s.f./person

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The City is requesting that the designation for this land use in Safety Zone 2 be changed from 'Prohibited' to 'Conditional' to allow for expected future expansion of the Marie Calendar site.

Staff recommends that the designation remain Prohibited for the following reasons:

1. As was presented in the July 20 staff report, the data reveal that Safety Zones 1 and 2 encompass 30-50% of near-airport accidents. This information is the basis for the Caltrans Handbook recommendation for the density limits for Safety Zone 2 as shown in Table 3-2. (also see Table 2-3 in HWD DRAFT ALUCP).
2. Based on the parcel's current configuration and existing uses, there is insufficient land available to cluster development or preserve open space for emergency landings (see maps in Attachment 2).
3. As demonstrated in the table above, the entire parcel is currently occupied with similar non-conforming, non-residential land uses.
4. This parcel can retain its value and be used for the same purpose (in this case, a restaurant) as long as the following conditions are met:

*Policy 2.7.5.7.(2) (b) Nonconforming Uses: Nonconforming nonresidential land uses may be maintained, altered, or reconstructed provided the following:*

1. *No expansion of the portion of the site devoted to the nonconforming use occurs.*
2. *No increase in the usage intensity above allowable levels for the safety zone in which the use is located occurs.*

*Policy 2.7.5.7. (2) (c) Reconstruction: An existing nonconforming development that has been fully or partially destroyed may be rebuilt only under the following conditions:*

1. *Nonconforming residential uses may be rebuilt provided that the expansion does not result in more dwelling units than existed on the parcel at the time of the damage.*
2. *A nonconforming nonresidential development may be rebuilt, even if completely destroyed, provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).*

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4. Additionally, Policy 2.7.5.7.f) Other Special Conditions establishes the opportunity for a jurisdiction to ask the ALUC to consider the merits of a project that is known to be an expansion of an existing non-conforming use:

*The compatibility criteria set forth in this plan are intended to be applicable to all locations within each AIA. However, it is recognized that there may be specific situations where a normally incompatible use can be considered compatible because of terrain, specific location, or other extraordinary factors or circumstances related to the site.*

1. *After due consideration of all the factors involved in such situations, the ALUC may find a normally incompatible use to be acceptable.*
2. *In reaching such a decision, the ALUC shall make specific findings as to why the exception is being made and that the land use will not create a safety hazard to people on the ground or aircraft in flight nor result in excessive noise exposure for the proposed use. Findings also shall be made as to the nature of the extraordinary circumstances that warrant the policy exception.*
3. *The burden for demonstrating that special conditions apply to a particular development proposal rests with the project proponent and/or the referring agency, not with the ALUC.*
4. *The granting of a special conditions exception shall be considered site specific and shall not be generalized to include other sites.*
5. *Special conditions that warrant general application in all or part of the AIA of one airport, but not at other airports, are set forth in Chapter 3 of this ALUCP.*

## **2. Other proposed changes to the Draft HWD ALUCP**

Attachment 1 contains comments submitted by the City, which resulted in a number of clarifying edits and reorganization of Section 2.7.5.7, as shown in the following section:

### **2.7.5.7 Special Conditions**

- a) *Infill. Where development not in conformance with this ALUCP already exists, additional infill development of similar land uses may be allowed to occur even if such land uses are to be prohibited elsewhere in the AIA. The burden for demonstrating that*

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*a proposed development qualifies as infill rests with the project proponent and/or local jurisdiction.*

- 1) *A parcel can be considered for infill development if it meets all of the following criteria plus the applicable provisions of either Sections 2.7.5.7(a)(2) or 2.7.5.7(a)(3) below:*
  - i. *The parcel size is 20 acres or less.*
  - ii. *The site is at least 65% bound (disregarding roads) by existing uses that are similar to, or more intensive than, those proposed.*
  - iii. *The proposed project would not extend the perimeter of the area defined by the surrounding, already developed, incompatible uses.*
  - ~~iv. *Further increases in the density, intensity, and/or other incompatible design or usage characteristics (e.g., through use permits, density transfers, addition of second units on the same parcel, height variances, or other strategy) are not included.*~~
  - ~~iv.~~ *The area to be developed cannot previously have been set aside as open land in accordance with open land policies presented in Chapter 3 of this ALUCP unless replacement open land is provided within the same compatibility zone.*
  
- 2) *For residential development, the density of the parcel proposed for development shall not exceed the following:*
  - i. *For parcels of 10 acres or less, the density shall not exceed the median density represented by all existing lots that lie fully or partially within a distance of 300 feet from the defined infill area. If the size of the parcel is 10 acres or less, the development density shall not exceed the total density represented by all existing lots that lie fully or partially within a distance of 300 feet from the boundary of the parcel to be divided.*
  - ii. *If the size of the parcel is greater than 10 acres (but no larger than 20 acres), then the development density shall be no greater than double the density permitted in accordance with the basic compatibility criteria listed in Table 2-3.*
  
- 3) *For non-residential development:*
  - i. *If the size of the parcel proposed for development is 10 acres or less, the usage intensity (the number of people per acre) of the proposed use shall be no greater than the average intensity of all existing uses that lie fully or partially within a distance of 300 feet from the boundary of the proposed development.*
  - ii. *If the size of the parcel proposed for development is greater than 10 acres (but no larger than 20 acres), the proposed use shall not have an intensity (the number of people per acre) more than 50% above the intensity permitted in accordance with the basic compatibility criteria listed in Table 2-3.*
  
- 4) ~~*The ALUC should consider the eligibility of a parcel for infill development only once. In order for the ALUC to consider proposed development under these infill criteria, the local jurisdiction*~~

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*having land use authority (Alameda County or affected cities) must first identify the qualifying locations in its general plan or other adopted planning document that has been found consistent with the ALUCP by the ALUC. This action may take place in conjunction with the process of amending a general plan for consistency with the ALUC plan or may be submitted by the local jurisdiction for consideration by the ALUC at the time of adoption of this ALUCP. In either case, ~~†~~The burden for demonstrating that a proposed development qualifies as infill rests with the project proponent and/or local jurisdiction.*

- b) *Nonconforming Uses. The ALUC has no authority over existing land uses, including those that are not compatible with the criteria established in this ALUCP. Specifically, an ALUC cannot reduce or remove an incompatible land use from an airport's AIA. However, proposed changes to existing uses are subject to ALUC purview if those changes would result in an increase of nonconformity with ALUCP policies. Specified changes to nonconforming uses are limited as follows*  
*Uses that are not in conformance with this ALUCP may only be expanded as follows:*

*1) Residential Uses.*

*i. Nonconforming residential uses may be maintained, remodeled, reconstructed, or expanded in building size provided that the expansion does not result in more dwelling units than currently exist on the parcel.*

*†ii. A single-family residential parcel may not be divided for the purpose of allowing additional dwelling units to be constructed.*

*2) Nonresidential Uses. A nonconforming nonresidential development may be continued, modified, transferred, or sold, provided that no such use shall be expanded in area or increased in intensity (the number of people per acre) above the levels existing at the time of adoption of this ALUCP.*

*i. Nonconforming nonresidential land uses may be maintained, altered, or reconstructed provided the following:*

*1. No expansion of the portion of the site devoted to the nonconforming use occurs.*

*2. No increase in the usage intensity above allowable levels for the safety zone in which the use is located occurs.*

*†3. Proposed expansion for reconstruction or modernization of non-conforming, but essential public services (e.g., water treatment plants, recycled water storage, flood control or water conveyance channels, and other public infrastructure projects necessary to maintain the health and safety of the public will be considered on a case-by-case by the ALUC.*

*†3) Any proposed expansion of a nonconforming use (in terms of the number of dwelling units or people on the site) shall be subject to ALUC review. Factors to be considered in such reviews include whether the development qualifies as infill or warrants approval because of other special conditions.*

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- c) *Reconstruction.* An existing nonconforming development that has been fully or partially destroyed ~~as the result of a calamity~~ may be rebuilt only under the following conditions:
- 1) Nonconforming residential uses may be rebuilt provided that the expansion does not result in more dwelling units than existed on the parcel at the time of the damage.
  - 2) A nonconforming nonresidential development may be rebuilt, even if completely destroyed, provided that the reconstruction does not increase the floor area of the previous structure or result in an increased intensity of use (i.e., more people per acre).
  - 3) Nothing in Sections 2.7.5.7(c)(1) through 2.7.5.7(c)(2) is intended to preclude work required for normal maintenance and repair.

### **3.Request for an extended public review period of 60 days versus 45**

City staff has requested that the public review period be extended to 60 days, as opposed to the 45-days currently planned. The concern is that the review period will end during the holidays, which will not provide sufficient time for adequate public review.

Staff recommends against this extension based on the following:

- CEQA requires that the Draft ALUCP Plan and Initial Study be circulated for 30 days only. We made the decision to extend this a year ago when the last Draft HWD and OAK ALUCPs were in public circulation; it was recognized at that time that this had been a long project, and a longer opportunity for public review was warranted.
- Ending the public review period during the holidays is easily avoided as release dates are flexible. There will be two evening public meetings held during this time: one in East County in the Dublin County Facility, and one in Hayward.
- Based on our experience last fall of no members of the public attending the hearing held despite a several thousand-piece mailing, news releases and multiple news outlets contacted, staff anticipates that more time would likely not result in more public input.
- The sentiment that has been expressed over the last year by the Commission and some members of the public is that after nearly 10 years, the time has come to complete this process and adopt the long-overdue updated airport land use compatibility plans.

----- **LIVERMORE AIRPORT** -----

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## POLICY ISSUES AND RECOMMENDATIONS

The City of Livermore submitted the following documents found in Attachment 3:

- A comment letter regarding a number of issues ranging from edits, to requests for significant policy changes.
- Suggested edits to Tables 3-1 *Noise Compatibility Criteria*, and Table 3-2, *Safety Compatibility Criteria*.

Staff responses to the City's comment letter are shown within the letter, following each section.

A number of changes are proposed to the Draft ALUCP based on the City's requests and comments, including the addition of a new policy for expansion of a public infrastructure non-conforming use which is added to both draft plans:

2.7.5.7 (b) (2) *Non-Residential Uses:*

*(3) Proposed expansion for reconstruction or modernization of non-conforming, but essential public services (e.g., water treatment plants, recycled water storage, flood control or water conveyance channels, and other public infrastructure projects necessary to maintain the health and safety of the public will be considered on a case-by-case basis by the ALUC.*

### 1. El Charro Specific Plan (ECSP)

When the City of Livermore developed the ECSP, the 1986 Airport Land Use Policy Plan was in effect. City staff evaluated the project based on the existing Policy Plan, and is concerned that the Draft ALUCP, if adopted as currently written, will require changes to the ECSP due to potential incompatibility. To that end, the City requests that the ECSP be identified as an existing land use in the Draft ALUCP due to Development Agreements in place that vest site specific land uses. (See discussion in the City's comment letter.)

- Based on the City's description of the land use agreements in place for the ECSP, it appears to meet the ALUCP definition of "Existing Use", which eliminates the need to call this out specifically, as requested.
- Additionally, ALUC staff and the project consultant reviewed the ECSP and do not believe there are potential incompatible land uses based on policies in the Draft ALUCP. To support this conclusion, the following discussion on the ECSP was added to the Land Use and Land Use Planning portion of the Initial Study:

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*El Charro Specific Plan*

The City of Livermore adopted the El Charro Specific Plan on July 9, 2007. The El Charro Specific Plan planning area is bound by I-580 to the north, El Charro road to the west, open space to the south, and the municipal golf course and LVK to the east. The Land Use Element of the El Charro Specific Plan includes the following policies related to land use compatibility:

<b>Goal 2.2</b>	City open space areas will be maintained to provide a variety of community supportive functions that are compatible with the Airport Protection Area (APA).	
<b>Goal 2.4</b>	Develop a land use program within the El Charro Specific Plan Area that is compatible with surrounding land uses and sensitive to the natural environment.	
	<b>Policy 2.4.1</b>	Locate land uses within the Plan Area to ensure compatibility with surrounding land uses, including quarry operations and the Livermore Municipal Airport.
	Objective 2.4.1a: All land uses proposed on properties in the Airport Protection Area (APA) will need prior City approval.	
	Objective 2.4.1e: Land uses will be generally consistent with density standards contained in the Safety Policies of the Alameda County Airport Land Use Policy Plan (ALUC, July 1986). Uses are defined as compatible when not exceeding a density of 25 persons per net acre over an 8-hour period, or a density not exceeding 50 persons per net acre for more than two hours per day.	
	Objective 2.4.1f: All properties within the Specific Plan area will be required to record aviation and noise easements prior to development, to ensure full disclosure and consistency with the objectives for land use compatibility with Livermore Municipal Airport and the Alameda County ALUC Plan. The easements shall specifically note that operations and flight numbers at the Livermore Municipal Airport could increase in the future.	
<b>Source:</b> City of Livermore El Charro Specific Plan, Land Use Element, July 9, 2007.		

The El Charro Specific Plan area is located within LVK's AIA and portions of safety zones 2, 3, and 6. Portions of the El Charro Specific Plan area located within Safety Zone 2 are designated for Open Space, which would allow for stormwater retention areas and small picnic areas. Land uses of these types would be conditionally compatible within Safety Zone 2, provided that airspace protection policies intended to avoid the attraction of wildlife hazardous to aircraft in flight were implemented. Therefore, the designation of Open Space associated with the El Charro Specific Plan is considered conditionally compatible with the LVK ALUCP, and no conflict would occur.

Land uses within LVK's Safety Zone 3 associated with the El Charro Specific Plan area include a mix of Regional and Sub-Regional Retail, Food, and Entertainment uses. According to the El Charro Specific Plan, Regional serving retail uses are planned for a majority of the area. Regional serving retail categories may include food and entertainment, mid-box retail, and lifestyle services such as general

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*merchandise sales, outlet stores, home decorating, house wares, clothing and accessories, and mid-size retailers that sell goods such as electronics, sporting goods, or other consumer products (pg. 2-2, City of Livermore, 2007). As indicated in Table 3-2 of the LVK ALUCP, land uses of these types are either conditionally compatible or permitted within Safety Zone 3; provided they meet the ascribed intensity standards and other conditions indicated in the ALUCP or by the ALUC during project review. These land uses would also be required to meet the height restrictions established by the LVK ALUCP's airspace protection policies, which derive from FAA's FAR Part 77 standards. In summary, commercial uses associated with the El Charro Specific Plan located within Safety Zone 3 would be considered permitted or conditional, and no inconsistencies would occur.*

*Lastly, commercial uses located within Safety Zone 6 would be subject to limited safety policies, and would primarily be restricted by the airspace protection policies within the LVK ALUCP (e.g., height restrictions, hazardous wildlife attractants, and avoiding glare, smoke, or electrical interference that may affect an aircraft in flight). As such, commercial uses associated with the El Charro Specific Plan within Safety Zone 6 are considered permitted and are consistent with the LVK ALUCP.*

**2. City of Livermore requested changes to Table 3-1 Noise Compatibility Criteria and Table 3-2 Safety Compatibility Criteria**

As seen in Attachment 3, there are a significant number of requested changes for these tables. For Table 3-1, the concern is that this table does not reflect the City's Noise Standards in the General Plan. For Table 3-2, the concern is that there will be significant inconsistencies with the city's adopted land use plans near the airport.

- ALUC staff reviewed both tables with consultant staff and the Commission Chair. As discussed in our response to the city's comments, the table is not based on the city's General Plan noise standards. Rather, the table reflects noise contours specific to each airport and its environs, and is as such is appropriately represented.
- Similarly, the Safety Compatibility Criteria in Table 3-2 is developed based on Caltrans accident data research and policy recommendations in the 2002 Handbook for each land use type. Some of the requested changes were incorporated into the draft plan, but others were not. Please refer to Tables 3-1 and 3-2 in Attachment 3, and the same tables found in Chapter 3 of the Draft ALUCP in Attachment 5.
- As noted in staff's response, the city has the option to either make their General Plans and Specific Plans consistent within the 180-day review period after ALUCP adoption, or, override the whole plan or specific policies the city will not support.

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**3. Request that Open Land Requirements be removed from selected portions of the Draft ALUCP**

The City has requested that Section 3.3.2.12 – *Open Land*-and the corresponding open space standards on Table 3-2 be removed and instead rely on the draft clustering policies in Section 3.3.2.11, combined with the City's development standards and limitations for development near the Livermore

Airport. City staff is also concerned that likely infill development will not meet the prescribed open space standards, including reserving 75x300 feet of unencumbered open space, and that such a large amount of open space required on a single lot will create a "takings" of development potential and open us the City and the ALUC to a lawsuit. Staff recommends leaving the Open Space requirements as is in the text and table due to the following:

- The Open Land policies show up in a number of places in chapters 1 and 2 of the Draft Plan, as do a number of other policies (i.e., project review requirements, Commission review options, meeting conditional use requirements, to name a few). This is done to reiterate key requirements as they apply to a number of situations, as well as to reinforce important concepts that may be easily overlooked in a policy document of this scope.
- As stated in ALUC staff's response, the dimensions are recommended, and should be used as a guide when considering future land use compatibility with the airport. A previously discussed example of this is the square feet/person figure in the Hayward Airport issue section.

**4. Request that the description of the accident source data set Caltrans uses in developing safety zone recommendations be modified**

The City requests that we clarify that Risk Data that the Safety Zones are in part based on are derived from a *national* accident database and not from an accident database for the Livermore Airport. This comment came up earlier this year during an Administrative Draft Plan review. At that time the cities felt that setting safety zone land use requirements based on accident data that is not derived from the specific local airport in question is a flawed methodology, and overstates risk. Although this distinction is relatively straight-forward, ALUC staff is unclear why this is necessary. Staff does not make a specific recommendation on this request, but offers the following points for the Commission's consideration:

- The Caltrans information is derived from a national database maintained by the FAA and the NTSB, which tracks all the factors that contributed to aviation accidents, ***based on specific airport types***: commercial, general aviation, military, heliport, or private airstrip.

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- While airport-specific accident data is always important to consider, it cannot provide a statistically-based representation of accident risk potential for the Livermore Airport. The FAA, NTSB, and Caltrans have done the analysis for risk based on a large sample size with similar characteristics, which produces a more defensible rationale for developing safety zone policy for all airports of a similar type, in this case, general aviation. To rely on each airport's history of accidents would skew the true risk potential.

**TABLE 3-2  
SAFETY COMPATIBILITY CRITERIA**

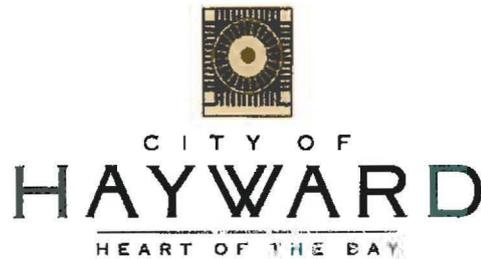
Land Uses	Safety Compatibility Zones						
	1	2	3	4	5	6	7
<b>Maximum Site-wide Average Non-Residential Intensity (People/Acre)</b>	10	40	80	100	100	No Limit	No Limit
<b>Recommended Open Land</b>	100%	40%	30%	20%	20%	0%	0%
<b>Non-Residential Land Uses</b>							
➤ Note: Where uses are listed as "C"-Conditional, please refer to Section 3.3.2.7(c).							
Offices (approx. 215 s. f. /person)	X	C	C	C	C	P	P
Small eateries/drinking establishments (approx. 60 s.f./person)	X	X	C	C	C	P	P
Medium sized business (approx. 200 s.f./person)	X	C	C	C	C	P	P
Mixed use retail centers with restaurant facilities (approx. 110 s.f./person)	X	C	C	C	C	P	P
Retail center with no restaurant facilities (approx. 170 s.f./person)	X	C	P	P	P	P	P
<b>Residential Land Uses</b>							
➤ Note: Where uses are listed as "C"- Conditional, please refer to Section 3.3.2.6(c).							
Short-term lodging Facilities (≤ 30 nights); hotels, motels, etc. (approx. 200 s.f./person)	X	X	C	C	C	C	P
Long-term lodging facilities (> 30 days): extended-stay hotels, dormitories, etc.	X	X	X	X	X	C	P
Single-family residential: detached dwellings, duplexes, townhomes, mobile homes	X	C	Zones 3 and 4: Incompatible at density > 9.0 d.u./ac; also see Policy 3.3.2.6(b)		X	P	P
Multi-family residential: low-to-high density apartments, condominiums	X	X	Zones 3 and 4: Incompatible at density > 12.0 d.u./ac; also see Policy 3.3.2.6(b)		X	P	P
<b>Sensitive Land Uses (Land Uses of Particular Concern)</b>							
➤ Note: Where uses are listed as "C"- Conditional, please refer to Section 3.3.2.8.							
Schools, K-12	X	X	X	X	X	C	P
Commercial Daycare (≥6)	X	X	X	X	X	C	P
Nurseries/In-home day care (≤14)	X	X	X	X	X	P	P
Inpatient facilities: hospitals, sanitariums, psychiatric facilities (approximately 250 s.f./person)	X	X	X	X	X	C	P
Outpatient facilities (>5 patients): dentist offices, clinics, etc. (approximately 240 s.f. /person)	X	X	C	C	X	P	P
Congregate Care Facilities- ambulatory and non-ambulatory (includes assisted living.	X	X	X	X	X	C	P

**TABLE 3-2  
SAFETY COMPATIBILITY CRITERIA**

Land Uses	Safety Compatibility Zones						
	1	2	3	4	5	6	7
<b>Maximum Site-wide Average Non-Residential Intensity (People/Acre)</b>	10	40	80	100	100	No Limit	No Limit
<b>Recommended Open Land</b>	100%	40%	30%	20%	20%	0%	0%
<i>convalescent/rehab facilities, retirement homes)</i>							
Correctional Facilities	X	X	X	X	X	C	P
High Capacity Indoor assembly room (≥ 1,000 people)	X	X	X	X	X	X	C
Medium to large indoor assembly room (≥300, <1,000 people)	X	X	X	X	X	C	C
Low capacity indoor assembly room (≤ 300 people)	X	X	C	C	X	C	P
Large outdoor assembly area (≥1,000 people)	X	X	X	X	X	X	P
Medium outdoor assembly area (≥300, <999)	X	X	C	C	X	C	P
Small outdoor assembly area (≥50, <299)	X	X	C	C	X	C	P
<b>Manufacturing, R&amp;D, Industrial Land Uses</b>							
➤ Note: Where uses are listed as "C"-Conditional, please refer to Section 3.3.2.7(c).							
Manufacturing, research and development (approx. 300 s.f./ person)	X	X	C	C	C	P	P
Occupancies utilizing hazardous (flammable, explosive, corrosive, or toxic) materials	X	X	Zones 3 - 5: C "Conditional": Special measures to minimize risk in the event of an aircraft accident to be determined by permitting agencies.			P	P
Storage of hazardous materials: gas stations, etc.	X	X	C	P	P	P	P
Warehouses, distribution facilities (approx. 500 s.f./ person)	X	C	C	P	P	P	P
Repair garages not requiring use of flammable objects	X	P	P	P	P	P	P
Open parking garages	X	P	P	P	P	P	P
Private garages, carports, and agricultural buildings	X	P	P	P	P	P	P
<b>Agriculture, Natural Features, Resource Operations</b>							
➤ Note: These uses may attract birds or other wildlife considered potentially hazardous to flight. For uses listed as C-Conditional, the project applicant and jurisdiction that has ultimate project approval authority are requested to implement appropriate mitigation measures into project design as described in FAA Advisory Circular 150/5200-33B. See Airspace Protection Policy 3.3.3.7(a)(5). Commission review required.							
Tree farms, landscape nurseries, and greenhouses	X	X	C	C	X	P	P
Community Gardens	X	X	C	C	X	P	P

**TABLE 3-2  
SAFETY COMPATIBILITY CRITERIA**

Land Uses	Safety Compatibility Zones						
	1	2	3	4	5	6	7
<b>Maximum Site-wide Average Non-Residential Intensity (People/Acre)</b>	10	40	80	100	100	No Limit	No Limit
<b>Recommended Open Land</b>	100%	40%	30%	20%	20%	0%	0%
Fish farms	X	X	X	X	X	P	P
Land reserves and open space	X	P	P	P	X	P	P
Waterways (rivers, creeks, swamps bays, lakes)	X	X	X	C	X	C	C
Reservoirs; quarry lakes; detention ponds; aquifer recharge; recycled water storage; flood control or water conveyance channels.	X	X	C	C	C	C	C
<b>Utilities</b>							
<p>➤ Note: These uses may generate dust, smoke, thermal plumes, or other hazards to flight. These uses may attract birds or other wildlife considered potentially hazardous to flight. Power lines, smoke stacks, or other tall objects associated with these uses may be hazards to flight. For uses listed as C-Conditional, see Airspace Protection Policy 3.3.3.7(a)(5), and Section 3.3. Commission review required.</p>							
Water treatment	X	C	C	C	X	C	C
Electrical substations	X	X	C	X	P	P	P
Power plants	X	X	X	X	X	X	C
Power lines	X	X	X	X	X	P	P
Roadways	C	P	P	P	P	P	P
<b>Recreational Land Uses</b>							
<p>➤ Note: Golf courses and parks may attract birds or other wildlife considered potentially hazardous to flight. For uses listed as C-Conditional, the project applicant and jurisdiction that has ultimate project approval authority are requested to implement appropriate mitigation measures into project design as described in FAA Advisory Circular 150/5200-33B. Also see Section 3.3. Commission review required.</p>							
Golf courses	X	X	X	X	X	X	C
Parks (playgrounds, picnic areas, athletic fields, tennis courts, etc.)	X	C	C	C	X	P	P
Riding stables and trails	X	P	P	P	P	P	P
<p><b>Notes:</b>  X – INCOMPATIBLE: Uses should not be permitted under any circumstances as they may expose persons to airport-related safety hazards.  C – CONDITIONAL: Uses or activities that may be compatible with airport operations depending on their location, size, bulk, height, density and intensity of use. Conditions are met upon completion of project review by the ALUC, which includes an adopted resolution identifying that all applicable criteria are met, as well as any design features recommended for incorporation by the jurisdiction with ultimate project approval authority (i.e., Planning Commission, City Council, or Special District Board). See sections 3.3.2.6, 3.3.2.7, and 3.3.2.9 for conditional criteria on specific land uses.  P – PERMITTED: Uses or activities are compatible with airport operations, however, these activities should be reviewed to ensure that they will not create height hazard obstructions, smoke, glare, electronic, wildlife attractants, or other airspace hazards. Noise, airspace protection, and/or overflight policies may still apply.</p> <p><i>All uses or activities identified in Table 3-2 are subject to intensity and density limitations as indicated. Particular attention should be given to developments that, when located in combination with other permitted or limited activities, may create cumulative impacts on airport operations. All uses should be reviewed to ensure that they will not create airspace hazards. Noise, airspace protection, and/or overflight policies may still apply.</i></p>							



November 15, 2011

Alameda County Airport Land Use Commission  
224 West Winton Avenue  
Hayward, CA 94544

Re: Draft Hayward Airport Land Use Compatibility Plan (ALUCP) and Related Draft Initial Study

Dear Commissioners:

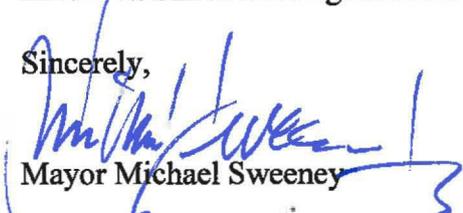
I understand that you are scheduled to approve at your November 16 meeting the final public review draft ALUCP document for the Hayward Airport and the associated Initial Study, to begin a 45-day public review period of those documents. Given that the current version of the draft ALUCP was only released less than a week ago late Thursday afternoon on November 10, I request that the public review period be extended to 60 days to allow the public and the Hayward City Council sufficient time to review and comment on the documents. Should a 45-day review period be established, that period would end on Saturday, December 31, 2011. Given the upcoming holidays and the fact that Hayward City Hall will be closed during the week between Christmas Day and New Year's Day, more time is needed to properly review these revised draft documents.

Additionally, representatives from Southland Mall, a major retail center in Hayward that will be impacted by the ALUCP, only recently received notification of your November 16 meeting and have expressed concerns with the draft ALUCP and the need for additional time to review it. Particular concerns have been relayed to City staff regarding potential impacts of the ALUCP on the vacant Marie Callender's restaurant building and the vacant former Lucky's Store building at the Mall.

Also, Hayward staff continues to have concerns with the provisions in Chapter 2 of the revised ALUCP document related to what modifications/alterations, etc. would be allowed to nonconforming uses, especially given the large parcels that comprise the Southland Mall property. As you know, the provisions in the draft ALUCP indicate parcels that contain more than one Airport Safety Zone are to have the more restrictive zone standards apply to the entire parcel.

It is hoped the City and the ALUC can continue to work together to develop an Airport Land Use Compatibility Plan for the Hayward Airport that meets the goals and policies of the Airport Land Use Commission while also recognizing the fiscal and economic importance in allowing flexibility in modifications to existing nonconforming establishments. Thank you for your consideration.

Sincerely,

  
Mayor Michael Sweeney

**Office of Mayor Michael Sweeney**

777 B Street • Hayward • CA • 94541-5007  
Tel: 510/583-4340 • Fax: 510/583-3601 • TDD: 510/247-3340  
EMAIL: Michael.sweeney@hayward-ca.gov

## 5.5 OVERRULING ALUC DECISIONS

### 5.5.1 Procedure

Various sections of the airport land use commission statutes provide for local agencies to overrule ALUC decisions on land use matters and airport master plans. The overruling process involves four mandatory steps:

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*The State Aeronautics Act primarily refers to the term "overrule," although "override" is used in some sections. In common practice, the two terms are often used interchangeably. The critical point is that any local agency overruling of an ALUC must include the four steps listed here.*

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- ◆ At least 45 days prior to any decision to overrule the commission, the local agency must provide the local ALUC and the Division a copy of the proposed decision and findings;<sup>3</sup>
- ◆ The holding of a public hearing (except when an ALUC disapproves a local agency action prior to having adopted an ALUCP);
- ◆ The making of specific findings that the action proposed is consistent with the State Aeronautics Act;
- ◆ Approval of the proposed action by a two-thirds vote of the agency's governing body.

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*Note that a 1992 opinion of the State Attorney General concluded that a two-thirds vote of the entire membership of a city council or board of supervisors is not necessary for an overruling; a two-thirds vote of the members constituting a quorum is sufficient.*

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Two particular aspects of the overruling process warrant further examination. One is the issue of what constitutes valid findings under the provisions of the law. The other involves the subsequent implications of an overruling action.

### 5.5.2 Findings

A requirement for a local agency to make specific findings in conjunction with a decision to overrule an airport land use commission determination is included in several sections of the ALUC statutes. In each case, the law provides that the findings must show that the proposed local agency action "is consistent with the purposes of this article stated in Section 21670." A local agency cannot simply overrule an ALUC determination without first documenting the basis for the overruling action and relating that basis directly to the purposes for which the ALUC statutes were adopted. The purpose of findings is to assure compliance with state law.

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<sup>3</sup> The local ALUC and Division of Aeronautics may provide comments in response within 30 days of receiving the proposed decision and findings. Any comments, while advisory, shall be included by the local agency in the public record of any final decision. However, if the local ALUC or Division of Aeronautics' comments are not available within 30-days time, the local agency may act without them. (PUC Section 21676.)

Requirements for a government entity to make findings of fact when taking certain actions appear in many parts of state law. Also, numerous court cases have dealt with the issues of findings and their adoption. The most important case regarding the use of findings in local land use decisions was *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. In its ruling on this case, the court defined findings, explained their purposes, and outlined when findings are needed in making local land use decisions.

Findings were defined in the decision as legally relevant conclusions that explain the decision-making agency's method of analyzing facts, regulations, and policies and the rationale for making the decisions based on the facts involved. In other words, findings provide the connection between the evidence in the record, and the decision reached. The *Topanga* court also outlined five purposes for making findings. Findings should:

- ◆ Provide a framework for making principled decisions, enhancing the integrity of the administrative process;
- ◆ Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to the conclusions;
- ◆ Enable the parties to determine whether and on what basis they may seek judicial review and remedy;
- ◆ Apprise a reviewing court of the basis for the agency's action; and
- ◆ Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.

The necessity for adequate findings to accompany a local agency's overrule of an ALUC was affirmed in a 1992 court case, *California Aviation Council v. City of Ceres* (1992) 9 Cal.App.4th 1384. In this case the court found that the city council had merely referred to the ALUC statutes and then concluded that the proposed land uses minimized public exposure to excessive noise and safety hazards in the airport area. The findings did not document the critical links between the facts surrounding the proposal the relevant policies, and the decision.

In contrast, an unpublished decision<sup>4</sup> of California's Third District Court of Appeal, in the case of *California Pilots Association v. County of Butte* (2003 WL 1871085), held that sufficient evidence supported the county's findings in support of its decision to overrule the ALUC. When affirming that the county's findings were adequate under Public Utilities Code section 21676 (b), the court stated:

“The Board's findings were sufficient to explicate that the proposal was consistent with the purposes stated in section 21670. The Board issued 10 pages of detailed findings, divided into four areas of concern related to land use near public airports: safety, overflight, noise, and airspace protection. The findings demonstrated that noise and safety hazards affecting the development were

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<sup>4</sup> While This decision in not published and, therefore, cannot be relied upon by a court or a party in any other action, the decision does provide useful insight on the factors that may be considered by courts in reviewing the adequacy of overrule findings. (See Cal. Rules of Court, rules 8.1105, 8.1110 and 8.1115.)

minimal or had been mitigated by a development agreement with the property owners.

The findings also were supported by substantial evidence. Each finding referred to relevant data, information, and guidelines, much of it taken from two sources prepared by professionals with expertise in airport land use planning: a state-published airport planning handbook and a federally-financed noise plan for the Chico Airport.”

The *California Pilots Association* decision confirms the rule of law established by past precedent (e.g., the *California Aviation Council* decision), namely, that to overrule the ALUC, findings should be based on substantial evidence in the public record that the proposed project is consistent with the overall goal of the State Aeronautics Act to minimize incompatible land uses within the vicinity of airports. In order to demonstrate such consistency, the local planning jurisdiction should explicitly delineate the basis for its determination that the proposed project does not impact the public health, welfare and safety or airport operations.

Perhaps most basic in preparing appropriate findings is that *findings must be substantive*, not just bare conclusions or recitations of the law: Generally, findings must explain the reasoning behind conclusions and provide a bridge between raw data and ultimate conclusion and decision.

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**F**indings must demonstrate that the proposed action “is consistent with the purposes...” of the statutes as set forth in the State Aeronautics Act (Section 21670). Examination of Section 21670(a) indicates that five separate purposes for the legislation are state:

“...to provide for the orderly development of each public use airport in this state...”

“...to provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards...”

“...to provide for the orderly development of...the area surrounding these airports so as...to prevent the creation of new noise and safety problems.”

“...to protect the public health, safety, and welfare by ensuring the orderly expansion of airports...”

“...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.”

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### 5.5.3 Notifying an ALUC of an Action to Overrule

In 2003, Assembly Bill (AB) 332 was enacted amending those sections of the Public Utilities Code -- specifically Sections 21676, 21676.5 and 21677 -- dealing with the authority of local agencies to overrule ALUCs. The digest for the legislation provides, in part:

“The bill would require the local or public agency governing body to provide the [ALUC] and the division [i.e., the California Department of Transportation, Division of Aeronautics; Caltrans] with the proposed decision and findings at

least 45 days prior to the decision to overrule the [ALUC] and would authorize the [ALUC] or [Caltrans] to make advisory comments within 30 days of receiving the proposed decision and findings. The bill would require that the advisory comments from the [ALUC] or [Caltrans] be included in the final record of any final decision to overrule the [ALUC]."

As indicated above, AB 332 imposed new notification and recordkeeping requirements on local agencies. Specifically, local agencies are now required to:

- ◆ Provide the local ALUC and Division of Aeronautics with a copy of the proposed decision and findings at least 45 days in advance of any overrule decision; and
- ◆ Include any comments from the local ALUC and Division of Aeronautics in the final record of decision.

AB 332 also imposed new requirements on local ALUCs and Division of Aeronautics; specifically, these agencies may provide comments on any proposed overrule decision and findings within 30 days of receiving such documents from a local planning jurisdiction. If the local ALUC and Division of Aeronautics fail to act within that time frame, the local agency may proceed.

### 5.5.4 Implications of Local Agency Overruling an ALUC

The state law indicates several implications of a local agency's decision to overrule an ALUC determination:

- ◆ Action Approved—The most obvious outcome of a local agency's overruling is that the proposed action—approval of a plan, ordinance, project, or whatever—takes effect just as if the ALUC had approved it or found it consistent with the ALUCP.
- ◆ Subsequent Reviews—If a local agency adopts or amends a local plan for the airport area by overruling the ALUC, then subsequent ALUC review of individual development projects related to that overruling become voluntary (PUC Section 21676.5(b)).
- ◆ Airport Proprietor's Immunity—Two sections of the law establish that, if a local agency overrules an airport land use commission with respect to a publicly owned airport not operated by that local agency, the agency operating the airport "shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation" (PUC Sections 21678 and, with slightly different wording, 21675.1(f)). The law does not indicate who will become liable under these circumstances.

## 5.6 ROLE OF AIRPORT PROPRIETORS

### 5.6.1 Introduction

Apart from their obligation to submit airport master plans, construction plans of new airports, and plans for airport expansion (when an amended airport permit is required) for airport land use commission review, airport proprietors also have a more basic role in airport land use compatibility matters. There are three facets to this role. One arises because of the relationship between the airport proprietor's actions and the substance of the ALUCP. A second is the



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, October 20, 2011, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00p.m.by Chair Loché.

**ROLL CALL**

Present: COMMISSIONERS: Faria, Lamnin, Lavelle, Márquez, McDermott, Mendall  
CHAIRPERSON: Loché  
Absent: COMMISSIONER:

Commissioner Márquez led in the Pledge of Allegiance.

Staff Members Present: Buizer, Conneely, Nguyen, Patenaude, Philis

General Public Present: 24

**PUBLIC COMMENTS**

None

**PUBLIC HEARING**

1. **Zone Change Application No. PL-2011-0175 and Vesting Tentative Tract Map Application No. PL-2011-0176** – John Dutra of Dutra Enterprises (Applicant); Dutra, Christensen, Tilley (Owners) – Request to change the zoning from Medium Density Residential to Planned Development and to subdivide the property to construct 144 single-family homes.

The project is located on multiple parcels totaling 10.9 acres generally located between Eden Avenue and Saklan Road, north of Middle Lane in the Mt. Eden area.

Senior Planner Sara Buizer gave a brief synopsis of the report.

Commissioner Faria asked how the proposed project would impact parking for the Walker Landing neighborhood. Senior Planner Buizer said there were four to six parcels between the developments and said she would not be able to speculate on the impact.

Commissioner Márquez asked how the project would impact City services such as fire and police. Senior Planner Buizer said any development would have an impact on services, and that the cost per unit hadn't been calculated so she couldn't quantify the amount. Commissioner Marquez asked if the fire station on West Winton was still in operation and Planner Manager Richard Patenaude confirmed it was. Mr. Patenaude also mentioned that both the fire and police departments had reviewed the project, supplied conditions for the project, and had not indicated any service issues because of the project.

Commissioner Márquez asked how many units would have the option of a ground level bedroom and Senior Planner Buizer said approximately one third of the units, mostly the larger, detached units, and the option would also include a full bathroom. Regarding accessibility, Commissioner Márquez asked if units had any steps leading to the front door and Senior Planner Buizer said she didn't think so.

Commissioner Lamnin thanked City staff and the applicant for incorporating requests made by the Commission based on City priorities. She asked about nearby local retail services and Senior Planner Buizer said she wasn't aware of any new amenities coming to the area, but said pedestrian passageways were included in the development plan to allow for better access to existing retail amenities. Commissioner Lamnin asked staff to address bicycle accessibility for the complex and when staff could not, Commissioner Lamnin pointed out that the City had a Bicycle Master Plan and that she was concerned about the amount of on-street parking and whether bicycles were being accommodated. Commissioner Lamnin also mentioned there had been questions about the quality of KB Homes and asked if KB would be contracted and whether the City had received any complaints or comments about KB units already constructed. Senior Planner Buizer said she hadn't heard any complaints and noted that several City staff members had purchased homes in the first KB Home development and only had wonderful things to say about the developer.

Commission McDermott asked staff to explain the impact of the Inclusionary Housing ordinance, in effect until the end of 2012, on the development including any restrictions. Senior Planner Buizer said that as long as the development received its entitlements while the ordinance was in effect there were no restrictions, although she added that the ordinance may be going back to Council to clarify some ambiguities. Commissioner McDermott asked for confirmation that the developer would be paying \$80,000 for 13 units in-lieu of having affordable housing and staff said that was correct. Commissioner McDermott asked about the impact of the development on enrollment levels for local schools and Senior Planner Buizer said payment of school impact fees should eliminate any impact. Commissioner McDermott said her concern was about physically accommodating more students and Planning Manager Patenaude said school district plans were based on existing General Plan densities and attendance levels conformed to their plans.

Commission Lavelle asked what the Vesting Tentative Tract Map conferred upon the developer, and the development itself, and Development Review Engineer John Nguyen explained that when a Vesting Tentative Tract Map was approved, the standard improvement plan would be set at that time regardless of when construction actually finished. As an example, Mr. Nguyen explained that if a private street width was set at 24 feet now and 10 years later Council increased the minimum width to 36 or 40 feet, the developer would not be obligated to widen the road. Commissioner Lavelle asked for confirmation that the development plan, if approved, would remain exactly the same regardless of what development company constructed the homes, and Mr. Nguyen explained that while the standard improvement plan would remain the same, the plan would have to adapt to any changes to the building code.

Regarding Condition of Approval number 12(n), which limits mechanical equipment other than solar panels from being placed on the roof, Commissioner Lavelle asked if that included sky lights or solar tubes. Senior Planner Buizer said no, the intent was to prohibit air compressors or other large pieces of equipment. Commissioner Lavelle confirmed that residents in the middle unit of the triplexes would be allowed to put in a skylight and staff said yes. Commissioner Lavelle asked staff to comment on Condition number 135 which limited when the Certificate of Occupancy could be issued, and Senior Planner Buizer explained that the condition required the contractor to create community and open space areas in a timely fashion so residents of the first units sold had the amenities available. Ms. Buizer commented that this condition had not been placed on other projects and as a result, those amenities were being constructed at the end of the project. Commissioner Lavelle asked if the number for each unit had any significance and Development Review Engineer Nguyen explained that Unit 72 marked 50% of total number of units.



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Commissioner Mendall disclosed that he met with the applicant earlier in the week and toured the site earlier in the day. Regarding the Benefit District mentioned in Condition 102, Commissioner Mendall asked how the collected fees were used and Senior Buizer explained that the district was set up when the property was first annexed into the City to pay for off-site improvements like sidewalks, curbs, gutters, landscape and street trees. She said the Dutrás originally funded the cost of those improvements and now the benefit district fees would reimburse them. Commissioner Mendall asked if the benefit district expired and Mr. Nguyen said in 15 years from January 16, 2007.

Commissioner Mendall asked what the total amount of park in-lieu fees would be, as mentioned in Condition number 134(d), and Senior Planner Buizer explained that the total amount was based on the number of detached and attached housing units. She said the fee per unit was a little over \$11,000 each, multiplied by 144 units, would total the park in-lieu dedication cost Dutra Enterprises would be required to pay.

Commissioner Mendall pointed out that the project was short 91 required on-site parking spaces and asked staff to use a map to show the Commission the private and public streets where parking would be allowed to compensate for those 91 spaces. Senior Planner Buizer said parking would be allowed on all streets wide enough to accommodate it and that included Saklan Avenue, Eden Avenue, Middle Lane, part of private street A (within the development), both sides of private street B, but no parking will be allowed on private street C because it was too narrow. Commissioner Mendall asked what percentage of the needed 91 spaces could be accommodated on those streets and Senior Planner Buizer said 75-80% on the private streets alone.

Commissioner Mendall said a problem the City was having with parking in some of the existing, denser neighborhoods was people using their garage for uses other than storing their vehicles. He said he was pleased that the Home Owners Association (HOA) for this project, as part of the conditions of approval, was required to enforce the rule that garages be used for vehicles only. He asked if a Parking Benefit District could be created if, in the future, further development made street parking a problem, and suggested adding a condition that allowed for the creation of a Parking District if the City deemed it necessary. He suggested staff consider the idea before the project goes before Council and Planning Manager Patenaude said staff would prepare a response to the suggestion.

Commissioner Márquez disclosed that she met with the applicant on Tuesday. She noted that the report mentioned that two residents living in the area had voiced support for the project and asked if staff had received any other comments. Senior Planner Buizer said feedback had been limited and noted that at public meetings held earlier, nearby property owners generally supported the project and liked the design.

Chair Loché disclosed that he also met with the applicant earlier in the week and then asked if staff had taken into consideration the proximity of Chabot College to the project when recommending approval. Staff said no. Regarding proposed setbacks, Chair Loché said he understood the trend of moving toward smaller lot sizes, but commented that the rear a setback of 3.5 or 4 feet appeared drastic and asked if other projects with similar setbacks had been approved. Senior Planner Buizer said yes, and explained that most projects with rear-loading garages had a 3.5 foot setback to the access road to stop residents from parking illegally in front of their driveways and creating a fire access problem.

Chair Loché asked if any plans or changes were proposed for Greenwood Park, located near the project, and Senior Planner Buizer said she was processing an application for a development on the property adjacent to the park, and although staff was still working on negotiation terms, the expansion of Greenwood Park was part of that plan. She said that project would come before the Commission in the next few months.

Commissioner Mendall asked if the \$1.5 million in park in-lieu fees generated by the proposed project would be dedicated for the Greenwood Park expansion and Senior Planner Buizer said no, the funds would go into the park zone, and explained that monies had already been earmarked for the Greenwood Park expansion from the first KB Home development. Commissioner Mendall confirmed with staff that Greenwood was a Hayward Area Recreation Department park and the two on-site “pocket parks” would be maintained by the HOA.

Chair Loché opened the Public Hearing at 7:39 p.m.

Jesús Armas, business address on Main Street, spoke on behalf of Dutra Enterprises, identified the applicant, CEO John Dutra, and the project architect, Jill Williams. Mr. Armas said in many ways the project was a continuation of something started 20 years ago when the City first considered annexing the islands. The annexation required that an environmental assessment be performed and that addressed many of the questions raised by Commissioners. Regarding public safety, he said a report produced for LAFCO determined that public safety needs could be met by the City under the medium density designation and zoning. The impact on schools was also studied, Mr. Armas said, and it was found that Eden Gardens Elementary and Ochoa Middle School could accommodate the increased student population. Mr. Armas noted that Dutra Enterprises has built on the original project approved by council in 2006 enhancing some of the elements introduced by KB Homes. Regarding retail uses, he pointed out that a two acre parcel located at West and Clawiter was already zoned Neighborhood Commercial. Mr. Armas mentioned that the project would generate around \$1.7 million in park in-lieu fees, which was similar to the amount KB paid. Mr. Armas said Dutra Enterprises had met with the Park District and conceptual plans had been developed for Greenwood Park. He noted that the park would essentially double in size, and although no neighborhood meetings have been held yet to finalize plans, there has been discussion regarding adding restrooms, a barbecue area, and skateboard area. Regarding the Benefit District, Mr. Armas said that Dutra Enterprises had funded \$13 million of infrastructure work with the understanding that money would be repaid in two ways: through the County Redevelopment Agency and through a Benefit District. Under city regulations, Mr. Armas said only water and sewer elements are eligible for coverage in the district. Finally, Mr. Armas noted that if the project was recommended by the Commission and approved by the City Council, all the conditions of approval would move forward “with the land” and if the builder had any changes, those changes would have to come back to the Commission or Council for approval. He then introduced Dutra Enterprises CEO John Dutra.

John Dutra, Dutra Enterprises, said his company would be celebrating its 40<sup>th</sup> anniversary next April. He noted that Dutra Enterprises had been working with the City for the last 10 years in the Eden/Saklan area. He said he has enjoyed working with the City of Hayward and had built a trust that Dutra was building a quality product. He provided background on the project explaining that his father made the annexation possible because he was successful in providing a funding mechanism for the infrastructure and all 149 units in the KB development had sold. For phase II, he said Dutra Enterprises would be doing the same thing or better. Mr. Dutra said that at this time, they are in concurrence with all conditions of approval.

Jill Williams, principal with KTG Y Group, business address in Oakland, presented a 3-D rendering of the project site coming in at A Street and moving through the development to end at the centralized park area. She also displayed a PowerPoint slide showing the preservation of an oak tree and the available open space. She discussed Dutra’s desire to complement and add to the existing development by offering more variety in housing types and that led to the mix in floor plans including integrating a first floor bedroom into not only the front-loading homes, but in one alley-loading unit as well. Ms. Williams said they tried to give individuality to the duets and triplexes and “worked hard” to carve out a patio area for the center unit to bring in light from two sides. She said she would be happy to answer any questions about accessibility and mentioned that, regarding green points, looked forward to exceeding City standards, would definitely reach 75 points, and would deliver a very sustainable new neighborhood to Hayward.



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Mike Giosso, Eden Avenue resident, said he had been a resident in the area for about 40 years. Mr. Giosso said that his property was originally located in the County when the processed first started and the development had improved his neighborhood dramatically. He said he supported the proposed project. Chair Loché asked him if he lived closed by to the new development and Mr. Giosso said he currently lived in the KB development, but kept his original home selling a portion of the property.

Malvina Okuda, Keets Lane resident, explained that her family owned property on Saklan Avenue, near the development, and had chosen not to sell to Dutra Enterprises. At the time of annexation for the first development, Ms. Okuda said her family was told that the use of their property would not need to change and noted that a rental property was located on the property as well as a garage and some large construction vehicles. Ms. Okuda asked for confirmation that the current project would not change their usage rights and Planning Manager Patenaude said the project would not interfere with the rights of the owner. Secondly, Ms. Okuda said a portion of her land was taken as part of the annexation and she asked if more land would be needed for infrastructure improvements. Senior Planner Buizer said the improvements along Eden and Saklan were complete and there were no plans to widen the existing road. Ms. Okuda also confirmed with staff that the development would include no affordable housing units. Finally, Ms. Okuda explained that her property was surrounded by a chain link fence and asked if more fencing would be added and if she would be responsible to pay for it. Senior Planner Buizer said the only new fencing would be along Saklan Avenue and Ms. Okuda clarified with Mr. Dutra that he didn't purchase another piece of property in foreclosure and he confirmed he did not. Ms. Okuda asked about the impact of the new development on a sewer line her family installed long ago, also under a benefits district, and Chair Loché asked her to write a letter and staff would respond.

Commissioner Mendall asked Ms. Okuda what she thought about the KB development in general. She said she was a little nervous about the development because the property had been a "country area" and her current tenant had hens and roosters and she was concerned that a resident in the new development might complain and they would have to get rid of them. Commissioner Mendall encouraged her to sit down with staff to discuss, and possibly alleviate, these concerns. Ms. Okuda mentioned that the roads are much better now with no potholes. Planning Manager Patenaude stated that property owners that had uses that were legal under the County at the time of annexation may continue those uses until they themselves abandon them.

Commissioner Mendall asked Mr. Armas to display a map that detailed the availability of street parking spaces. Mr. Armas did so explaining that they looked at the parking capacity of all of the interior streets, excluding Street C and part of Street A, and determined that any home fronting one of these streets would have sufficient space to park. Commissioner Mendall confirmed that 91 spaces would be provided by those interior streets alone and Mr. Armas said yes. Regarding the on-site park, Commissioner Mendall said it was "in a really nice spot" and would be a community gathering place and suggested park benches. Mr. Armas said benches were included in the central area, around the play structure, but said suggestions were welcomed indicating that the plans were conceptual and that they would be working with a landscape architect in the future. Commissioner Mendall said he imagined a family holding a 5-year-olds' birthday party there and noted they would need a couple of benches, a picnic table or two, an area to run, and with the play area already planned, that would create the greatest value. Mr. Armas said he agreed and noted the park area was almost a third of an acre.

Commissioner Márquez asked Mr. Armas how many parking spaces were available in each driveway. Mr. Armas said every single family home would have two covered spaces and two in the apron. Units with

courtyard access would not have the ability to park on the street, he said, those areas would be marked as a fire lane.

Regarding Commissioner McDermott's comment about the inclusionary housing ordinance, Mr. Armas explained that Council voted to give applicants the opportunity to make the argument that contributing funds was more effective than building affordable housing units. A few years ago, Mr. Armas said, to encourage residential development, for a short time, Council said that anyone who received discretionary approval by December 2012, by right, had the ability to pay the fee and in this instance, he said, Dutra Enterprises was availing itself of that option. The payment would go into a trust fund for the City to use in any way they deem most effective, he said. Commissioner McDermott thanked him for the explanation.

Commissioner Lamnin disclosed that she met with the applicant earlier in the day and took a self tour of the site. Regarding fences, she asked if there would be fences along Saklan Road or other public streets outside the development and Mr. Armas said if the units face the street there would be no fence. Commissioner Lamnin commented that people not living in the development might want to use the facilities and although that wasn't necessarily a bad thing, suggested they take that into consideration.

Commissioner Lamnin then asked where the sales area would be located and Mr. Armas said that hadn't been determined. Mr. Dutra said the developer would decide, but would probably select the prime lots in the complex, for example, across from the on-site park. Commissioner Lamnin confirmed that the street names A, B, and C were just place holders and Mr. Dutra said yes.

Chair Loché closed the Public Hearing at 8:10 p.m.

Commissioner Faria thanked Ms. Okuda for coming forward, providing some background, and giving her opinion. Commissioner Faria said she lived in the area and had had the exact same questions regarding the uses by residents already in the neighborhood. She said the responses answered a lot of questions.

Chair Loché said this was the most exciting project that the commission had seen in quite some time and he was glad people had come to the meeting to see what transpired.

Commissioner Mendall said he liked the development and thought it was better than the first. He acknowledged that the density of the project, the parking issues, and the setbacks, but said he was pleased to see that the applicant worked with staff to find compromises to make up for those. Commissioner Mendall highlighted the 75 green points and the fact that the development did not maximize the density, as past projects have, noting the density was 25% below what was allowed and fit with the neighborhood. He said the universal design elements in 30% of the homes was "a good thing." He also said he liked that the garage was on the same level as the kitchen, the height of the buildings, the open space, and noted that the cut-throughs and on-site park and nearby park, would make the development a walkable area.

Commissioner Mendall made a motion to recommend approval of the proposed project to the City Council including, 1. adoption of the Mitigated Negative Declaration (MND), Mitigation Monitoring and Reporting Program, and 2. approval of the Zone Change and Vesting Tentative Tract Map, subject to the Findings and Conditions of Approval. Commissioner Márquez seconded the motion.

Commissioner Márquez said she was in support of Commissioner Mendall's motion saying that the applicant had done a tremendous job researching and working with the community and that she appreciated the investment they had made in the past. She noted that Dutra Enterprises had been open to feedback, said Senior Planner Buizer did an excellent job, and said she was glad the homes were not three-story. She also said she appreciated the open space, universal design, the park, and the preservation of the existing tree.



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Commissioner McDermott asked Assistant City Attorney Conneely if she should recuse herself because she was friends with the Dutra family and Ms. Conneely responded that as long as she could remain impartial she could act on the item.

Commissioner McDermott stated that she was familiar with the area, and thought the project would add to existing development. She said it was nice to see a residential development that encouraged residents to walk and said that would probably help Southland Mall and push them to make improvements to the mall. She concluded by saying it was a nice development, that she knew the family and that they would do a good job. Commissioner McDermott said this project wasn't a 100% perfect but still an excellent development.

Commissioner Lavelle disclosed that she also met with the developer and was fully supportive of the motion agreeing with comments made by Commissioner Mendall and Márquez. She thanked the Dutrás for their willingness to step forward and build the utilities years ago. She noted that she was on the Commission when phase one was reviewed and at that time, many residents expressed heartfelt comments and concerns regarding switching to the City's sewer system. Commissioner Lavelle said it was wonderful that the development was complete and that no residents had come forward to oppose this project. She noted that that said a lot about the Dutra family. She complimented Ms. Williams on the modern look of the development, the effort to create different spacing of the front, doorway entries, window treatments, and façade treatments. Commissioner Lavelle said she liked that conditions like 12(p), which limits large expanses of blank wall (like the side of the house), were included, as well as another that required that all decorative window treatments extend to all elevations. These are important details, she said, that make Hayward look attractive and helped maintain home values over time. Commissioner Lavelle concurred with Commissioner Mendall's comment that garages should be used for cars, rather than storage or living area, and noted the HOA would have to enforce that rule to alleviate the need to park on the street, and commented that because of the limited street parking the development would probably self-police. Commissioner Lavelle said she also agreed with Commissioner Lamnin's comment that the development should accommodate bicycles and suggested that the on-site park have a bike rack. She concluded by noting that residents could also shop the retail plaza with Target and the new Fresh & Easy at A and Hesperian and that there were plenty of new and existing retail options for residents to shop in Hayward.

Commissioner Lamnin said she was also supportive of the project saying that a lot had been done to make it an asset to the community. She encouraged Dutra Enterprises to partner with solar and cool-roof companies to create a package that potential homeowners could take advantage of when financing a home. She also suggested clear communication channels, including signage, so residents and neighbors like Ms. Okuda, would know who to call or where to go for questions or issues like noise complaints, etc. Commissioner Lamnin also suggested that the HOA consider the need for parking permits in the future, and inclusion of language in CC&R regarding rental units due to the proximity of Chabot College. She also suggested electrical outlets at the park so people can plug in computers or music and the selection of a play structure that would appeal to older kids as well as tots.

Commissioner Faria said she would also be supporting the project saying it was very attractive. She suggested including a pet area for the park to accommodate the different ages of residents and those that may have pets instead of children.

Chair Loché said this was a very, very attractive project and that he would certainly be supporting the motion. He said this neighborhood was one of the four identified in the Housing Element as a location to meet the housing goals of the City of Hayward. "This is the perfect place," he said noting that it was the right project

that looked the way you'd want it to look, and he commented that past residential developers hadn't done all they could to build a quality product in Hayward. Chair Loché said he liked the variety of housing types and said that taking into the consideration the size of project, that it came without any complaints was just shocking! He said he was glad that Ms. Okuda had voiced her questions, but the fact that not one other person said "Please don't do this," didn't happen very often. Chair Loché said the close proximity of the project to Chabot College was a great thing and suggested Wi-Fi for the area. "We're a very connected City," he said. He concluded by saying that the small blocks would make the neighborhood very walkable. He then called for the vote.

The motion passed 7:0:0.

AYES: Commissioners Faria, Lamnin, Márquez, Mendall, McDermott, Lavelle  
Chair Loché

NOES:

ABSENT:

ABSTAINED:

## **COMMISSION REPORTS**

### **2. Oral Report on Planning and Zoning Matters**

Planning Manager Patenaude mentioned that the initial report on the earthquakes that occurred earlier in the day, and earlier in the meeting, was 4.2 and 4.0, respectively and were centered in Berkeley. He then reviewed future meeting topics including workshops on the implementation of the Historic Preservation Program and the downtown plan efforts. He noted that both would follow input from the City Council, but the Commissioners would meet and be able to provide comments about the downtown plan before the CalPoly students arrived to do more assisting.

Commissioner Lamnin asked if downtown plan had already gone before Council and Planning Manager Patenaude said it would go to Council the following Tuesday.

Commissioner Mendall asked for the workshop reports earlier so they could have more time to review. Planning Manager Patenaude suggested that Commissioners read the Council reports as they would be very similar to the Planning Commission reports.

### **3. Commissioners' Announcements, Referrals**

Commissioner Mendall gave an update for the Sustainability Committee noting that meetings were now held quarterly. He mentioned the County was discussing starting a commercial recycling program and approving a county-wide plastic bag ban.

Commissioner Lamnin mentioned that at the last meeting she had requested staff correct lane markings on Carlos Bee and noted that had been done and the road felt much safer. She also noted that due to previous commitments, she wouldn't be able to attend the next two meetings. And finally, Commissioner Lamnin said she had been walking around downtown earlier in the evening and there was a "wonderful feeling" due to the Restaurant Walk fundraiser being held for the library. Participants of the event got to enjoy sample fare from local restaurants and she said there was a real "community feeling" and it was exciting to see people discussing where to go next. "Kudos to those who planned the event," she said.



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**APPROVAL OF MINUTES**

4. None

**ADJOURNMENT**

Chair Loché adjourned the meeting at 8:33 p.m.

**APPROVED:**

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Mariellen Faria, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk



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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:00p.m.by Chair Loché.

**ROLL CALL**

Present: COMMISSIONERS: Faria, Lavelle, Márquez, McDermott, Mendall  
CHAIRPERSON: Loché  
Absent: COMMISSIONER: Lamnin

Commissioner McDermott led in the Pledge of Allegiance.

Staff Members Present: Buizer, Conneely, Patenaude, Philis

General Public Present: None

**PUBLIC COMMENTS**

None

**WORK SESSIONS**

1. Historic Preservation Program – Implementation

Planning Manager Richard Patenaude gave a synopsis of the report noting that public hearings for the Prospect Hill Historic Preservation District would not begin until early 2013 due to reduced City staff and community volunteers needing time to collect and present the material. Mr. Patenaude also mentioned that he recently discovered that California State University East Bay had a Public History Program and said he would be working with the department director to explore the possibility of having students provide assistance.

Chair Loché asked if the Rental Housing Owners Association’s request to exempt post-1946 multi-family residential structures from the ordinance had been granted. Planning Manager Patenaude said Council gave no direction to exempt those properties, and noted that although the Association had expressed concern about the burden placed on historic property owners wanting to make changes to these properties, to date, City staff has had only positive experiences with smaller, multi-family property owners. As an example, Mr. Patenaude mentioned the owner of a building on Sixth Street who wanted to replace a back window with a vinyl window. Mr. Patenaude said the vinyl window was so true to style that he was able to approve the request over the counter. Planning Manager Patenaude said staff has noticed that as people learn their building had historic significance they look at the building differently and were more willing to make adjustments to their original plans to retain the character of the building. Mr. Patenaude noted that besides window replacement, the most common alteration requested was replacing wood siding with stucco, but with a little education, owners have understood the value of keeping the wood siding and the historical integrity. He concluded by saying that staff had worked successfully with owners so making changes was not a burden. Chair Loché confirmed with staff that it was Councils’ intention to deal with these properties on a case by case basis.

Chair Loché asked how Public Hearings notices would be distributed when historical preservation designations for properties or districts came before Council and/or the Planning Commission. Planning Manager Patenaude said there would be different types of noticing depending on what was being discussed. For the designation of a specific property, he said, a notice would be sent to property owners in the standard 300 foot radius. For zoning incentives and city-wide issues, Mr. Patenaude said notice would be provided via newspaper, a list of interested parties, and via interest groups. Chair Loché said he wanted distribution to be as wide a net as possible so residents come in and share their thoughts. Planning Manager Patenaude added that when dealing with specific programs like the Mills Act, the City would notify all qualifying properties.

Commissioner McDermott noted that participation was described in the report as voluntary “unless structure is of significant community value,” and she asked what would happen in that case. Planning Manager Patenaude explained that properties could be designated historic in several ways. In some communities, an interested third party could develop a petition requesting a historical designation and submit it to the city, he said. Council wanted the owner to request that designation so Hayward’s ordinance does not allow third parties to petition, however, he explained that if the property was deemed important to the city as a whole, the City itself could make the historic designation without the consent of the owner. Planning Manager Patenaude noted that all requested designations, whether from the owner or the City, would have to go through the Public Hearing process. He noted that a lot of research was needed before a property was found historical and the final determination would be made by the Planning Commission, with any appeals going to Council.

Commissioner McDermott asked hypothetically, if a residential or commercial property was involuntarily deemed historic, would the owner be bound by the same contractual obligations as an owner who volunteered to participate. Planning Manager Patenaude explained that a contract would only be created if the owner was pursuing the Mills Act, and noted that whether voluntary or by City designation, the property owner would be eligible to participate in any of the available incentive programs.

Commissioner McDermott said a Mills Act contract period was 10 years and she asked if incentives, including a 50% reduction of property tax, were available during the entire contract time. Planning Manager Patenaude said yes, noting that if the contract was not cancelled, incentives were available for 10 years from the anniversary of the original contract date. Commissioner McDermott asked if the contract was reviewed on an annual basis and Mr. Patenaude said only compliance with the contract was reviewed. Commissioner McDermott commented that she read an article by a real estate agent in Bend, Oregon, that stated some positive things, but concluded that historically designated properties were more difficult to sell.

Commissioner McDermott asked if the tax base of a property would be frozen at the time it was designated historical. Planning Manager Patenaude clarified that it was not the designation itself that would bring a property under a Mills Act contract. He explained that once the property received historical designation it could then be registered as historical and eligible to participate in incentive programs. Mr. Patenaude noted that federal tax credit benefits do not necessarily rely on a local designation. For example, he pointed out that the Green Shuttle Hotel received federal tax credits because the owners followed guidelines for the National Register. Planning Manager Patenaude said local support could help a property owner received national recognition.

Commissioner Márquez disclosed that she had a relative who owned property on C Street but felt she could remain unbiased and participate in the discussion. She asked if the City had been collaborating with the Historical Society. Planning Manager Patenaude said yes, the Historical Society, along with consultants, had developed the survey and the context statement used by the City, and he noted that most archives were held with the Society. Commissioner Márquez asked how many homes were in the Prospect Hill area and their current value. Mr. Patenaude didn’t have numbers ready for either question, but directed her attention to a map that color-coded properties in the Prospect Hill area based on their historical integrity. Commissioner



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Márquez confirmed that Council wanted to exempt residential properties valued over \$1.5 million and commercial properties over \$1.3 million so they could participate in the Mills Act and the City wouldn't lose out on the revenue base and Mr. Patenaude said that was correct. Commissioner Márquez corrected the address of a property shown in Attachment 3 of the report, noting the commercial property was located on B Street, not Main. Finally, Commissioner Márquez noted that according to the report, "to monitor compliance, periodic examinations of the premises may be done as necessary" for properties under the Mills Act and she asked who would be conducting those inspections. Planning Manager said staff would conduct inspections.

Commissioner Mendall stated for clarification that there were three levels of historical designation from "not designated," to "designated," to "under contract." For a building that was historically significant but not on the City's register, he asked for confirmation that there would be no consequences to that property owner. Planning Manager Patenaude said there were consequences, but mainly a California Environmental Quality Act (CEQA) issue. Whether or not a survey had been performed, he explained, if the property was considered historic it would still need to be analyzed under CEQA to determine if the proposed change impacted the structure of the building. Mr. Patenaude said the benefit of having already conducted a survey would be the City already knew the properties' significance and any decision by the City would be less subjective and not rushed.

Commissioner Mendall reiterated that knowing the property was historically significant had no consequence to the owner; knowing would not change any requirements or impose any new restrictions, and Mr. Patenaude said that was correct unless the property owner was proposing changes that would impact the character of the historic structure, then the owner would have to apply for specific permits. Planning Manager Patenaude pointed out that even if the historic building ordinance was not in place, the proposed change would still be reviewed under CEQA and could be found to have a negative impact.

Commissioner Mendall asked if property owners would have any reason to oppose a historic designation and Planning Manager Patenaude said with the adoption of the Historic Preservation Program and an incentives program, the City was hoping there would not.

Finally, Commissioner Mendall confirmed that after the property was designated, the owner could voluntarily choose to enter a Mills Act contract—emphasizing that this would be voluntary—and that contract would have significant financial benefits as well as significant additional burdens as a trade-off. Mr. Patenaude said that was correct. Commissioner Mendall also confirmed similar pros and cons of having a property listed on the National Register.

Commissioner Mendall said the City's plan to initiate the program with the Prospect Hill neighborhood was good because there were a lot of residents interested in participating and that would assist with working out the kinks in the program. He said he also like the idea of getting assistance from CSUEB Public History program students. Commissioner Mendall asked why All Saints Church was not included on the list of historical buildings and Planning Manager Patenaude explained that buildings in the downtown core were being considered first. Mr. Patenaude noted there was a twist with religious properties and it was not clear if designation could be forced by the City. However, he noted that All Saints had been successfully working with the City to make changes to buildings without changing the historical integrity.

Commissioner Mendall asked if all property owners on the "potentially historic list" had been notified and Planning Manager Patenaude said no. Commissioner Mendall said they should be, especially the "high integrity" structures. Mr. Patenaude said they would be contacted to participate in the Mills Act Program

development workshop. Commissioner Mendall asked when that would happen and Mr. Patenaude said approximately spring 2012. Commissioner Mendall said if it was his property on the list, he would be irritated if he received notice six months, or a year, down the line, and said sooner was better. Mr. Patenaude said the information was included on the City's Global Information System (GIS), but Commissioner Mendall said that was not the same as being contacted directly.

Commissioner Mendall noted that the report stated that the Planning Commission was one of the bodies that could trigger a designation review and he asked how that would happen. Planning Manager Patenaude said Commissioners could direct staff to investigate. Commissioner Mendall asked for confirmation that one or two commissioners would have to ask for the item to be added to the agenda and Mr. Patenaude said there was no particular process to make a recommendation, but said it would be a good idea if the recommendation came from a majority of the members. Commissioner Mendall suggested staff develop a process to trigger a formal hearing and Mr. Patenaude explained that a formal hearing wouldn't happen until all research was complete, but how that research was started was the needed process.

Assistant City Attorney Conneely said a Commissioner could make a request under Public Comments or Commissioners' Announcement, Referrals, and Commission members could indicate if there was a majority that would like to see it agendaized. Commissioner Mendall then confirmed the procedure once the requested designation was placed on the agenda.

Commissioner Mendall said focusing on property owners who want to participate was the right priority as well as making progress with the program with as little confrontation as possible. Planning Manager Patenaude commented that he was the preservation officer in Palm Springs for 15 years and quite a few of the designations went to Council without the agreement of the owner, noting that most were commercial properties. Once designation was made, however, he said owners realized it was a good marketing tool and helped attract customers especially to hotels, restaurants and retail locations. Commissioner Mendall pointed out that the incentives were quite powerful and significant and that was one reason the Planning Commission and Council were excited about going forward with the program. He called it a "strong win for the property owner" if they embrace the designation.

Commissioner Faria asked if seismic retrofitting would be required under the program. Planning Manager Patenaude said not because of the historic preservation program. He explained that there was a seismic retrofit program through the State (for unreinforced masonry) and in Hayward, all buildings that fell under that program had been retrofitted. Mr. Patenaude said there hadn't been any other programs that required retrofitting, but if a change was proposed to a building that changed the occupancy, retrofitting could be required and that could be based on historic designation.

Commissioner Lavelle said it was pleasing to see the progress made with the program and staff working so closely with the public. She said she was also pleased to see public resources included on list such as the old City Hall and the water tower in the Cannery area. She commented that it was too bad the program wasn't in place before the old Hayward High School was torn down and was glad the program would help maintain older buildings moving forward. Commissioner Lavelle agreed with Commissioner Mendall that the Prospect Hill neighborhood was a good place to start and she asked if posted signs or a display would be erected if the neighborhood was deemed historic. Planning Manager Patenaude said all those things could happen and would be developed as part of the historic district designation, but some would be dependent on funding. Commissioner Lavelle suggested seeking grant funding and Mr. Patenaude commented that now that City had an adopted program and if the district was adopted, there would be more grants programs available.

Commissioner McDermott commented that with the extreme interest by Prospect Hill residents to get on board with the program, initial implementation was really important to help send a message to future participants; if it's done successfully, they will want to participate and designation by the City won't have to come into play. Regarding the \$200,000 maximum set aside for reduction in property taxes annually,



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Thursday, November 3, 2011, 7:00 p.m.  
777 B Street, Hayward, CA94541**

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Commissioner McDermott commented that based on the number of properties with high historic integrity that money would be eaten up quickly. Planning Manager Patenaude explained that if the maximum was reached, there was a caveat that allowed the issue to go back to Council with a request to raise it.

Commissioner Lavelle voiced support for an idea made by Council Member Henson that homes of historic figures be recognized, noting that quite a few historic figures came from, or through, Hayward.

Commissioner Mendall said downtown needed more “eyes on the street” and that meant windows on the ground floor, which he said may not mesh well with historic designations that don’t have that kind of frontage. He asked if there was any flexibility. Planning Manager Patenaude said for the most part, the retail buildings that were potentially historic did have ground floor windows. Commissioner Mendall suggested some flexibility should be available to accommodate that particular feature and Mr. Patenaude noted the request.

Commissioner Lavelle pointed out that in the photos included with the report, only the Ranch Restaurant did not have front windows.

Chair Loché agreed that the potential partnership with students at CSUEB was a great idea as was keeping the program voluntary. He stressed the importance of making sure information and communication with property owners was made and noted the substantial incentives should be the engine that gets the program rolling. Chair Loché asked Planning Manager Patenaude if the one year implementation timeline for the Prospect Hill neighborhood to come back before the Planning Commission and Council was really doable because he pointed out, upper B Street had many potentially historic structures as well. Chair Loché expressed concern that the process could take too long. Planning Manager Patenaude said while he couldn’t guarantee it, he pointed out that some of the Prospect Hill residents had already done research and that would help move the process along. Chair Loché confirmed that the process would happen faster if residents were involved and Mr. Patenaude said yes, adding that time would also be saved because Prospect Hill already had an interested neighborhood group unlike upper B Street where a neighborhood organization would have to be created. Chair Loché asked when the neighborhood meeting would be held in Prospect Hill and Planning Manager Patenaude said that no meeting date had been set yet.

## 2. Downtown Plan Update

Senior Planner Sara Buizer gave a synopsis of the report and suggested the Commissioners address each of the six questions, developed to initiate discussion, in order.

Question 1—What is your overall vision for downtown, i.e. do you visualize a downtown with a focus on nighttime entertainment uses, a focus on daytime office and retail uses, a focus on family-oriented activities, or some other focus, and do you have ideas of focus for specific areas of downtown, such as an entertainment district between Main Street and Foothill Boulevard on B Street?

Commissioner Mendall said he thought of downtown in two different pieces: one, the triangle area surrounded by the mini loop, should be the entertainment district with restaurants and bars; uses for the wider area could vary a lot more and already include retail and residential. He said, in general, downtown was fairly successful during the day, but died at night and that was the time he said the City should focus on, the core triangle area in particular. Commissioner Mendall said the goal should be to create a piece of downtown that had a different feel in the evening with a lot of people, welcoming and safe.

Chair Loché said for the downtown to be successful, he hoped that uses could include more than just one of the choices already mentioned, and agreed with Commissioner Mendall that the major part of downtown should be night-time and entertainment uses. He said the City's location and having more than one college should not be ignored and the City should be providing those uses downtown for students. Retail uses should also be included, but he said the first thing that came to mind was entertainment.

Commissioner Márquez reiterated that her family owned property downtown but felt she could remain unbiased. She agreed that the commission should focus on entertainment but also play up the City's diversity for food options to meet the needs of the different cultures. She supported mixed-use downtown and entertainment for youth noting the City lost both its skating rink and bowling alley. In regards to a partnership, Commissioner Márquez noted that CSUEB had a Bay-Bucks program where students load money onto a card; she suggested building a partnership with downtown businesses to accept the cards, and creating a shuttle bus to bring the students there. She said downtown was lacking and needed things like a spa, a stationary store, and other day-to-day amenities besides food and entertainment. She thanked Commissioner Lavelle for sparking her interest in bicycling, and suggested installing bike racks and boxes, and finally, she said lighting and landscaping needed to be improved.

Commissioner McDermott commented that she had lived in the Hayward community for a long time and could remember when Foothill Boulevard was bustling. She said anything the Commission and City could do to encourage people to get out and walk downtown would be extraordinary. Commissioner McDermott also mentioned that she had recently visited downtown Livermore and was astounded by the progress made and the hustle and bustle, noting the large number of families, and lots of retail and restaurant choices. If the City of Hayward could do something similar, she said, downtown would be successful. She agreed with Commissioner Márquez that there was nothing for youth to do downtown, and there was no venue to hold big events. Commissioner McDermott concluded saying that anything that gets people out, where they feel safe in the community, able to walk outside and enjoy the environment, was a great thing.

Commissioner Faria said she agreed with comments already made and noted the Hayward Street Parties provided access to the downtown in the evening hours and a place to congregate, visit and enjoy each other's company. She said it was amazing the number of people who attended the June street party and she said the City needed to create more venues that encouraged people to come downtown. She commented that with the involvement of the two colleges, the Chamber and Commerce, and other neighborhood groups, an event should be a success. Commissioner Faria agreed with Commissioner McDermott that they city needed a large space for people to congregate and hold events like the Thanksgiving dinners that used to be served at Centennial Hall.

Commissioner Mendall mentioned that 10 years ago the Hayward Youth Commission conducted a survey of local teenagers and he said the big take-away for him was that local youth wanted more things to do downtown and they needed them in clusters because either they didn't have a car or their mom wasn't willing to drive them around. He said downtown was the obvious place for such a cluster. Downtown already has a pool hall that allows teens most nights, he said, with a couple more businesses, there was a cluster. Commissioner Mendall said he would like that information included in the vision so potential business owners can latch on to it and as a group, attract the teen clientele. He pointed out that Hayward had lost movie theaters, a bowling alley and a roller rink and he said he thought that was because they were located alone. Commissioner Mendall said another big idea he heard at a City Council meeting was closing one of the streets in the downtown core, and he said Main Street seemed like the obvious choice. Not close it necessarily, he said, but reduce it to a single lane of traffic, and widen the sidewalks to make room for things like sidewalk cafés. He suggested using B and Main as the anchor and let it spread from there. He also suggested using Main Street as a civic space and if, for example, it was closed, create a civic plaza without having to buy new land.



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Chair Loché said a more recent survey by the Hayward Youth Commission asked what teens would like to see locally and the consensus was a bowling alley.

Question 2—If safety is a key component to a downtown, what are some things that make you feel safe in downtown, i.e. adequate lighting, public gathering spaces, police presence, 24-hour businesses, ground floor residential units and entry doors/windows on the street, etc.?

Chair Loché said personally, he would feel safer if there were less empty businesses downtown. He acknowledged that was out of their control, but said that thriving businesses would make him, and a lot of other people, feel safer.

Commissioner Mendall said he also recently visited downtown Livermore and he was ecstatic because structurally, the downtown was very similar to Hayward's. He said, however, it had a totally different feel. He said he and his wife talked about what made the feel of it so different from Hayward and one thing he noticed was all of the shops and restaurants had lots of glass in the front and people walking by could see all the way to the back. As a woman, his wife said being able to see in made her feel safer about going inside. That made sense even for him, he said, and it made him realize that he also felt more comfortable to be on the outside because he knew the people inside could see the sidewalk. He said the buildings in downtown Hayward have glass but not the depth of vision, or the window displays block the view into the building, so people don't get the same benefit. Commissioner Mendall said architecturally, it starts with the windows and the visibility.

Commissioner McDermott said personal safety was important to encourage people to come outside. When the downtown area is empty, she said, and there are very few people on the street, people feel vulnerable to crime because no one would see you or see that you needed help. She pointed out that in downtown Hayward, as much as BART can be a plus, it can also create a problem with transients. She gave an example of a person fleeing from BART police and running into a local business she was also in. There was no back exit and she said she felt very vulnerable. She concluded by saying that personal safety was a key component to getting people to come outside.

Commissioner Márquez said lighting was crucial both on the sidewalks and within the businesses. She mentioned that the Chamber of Commerce had ambassadors that walked downtown streets on the weekends and she suggested partnering with the Chamber to have ambassadors available more often. Commissioner Márquez said a strong police presence wasn't needed, but it wouldn't hurt to see a police car drive by every 20 or 30 minutes on the main streets to know they were close.

Commissioner Faria agreed that safety came in numbers. She also noted that downtown had several parks and some people might be uncomfortable about going into the parks because of the transients that tend to occupy them. She suggested moving them along to make downtown more comfortable for families. She also recalled on a recent trip to San Antonio that they had an ambassador program where the volunteers would approach tourists and give them information and coupons. Commissioner Faria concluded saying that lighting set a tone and created atmosphere and during the holidays, pretty lights in trees and windows were welcoming and could encourage people to come downtown.

Commissioner Lavelle said the two safety items mentioned that she concurred with most strongly were filling the empty store fronts and the problem of vagrants and transients smoking and drinking downtown. She also pointed out that there were four or five high schools in town and suggested students work with the Chamber

or the City to earn community service credits by being downtown ambassadors. Commissioner Lavelle said the City had terrific parking options, but most were behind buildings. She suggested the student ambassadors could direct traffic toward the lots and then provide information about restaurants and activities. Commissioner Lavelle said the main problem downtown was the population of homeless or people needing services. She said the City needed to find ways to get those services to those people, or provide more services, so vagrants and troublemakers didn't cause crime or worries to visitors downtown.

Commissioner McDermott said she had been approached in a parking lot by a homeless person or transient asking for money and suddenly having someone behind her was frightening. She commented that in San Francisco and Santana Row in San Jose, there are enough people around that she didn't feel as threatened when someone approaches her and asks for money. Commissioner McDermott said the City's recent "Taste of Hayward" event brought families and couples downtown and into restaurants and she said that was a very positive thing. She said the City needed more events like that.

Question 3—Do you feel there adequate open space and recreational opportunities in downtown or in proximity to downtown? If no, any suggestions for ways to incorporate more or what types of open space and recreational opportunities would you like to see?

Commissioner Márquez said the City had a unique opportunity to partner with HARD to use empty buildings downtown to draw youth in for events or activities like Battle of the Bands. She said downtown needed a building that could be used for community events, things like Thanksgiving dinners, annual activities, Gymboree programs for young children, gymnastic; a multi-use space that HARD could run. Commissioner Márquez pointed out there were no recreational options downtown, like a gym, and if there was a big enough community building maybe HARD could incorporate a gym within that facility (with discounted fees for Hayward residents).

Commissioner Mendall said Councilwoman Halliday mentioned the possibility of HARD looking for a new location for the Repertory Theater and he commented that would be a wonderful thing to bring downtown. He pointed out that the theater could be used for some of the other uses suggested by Commissioner Márquez.

Commissioner Lavelle asked the other Commissioners if any of them had walked along the Embarcadero in San Francisco by the Ferry Building and the ballpark. She said Hayward should encourage walking, since many people come here via BART, and she suggested dedicating a side of the sidewalk or a pathway with arrows or historic markers that visitors and residents could enjoy. She also suggested bicycle lanes where appropriate. Commissioner Lavelle said when the "loop" was completed, the City will want to make sure that visitors—walking, bicycling and driving—know the best route through the downtown and if they could pick up some coupons for local restaurants while walking that would be great.

Question 4—How often do you come to downtown, other than for business purposes? What types of uses would encourage you to spend more time downtown?

Commissioner Mendall said he comes downtown to eat, but there was not much to do after eating. Food, entertainment, and art, he said, was the description of what the downtown core should offer, as well as going into a bar for a drink and window shopping. He said that would be the kind of downtown he would spend more time at. He also mentioned having teen-friendly businesses and a day spa would be nice.

Question 5—What do you think is the biggest obstacle to transforming the downtown to be more aligned with your vision?

Commissioner Lavelle said "Money." She said City staff, economic development, City Council, the Chamber of Commerce, and all businesses, need to do more—she said she wasn't sure exactly what—to outreach to



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bring investors to the community, to spend the money and realize that Hayward was a good place to invest. She said that was why downtowns like Pleasanton, Livermore, parts of Oakland, and the Peninsula were so successful was because the people who had the resources came in and fixed up the buildings and opened restaurants (a very large investment). She said for some reason those people don't feel so comfortable coming to Hayward and they need to be convinced by leaders in the community so the parts of downtown that didn't feel safe or weren't attractive could be overridden by the future vision of how Hayward could be.

Commissioner Mendall said he heard from leaders who work more closely with property owners, that there were a number of downtown property owners who weren't particularly interested in filling their buildings. He said he didn't understand why they would think that having a building that didn't produce any revenue was a good thing, but there did seem to be a lot of that going on and for a long time. He said the City needed to attack that problem directly. Commissioner Mendall said he didn't have a particular solution to propose, but suggested the City spend some time thinking about it and maybe create some financial disincentives for leaving buildings vacant, or incentives for filling them. He said the City needed to be creative to get some of the property owners off the fence rather than hold out for the perfect tenant. Commissioner Mendall said that until they fill the spaces, downtown was going to have gaps that make people feel unsafe and uncomfortable walking the full length of B Street, which they needed to be able to do.

Commissioner Márquez said that one of the things the City could start doing now was improving the lighting and clean up the parking lots already in use so people who were coming to downtown restaurants and businesses would feel safer. She noted that the art installations in the vacant building next to the theater were wonderful and had attracted a lot of people. She suggested thinking of other ways to attract people including collaborations with non-profits and different art venues to fill empty spaces downtown.

Chair Loché said one of things he liked about the art gallery near the theater was the glass front and like Commissioner Mendall said, that you can see in there. He agreed that the visibility added to the feeling of safety. Chair Loché said other obstacles included empty businesses and the homeless loitering in downtown and those were not simple issues to overcome. He said it would take a lot of creativity and ingenuity, but those were the biggest obstacles the City had in transforming downtown.

Question 6—What do you think are positive uses or building in downtown of which you would like to see more?

Commissioner Márquez said that she and her daughter had attended the Saturday program at Sun Gallery many times and she suggested bringing similar activities to one of the buildings downtown to attract families. She noted that the cost of that program was a suggested donation and the same could work with non-profit groups.

Commissioner Lavelle said HARD had a photo gallery, Photo Central, on E Street, but space was tight so she suggested displaying the work, or at least part of the exhibit, a little closer to downtown. She said for an earlier proposed project she had made a list of uses she would like to see downtown and the list included: theater or movies, a coffee or tea shop near theater, card or stationary store, kids toy and clothing shop, fancy pizzeria, chocolate shop, breakfast places, exercise facility, spa, art gallery and poetry space, more hair salons and a barber shop.

Commissioner McDermott said City Hall was a positive use downtown because of the events that were held there including sister city meetings, the "Light Up the Season" holiday celebration, and other private and

public events. She said driving by it was nice to see activity taking place and the number of people participating. She said the utilization of City Hall was a good example of using a public facility for many different types of events in the community. Commissioner McDermott said she also liked what the City did with the old Giuliani police building. A park was there now and esthetically, she said it was very nice, very appealing.

Commissioner Lavelle said the Farmers Market held downtown every Saturday morning was a fantastic family-friendly environment that encouraged people to visit businesses afterwards. She also mentioned the modern-style banners on downtown street poles and suggested either adding more or diversifying the existing banners.

Commissioner Mendall said the “Taste of Hayward” event was really wonderful, not only because it was a success, but because it showed what downtown could be, and should be. He said that if the City could hold more events like that, it would start to change how people think of downtown and he noted that that was a big part of what they were trying to do. Commissioner Mendall said cleaning up downtown and adding murals was helping; his coworkers would now come downtown to have lunch with him where they would not before. He then noted that when he was down in Livermore he barely noticed a chain link fence because plywood covered the fence and it was painted with artwork so it looked like an art display. Rather than a vacant lot with a chain link fence, he said the feel was totally different and it cost almost nothing to do. Other suggestions from Commissioner Mendall included having lit advertising signs in parking garages as a way to add light and have someone else pay for something other than a concrete wall; having art work for sale inside various businesses; and bringing a burger place to downtown. He remembered going on dates and having a movie and a burger. He said the perfect spot for a Johnny Rockets would be in the round corner building by Cinema Place facing Foothill Boulevard.

Commissioner McDermott suggested Val’s move downtown and Commissioner Mendall said that he would love to have Val’s to come downtown by either moving or opening a second restaurant. “That would be better than Johnny Rockets,” he said.

Commissioner Márquez said that one of the most underutilized areas was the grassy area outside of the main library. She said the City really needed to hold events there and suggested a Science In the Park event, or a jazz festival; any event that utilizes the space and has families bringing blankets, relaxing, and buying food. She also added that downtown needed an ice cream shop or ice creamery.

Commissioner Faria thanked staff for getting Cal State East Bay students involved in the Historic Preservation Program. She commented that when she heard that Cal Poly San Luis Obispo students were assisting with the downtown plan she wondered where the CSU East Bay students were and it was great to hear they were involved.

## **COMMISSION REPORTS**

### **3. Oral Report on Planning and Zoning Matters**

Planning Manager Patenaude gave a brief rundown of future meeting topics. He asked for feedback if the Commissioners wanted business cards. Mr. Patenaude said Commissioner Mendall asked him to bring up the issue of Anza Park along Foothill Boulevard where it crosses the San Lorenzo Creek. He said the pocket park was being renovated as part of the Route 238 improvements with new information about the Anza expedition. He said a community member had asked about the appropriateness of placing the materials at that location; he felt that was not the exact location. Mr. Patenaude said the intent of the plaques that would be placed there was to change the message from “this was the crossing location” to “the crossing happened in the area” because the exact trail was unknown, but Mr. Patenaude noted that the location was very visible.



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Commissioner Mendall said it would be nice to give the community member a call to see if that would be satisfactory.

4. Commissioners' Announcements, Referrals

Commissioner McDermott announced the upcoming Hayward Education Foundation "Count Me In" event on March 23<sup>rd</sup> at Cal State East Bay. She invited staff and department heads to show their support for education in Hayward by coming to the event. She said they would be absolutely amazed by the talent of students including artwork from Mt. Eden High School and the choir from Mt. Eden High School would perform.

**APPROVAL OF MINUTES**

5. The minutes of October 6, 2011 were approved with Commissioner Lamnin absent, Commissioner Faria abstaining, and one minor correction.

Commissioner Márquez clarified a comment captured in the minutes saying that she understood that Planning Commission meetings had been cancelled due to the economy and she hoped she wasn't putting a burden on Chair Loché by the additional meetings.

**ADJOURNMENT**

Chair Loché adjourned the meeting at 9:01 p.m.

**APPROVED:**

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Mariellen Faria, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk



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**MEETING**

A regular meeting of the Hayward Planning Commission was called to order at 7:04 p.m. by Chair Loché.

**ROLL CALL**

Present:	COMMISSIONERS:	Faria, Lavelle, Márquez, McDermott, Mendall
	CHAIRPERSON:	Loché
Absent:	COMMISSIONER:	Lamnin

Commissioner Márquez led in the Pledge of Allegiance.

Staff Members Present: Conneely, Koonze, Patenaude, Philis, Rizk

General Public Present: 17

**PUBLIC COMMENTS**

Doug Ligibel, Mesa Circle resident and member of the Downtown Neighborhood Watch, commented that Hayward property values had dropped another 10% and he said one of the problems was the Hayward Police Department was too small to deal with the crime in the City. He said the downtown clubs had generated a lot of police activity citing 46 calls for the Funky Monkey in one 12-month period, which was unacceptable. He did note, however, that ME Restaurant and Lounge was “trying to turn it around” and said he’d had dinner there earlier and the “food was fantastic.” After speaking with officers, Mr. Ligibel said the late-night problems were the concern and because Hayward had limited law enforcement resources, when an incident occurs downtown and the entire police force has to respond, downtown neighborhoods were left without any assistance. The Neighborhood Watch group works with HPD, BART police and County Sheriffs and he suggested the City work with all the businesses downtown to try to lessen the amount of police resources used for the B Street business district. He commended the owners of ME and also the Bijou, for their efforts. He pointed out that there were 8,000 registered voters that had been organized in the downtown area, and he said they wanted the Planning Commission to focus on public health and safety issues, specifically with the safety issues associated with the B Street business district.

Frank Goulart, with business address on Main Street, said he was following the Occupy Oakland movement and one of the group’s concern was the documentary transfer tax was not being paid on foreclosed properties therefore saving banks “oodles and oodles” of money. He noted that the Oakland City Council had control of whether or not the tax was being collected and he asked if the same thing was happening in the City of Hayward. He asked if the City could increase police, fire and library services by getting the banks to actually pay the tax.

## PUBLIC HEARING

1. **Zone Change Application PL-2011-0283 / Text Amendment Application PL-2011-0348 / Site Plan Review Application PL-2011-0215 – Stantec, Larry Tidball (Applicant) / Auto Mission Ltd. (Owner)** – Request for a zone change from High Density Residential District to General Commercial District, repeal the Mission Corridor Special Design Overlay District, and Site Plan Review associated with a proposed renovation of the Toyota Dealership.

The properties to be rezoned are 24690 through 24710 O'Neil Avenue, the properties of the Toyota Dealership also include 24760 and 24778 O'Neil Avenue and 24773 Mission Boulevard (Assessor's Parcel Nos. 444-36-34-3,44-6, 45-6, 46, 47 and 48), approximately 200 feet north of Orchard Avenue, on a through-lot having frontage on both Mission Boulevard and O'Neil Avenue. The Mission Corridor Special Design Overlay District Encompasses the Mission Boulevard Corridor between Jackson Street and Harder Road.

Associate Planner Tim Koonze gave a brief synopsis of the report noting that no comments had been received regarding the application.

Commissioner Lavelle asked what the consequence would be if the special design corridor was removed. She said she was trying to envision what it would look like to a person travelling along Mission Boulevard, which they were trying to improve, and she said the proposed design of the dealership was very modern, very stylish and would look significantly different from the Spanish design of existing car dealerships. She said the contrast between older dealerships and empty lots could be jarring if the proposed design for Toyota was approved, and she asked what could be done to smooth the flow from one dealer to the next. She also asked if future developments would be able to use any design and could Volkswagen and Honda remodel their dealerships to look more modern. Associate Planner Koonze explained that if the design overlay was removed, existing dealerships could remodel to a more modern design of their choosing with City approval. Mr. Koonze reminded the Commission that the City was proposing a form-based code along the Mission Corridor similar to the one approved in the South Hayward BART station area and noted the same architectural design principles would be incorporated into this area.

Planner Manager Richard Patenaude said the bottom line was that the design overlay was going to disappear anyway when the Form-based code was adopted. Commissioner Lavelle confirmed that there was no need to adhere to the existing design overlay once the form-based code was adopted and Mr. Patenaude said that was correct.

Commissioner Lavelle asked for confirmation that neighbors along O'Neil were notified about the proposed changes, in particular the car wash, and Mr. Koonze said the car wash was mentioned in the notice and stated that no comments were received and he reiterated that the car wash already complied with the noise study and Toyota proposed to add a sound wall. Commissioner Lavelle commented that there was a lot of activity in the area already and her main concern was that people had been notified. She asked if any comments had been received from the other major car dealerships about the application and staff said no.

Commissioner McDermott commented that she was concerned about design flexibility and said it was her understanding that the flexibility would become available in 2012 anyway and all the Commission was doing by allowing the proposed exception was let Toyota make the changes earlier. Planning Manager Patenaude said that was correct and he noted that the City had received several applications for building remodels including a proposal from Chavez Market for a more contemporary design of the old Smart and Final space.



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Commissioner McDermott confirmed that Toyota owned the two single-family and one multi-family residence on either side of the dealership. She then asked staff about the purpose of the car wash and why it needed to stay open until 9 p.m. Associate Planner Koonze said the hours stated in the conditions of approval resulted from the noise ordinance which limited noise to 70 decibels at the property line between the hours of 7 a.m. to 9 p.m. Mr. Koonze said the car wash hours were limited to match the ordinance and said the applicant could answer questions about the car wash. Commissioner McDermott asked if the proposed 8-foot wall would reduce noise and by how much, and Mr. Koonze stated that because the current noise levels were already below the maximum limit, the study did not address that question.

Regarding the noise ordinance and operating times, Commissioner Márquez asked what days of the week the car wash would be open and suggested including that information in the conditions. She said she liked the ramp in the front of the building and asked if there would be handicap-accessible restrooms and if any energy efficiency measures had been considered for the car wash. Associate Planner Koonze said that was best answered by the applicant. Commissioner Márquez asked if hours of construction were going to be restricted and Mr. Koonze said that could be added to the conditions, but noted a City ordinance restricted hours of construction already. Commissioner Márquez asked what those hours were and Planning Manager Patenaude said 7 a.m.-7 p.m. Monday-Friday, with shorter hours on weekends and holidays. Commissioner Márquez commented that the initial study checklist indicated that the City did not need approval from any other agency and she asked if the fire department was going to be consulted to confirm there was appropriate access to the dealership. Mr. Koonze explained that “no other agencies” meant agencies outside the City government such as California Fish and Game and Corp of Engineers.

Referring to Condition of Approval number 51, Commissioner McDermott asked what hazardous materials the condition was referring to and if the Fire Department had conducted a Phase I environmental review. Associate Planner Koonze said a Phase I study was conducted and an underground storage tank was found. He noted that the Fire Department had its own permitting process for the tank with regulations that would have to be met by Toyota. Planning Manager Patenaude said the City’s hazmat manager was satisfied with the progress on this issue.

Chair Loché noted that the car wash was located at the back of the property and he asked how close it was to the nearest residential unit. Associate Planner Koonze said approximately 80 to 100 feet, and noted that different locations on the lot were considered for the car wash but existing easements left them with no alternative.

Regarding Condition of Approval number 12, Commissioner Mendall pointed out that the condition required a 25-foot strip from the mid-point of a 50 foot-wide street, and he asked if that meant there was no change. Associate Planner Koonze explained that meant the 25-foot strip was less than that now and Toyota would have to dedicate up to that point. Commissioner Mendall said the purpose was to align the dedication of the expanded portion of the property with the existing properties and Mr. Koonze said that correct.

Chair Loché opened the Public Hearing at 7:34 p.m.

Larry Tidball, with Stantec Architecture, business address in Irvine, said he was representing Toyota and its desire to move forward with a dealership that would represent the Toyota brand and it would be an asset to the City. Mr. Tidball said the proposed design would be a good fit for the community and the Commission’s approval would let them move forward. Regarding the Honda and VW dealerships, Mr. Tidball said all car dealerships operate under a franchise agreement with the manufacturer and the manufacturer pressures them

to maintain a modern facility that matched image standards. He said the existing dealership didn't comply because it had an old building on a substandard-sized lot. Mr. Tidball said the owner had purchased the adjacent residentially-zoned properties so they could grow the business on-site and not have to move to another city. He said the owner wanted to remodel in Hayward and by meeting the Toyota standards they could continue to contribute to the community. Mr. Tidball said they designed the project to meet those corporate goals, comply with City ordinances and be a better neighbor than they could be in the existing facility. He said the upgrade would make the dealership customer-friendly, and energy efficient. He noted that car dealerships generate sales tax revenue and by improving the facility it could grow and have higher sales volumes.

Addressing some of the questions from Commissioners, Mr. Tidball pointed out that by allowing the text change, other dealerships and vacant properties would be able to remodel while still complying with the manufacturers. He noted that redesigning using the existing Spanish design would earn the dealership fewer compliance points with the manufacturer and therefore generate less incentive. Regarding days of operation, Mr. Tidball said the dealership was a seven-day-a-week business, with the car wash servicing vehicles coming in for repair. He noted that almost all the dealers wash cars as part of the service and customers have come to expect it. Chair Loché asked Mr. Tidball if the car wash would operate 7 a.m. to 9 p.m. and Mr. Tidball said he would let the General Manager respond to the question, but noted that when the service department became more successful, there might be extended service hours. Regarding the car wash, Mr. Tidball said the key thing was that it complied with all City noise standards and asked that those hours not be restricted. Regarding energy efficiency, Mr. Tidball said the car wash would be designed to recycle most of its water and both the building and the car wash were designed to comply with Hayward's green standards which were more restrictive than the state Title 24 requirements.

Regarding the underground storage tank, Mr. Tidball said the tank was from the 60s, had a leak and had long ago been removed, but there was still some contamination in the ground. He said the California Water Quality Resources Board was monitoring the case, and another company was periodically testing the water, reporting back to the State and working to continue the clean-up. Mr. Tidball said the project did not impact this process and all documents pertaining to the monitoring had been provided to the fire department.

Regarding Commissioner Mendall's question about the dedication, Mr. Tidball said the proposed dedication would straighten out the property line and allow for a continuous fence and landscaping along the rear of the property facing O'Neil Avenue.

Commissioner Mendall asked General Manager Joey Kohistani if the cars parked on the street near the driveway on the south side would be moved onto the lot with the expansion noting the driveway was very narrow with poor visibility due to the parked cars. Mr. Kohistani said the new design would modify the driveway and traffic in and out of the dealership would re-routed to O'Neil Avenue.

Commissioner McDermott asked Mr. Kohistani where the next closest Toyota dealership was located and he said Oakland and Fremont. Commissioner McDermott then asked about sales noting Toyota wouldn't invest in redesigning the dealership if it didn't make fiscal sense. Mr. Kohistani said it made fiscal sense and Toyota wanted them to remodel at this time. Commissioner McDermott said it was nice to see Toyota remodel the dealership and make it more modern and said she would be supporting the motion.

Chair Loché closed the Public Hearing at 7:47 p.m.

Commissioner Faria said she agreed with Commissioner McDermott that it was good to have businesses investing in Hayward. She also supported taking the delivery of vehicles on site and taking that activity off of O'Neil commenting that doing so would benefit the neighborhood and the residents who also invested in the area by buying new homes. She noted that no comments had been received from neighbors. Commissioner



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Faria concluded that the remodel would benefit the City, bring additional revenue, and beautify the area. She said the design would tie in with the dealerships located elsewhere and she would be supporting the proposal.

Commissioner Mendall echoed Commissioner Faria saying it was wonderful to see a business like Toyota recommitting to Hayward with the expansion and thought the plan was a good one. He said he was looking forward to getting his car washed the next time he brought his vehicle in for service, and he concluded by saying the expansion was a good thing for the dealership and for Hayward and that he would be supporting the motion.

Commissioner Mendall made a motion for the Planning Commission to recommend that the City Council: 1) adopt the Initial Study and Negative Declaration, 2) approve the zone change for three parcels fronting O'Neil Avenue from High Density Residential (RH) District to General Commercial (CG) District, 3) approve the Zoning Ordinance text amendment to repeal the Mission Corridor Special design Overlay (SD-2) district, and 4) approve the site plan review to expand and remodel the Toyota automobile dealership, based on the findings and conditions of approval.

Commissioner Márquez seconded the motion and asked if she could make a friendly amendment that limited the hours of car wash from 7 a.m. to 9 p.m., Monday-Friday, and add a condition that limited the hours of construction to comply with the municipal code. Chair Loché noted that the car wash was currently allowed to operate seven days a week and Commissioner Mendall said construction hours were already limited by the muni code so Commissioner Márquez withdrew both amendments.

Regarding the car wash, Chair Loché asked if, after construction was complete, the neighbors started to complain about the noise, the Planning Commission could restrict the hours of operation or ask for added noise reduction measures, and Planning Manager Patenaude said yes, the zoning ordinance had provisions for recalling projects for reconsideration if adverse effects were later found.

Commissioner Lavelle said she fully supported the motion and said she looked forward to the improvements. She said it was very important that no resident had objected, and it was critical for the Planning Commission and City Council to support business in Hayward. She said the design was very stylish and modern and looked similar to the dealership in Milpitas which was very successful. Commissioner Lavelle also noted that the color scheme was the same as Cal State East Bay Pioneers, and suggested Toyota tie in their marketing to the university. She concluded that the next time she shopped for a hybrid vehicle she would be excited to check out Toyota, a leader in green energy, which the Commission supported.

Speaking on her second, Commissioner Márquez commended the dealership in keeping the property well-maintained and said she appreciated that the company wanted to invest in the City. She said she liked the design and commented that she worked in Oakland and passed the dealership there every day and the proposed improvements were part of branding and recognition. She congratulated them for wanting to pursue further endeavors in Hayward.

Chair Loché said he echoed the comments made by the other commissioners and said the stated purpose of the General Plan was to revitalize commercial areas. He noted that the City's autorow had been struggling and having Toyota "double down" and show with their dollars that this was where they wanted to be for some time was a pleasure to see. He said he was sure the structure would be appealing, but commented that it would look vastly different from the buildings already in the area. He said that knowing that the form-based

code was pending approval gave him faith that future development would have a guide in that area. He concluded saying he would be supporting the motion.

The motion passed 6:0:1 (Lamnin absent).

AYES: Commissioners Faria, Márquez, Mendall, McDermott, Lavelle  
Chair Loché  
NOES:  
ABSENT: Commissioner Lamnin  
ABSTAINED:

2. **Conditional Use Permit No. PL-2011-0334** – One year review of operations of ME Restaurant and Lounge and modifications of conditions of approval.

The property is located at 926 B Street.

Commissioner Márquez said she would be recusing herself due to her family owning property in the area.

Chair Loché explained that the applicant had been given the opportunity to hold the item to a future date since only five commissioners were present. The applicant indicated that they would like to proceed.

Planning Manager Patenaude gave a brief synopsis of the report noting another review was recommended in one year unless there were significant issues that arose before then that required the review of the Planning Director.

Commissioner Mendall confirmed that nightclub operations were still limited to only two days a week, but dancing and alcohol were allowed the other five days a week, so he asked staff to explain the difference. Planning Manager Patenaude explained that a conditional use permit (CUP) was only required because of those two days a week that the establishment operated as a nightclub. If ME was only operating as a full-service restaurant, he said, a CUP would not be necessary. Mr. Patenaude commented that the establishment was a hybrid-type of situation to begin with and the staff recommendation was to allow them to have more nightclub-type activities during the week but with earlier hours. Mr. Patenaude said the types of events being held during the week had been more inter-generational and the proposed changes would allow them to accommodate private parties under the provisions of the CUP. Mr. Patenaude pointed out that the hybrid situation wasn't covered under the ordinance and ultimately staff was recommending extension of nightclub operations. Commissioner Mendall said certain conditions applied only when ME was operating as a nightclub, for example, providing additional security, and he asked if those conditions would now apply seven days a week. Planning Manager Patenaude said staff hadn't recommended any change and that was something the commission could consider during their deliberations. Commissioner Mendall said he had a number of questions for the Hayward Police Department representative.

Commissioner Faria asked if staff had received any feedback from neighboring businesses and Planning Manager Patenaude said no comments were received, but noted the president of the Chamber of Commerce was in the audience and could comment on the business community reaction.

Commissioner Lavelle asked why the applicant was requesting in and out privileges be allowed. Planning Manager Patenaude said the applicant would be able to address specific experiences related to the request, but noted that patrons may have articles of clothing or items that they want to return to their vehicles, and the proprietor would make the decision on a case by case basis. Commissioner Lavelle confirmed that staff was recommending that reentry only be allowed only if patrons were rescreened, and whether or not they have to repay would be determined by the applicant. Commissioner Lavelle also asked for clarification from staff on



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why a DJ was allowed Sunday through Thursday until 10 p.m., but that activity did not fall under nightclub activities. Planning Manager Patenaude said the City was calling that nightclub operations, but was imposing different times because of the impact on resources.

Director of Development Services David Rizk said the major difference was the hours that allowed the additional activities, and that was based on staff recommendation and input from the police department. He also noted that the definition of the hours, in terms of the use permit, come straight from California Department of Alcoholic Beverage Control (ABC) regulations, which define nightclub activity taking place between 9 p.m. to 2 a.m. He also noted that future Council and Commission work sessions would include discussions about revising some ABC regulations.

Commissioner Lavelle confirmed that the same activities could occur throughout the week, the only difference was Friday and Saturday they could go until 2 a.m. Planning Manager Patenaude said yes, noting there was a “different mood” to the event depending on what night it was. Commissioner Lavelle commented that the owner had asked to extend alcohol service until 2 a.m., but staff was recommending that service continue to end at 1:30 a.m. and Mr. Patenaude explained that that would give the patron time to finish their last drink and provide a “cool down” period before closing. Commissioner Lavelle said police resources would need to be considered and asked the police representative to comment on shift change timing and the impact of additional activities on services.

Commissioner Lavelle asked if staff had visited the business to observe how it was operating as a restaurant and asked staff to comment on whether food service had increased and had been successful, or if food service was only auxiliary to the main entertainment purposes. Planning Manager Patenaude said it would be appropriate for the applicant to comment on the food service and he emphasized that their ABC license required that 50% or more of receipts come from food service.

Commissioner McDermott noted that the only violation of existing conditions noted in the report had to do with security licensing and she asked for more information. Planning Manager Patenaude said that Hayward Police Department (HPD) representative Detective Ryan Cantrell could respond. Commissioner McDermott asked how the City could ensure the violation wouldn't happen again and if security licenses were registered with HPD. Director of Development Services Rizk suggested Officer Cantrell address the commission.

Commissioner McDermott asked staff to answer one more question, regarding Condition of Approval number 42, which stated that live music could be amplified. She asked what did that do in regards to the noise ordinance. Planning Manager Patenaude said in order to comply with the City's noise ordinance, music must not be experienced outside of the establishment. He explained that the noise ordinance did not specifically address background music and live entertainment issues at restaurants, so this condition allowed ME to have live and amplified background music as part of their everyday operations, as long as it was in compliance with the noise ordinance.

Chair Loché asked staff to comment on whether they were concerned that allowing in and out privileges could contribute to loitering. Planning Manager Patenaude responded that Planning and Police staff had met several times to develop the report's recommendations, and that had never been expressed as a concern. Mr. Patenaude noted that allowing in and out privileges could alleviate some of the negative experiences patrons had when they needed to run to their car and then were not allowed back in.

Commissioner Faria said she also had concerns regarding in and out privileges and expressed concern that when handled on a case by case basis, some patrons may be dissatisfied that rules were applied fairly. She asked if there would be guidelines for security at the door. Planning Manager Patenaude stated that the condition required security staff to complete ABC training for alcohol and drug detection, but noted that ME staff would have the final decision of whether or not to let a patron back in and that would, most likely, be based on the condition of the patron. Commissioner Faria said she was concerned about consistency and Mr. Patenaude said the owner could respond.

Commissioner Lavelle noted that the staff recommendation for condition 43 included later hours for select holidays and some Sundays. She expressed concern about the condition language and asked why Halloween and New Year's Eve were specifically on the list. Planning Manager Patenaude explained that those holidays were associated with a specific type of party and had been called out by the owner. Commissioner Lavelle pointed out that in Hayward, Cinco de Mayo was frequently celebrated, and she liked St. Patrick's Day, and she asked if other holidays would be accommodated that were not Monday, national holidays, if the applicant wanted, or was the applicant only requesting Halloween and New Year's Eve. Planning Manager Patenaude said the zoning ordinance allowed the Planning Director to make adjustments to conditions of approval so the applicant could come back and request other holidays later. Commissioner Lavelle pointed out that the condition currently stated that dancing was allowed until 2 a.m. on national holidays, which could be interpreted to mean that the party started on the Monday holiday and went until 2 a.m. Tuesday rather than starting on Sunday and going until 2 a.m. Monday. Mr. Patenaude said if the national holiday was on Monday, the language would allow the 9 p.m. to 2 a.m. operation, and noted it was difficult to craft specific language. Commissioner Lavelle expressed concern that the owner would be restrictive on Sundays, but Mr. Patenaude said that a national holiday provision would trump the currently stated Sunday hours.

Commissioner Mendall asked if there was any expense to the applicant for the public hearing and Planning Manager Patenaude said yes, time and materials. Commissioner Mendall asked for an estimate of cost and Mr. Patenaude said a \$700 deposit was required and any amount beyond that would be billed. Commissioner Mendall expressed concern about the applicant having to pay again for the review next year and Mr. Patenaude said the typical use permit deposit was \$5,000 and that was an average. Commissioner Mendall asked if the review by staff a year from now would be less expensive and Mr. Patenaude said yes, quite a bit less, but the cost could go up if the review was referred back to the Planning Commission or if the applicant requested additional changes to the conditions.

Chair Loché invited Detective Ryan Cantrell to approach the podium.

Commissioner Lavelle asked Officer Cantrell about shift changes particularly on Friday and Saturday evenings. Officer Cantrell explained that there wasn't a shift change, but a decrease in officers at 2 a.m. when the swing shift went off-duty. Commissioner Lavelle said that information reinforced the recommendation by staff to maintain the 1:30 a.m. last call.

Commissioner Mendall said 26 incidences in the last year, as cited in the report, seemed high and he asked why HPD was comfortable with that number. Officer Cantrell explained that while writing reports, patrol officers now ask patrons where they are coming from and how much they have had to drink. When going to ABC for revocation review, he said that information gives HPD leverage by providing documentation and may explain why statistically the number seemed higher than in the past. Officer Cantrell pointed out that the 26 incidences at ME Lounge and Restaurant equaled less than one incident per week and other locations had many, many more. Officer Cantrell also noted that none of the incidents were "critical" and the drain on police services assessment was based on the number of critical incidents. He noted that both in uniform, watching reports come across his desk, and undercover at the site, his personal assessment was the number of calls for the types of services requested was not a concern.



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Commissioner Mendall said he would expect the number of incidents to go up if nightclub activities were extended to additional nights and Officer Cantrell noted that ME was not asking to extend nightclub activities as much as they were asking to hold private parties during the week and allow dancing. Officer Cantrell pointed out that the CUP required a security plan for events with over 200 guests and that plan would be reviewed by HPD.

Commissioner Mendall asked Officer Cantrell to comment on the issue of ME security staff not having the proper credentials as noted in the staff report. Officer Cantrell explained that because ME contracted with a private security company, guard staff had to be licensed with the state. During a sweep, he said, two security operators working the line in a security capacity were found not to be credentialed with the State of California Consumer Affairs. The employees were cited and HPD met with management to discuss the requirement.

Commissioner Mendall said a downtown Neighborhood Watch member told him that a critical incident involving a shooting occurred within the first six months of ME Lounge and Restaurant opening. Officer Cantrell said that there had been more than one incident involving firearms, but nothing could be directly linked to the premise, and nothing was found that indicated that ME provoked the incident, which was the basis for license revocation by the ABC.

Regarding in and out privileges, Commissioner Mendall asked Officer Cantrell how HPD felt about the request, what was their experience, and what were their concerns. Officer Cantrell pointed out that because the condition was in the CUP originally, someone must have felt it was an issue. Officer Cantrell said in his experience, how the results of this privilege were handled was based on the responsibility of the applicant. He said he didn't see it being an issue as long as ME understood they would have to continue to monitor loitering and lines and where patrons were going. Officer Cantrell explained that the applicant was requesting the privilege because patrons were getting upset when they couldn't leave to put something in their car or they had left and found out they couldn't come back in. Officer Cantrell pointed out that if the privilege becomes a problem, then HPD would definitely want to review the CUP in one year. He also noted that now that smoking is prohibited, the number of patrons leaving the club to smoke had also declined and anyone loitering in front of the club, in general, needed to move along. Commissioner Mendall said he thought the purpose of the condition was to prevent drug sales. Officer Cantrell said more commonly, a patron would leave to get high and then come back, but he noted the screening process could catch that.

Chair Loché asked if the ABC LEAD training would help ME staff more effectively determine what was going on during the screening process and Officer Cantrell said some training was better than nothing, but having a continued liaison between the establishment and HPD was the most effective tool.

Commissioner McDermott said ME contracted with a private security company and it was that company's responsibility to make sure security personnel were licensed. She asked what kind of responsibility did ME have if they had a contract with a company that provided unlicensed guards. Officer Cantrell said discussions between HPD and ME at the time emphasized that ME owners needed to take a proactive role in making sure that everyone working in a security capacity was licensed. Commissioner McDermott asked how they could confirm that guards were licensed and Officer Cantrell said they would need to ask to see the license of each and every security guard and he said he emphasized this to ME owners that this was part of the responsibility of meeting the CUP. Commissioner McDermott asked if guards carry a card and Officer Cantrell said yes and that it looked like a driver's license.

Chair Loché opened the Public Hearing at 8:47 p.m.

Monica Thompkins, Stonehaven Court resident, and owner of the ME Lounge and Restaurant, noted the accomplishments of the past year and having stayed true to their vision for ME including bringing new life to downtown, offering a restaurant that provided excellent food and family dining, and creating a multi-event facility with an atmosphere that appealed to a diversity of customers. In response to earlier questions about the restaurant, Ms. Thompkins said, as originally proposed, ME has offered weekly specials and recently participated in the Restaurant Walk and "Taste of Hayward." Based on feedback and customer comments, Ms. Thompkins said they had expanded and finalized their menu while maintaining reasonable prices. She said that a restaurant was always their priority, but due to economics, it was also their intention to provide full-service multi-venues. Ms. Thompkins listed the events held at ME, including wedding receptions, political events, retirement parties, and birthday parties, and noted that all were private events that were also about the food. She emphasized that the restaurant was their priority and noted parties were not allowed to bring in outside food. Regarding diversity and various holidays, she said ME did have a St. Patrick's Day event and celebrated diversity and all groups. She said ME also supported local non-profit organizations and gave back to the community by holding fundraisers.

Ms. Thompkins said she understood the Commission's concerns about the lounge, but noted the restaurant, the community, and providing other entertainment, was what they were all about. She noted that 51% of work staff lived in Hayward including her. She pointed out that ME was contributing tax dollars and would continue to contribute as the business grew.

Regarding security, Ms. Thompkins said she was building a team by working together with HPD to preserve the safety of the community. She said she wanted people to experience pleasure and feel safe at her establishment and noted that both she and her husband maintained their top secret security clearances. Regarding in and out privileges, Ms. Thompkins said the original condition stated that she had to charge the returning patron again, and all she was asking was that not be a stipulation. She said they wanted to maintain order and didn't want the confusion of people going in and out, but said there were circumstances when patrons needed to go out and they shouldn't have to pay to come back in. She said a sign was posted at the entrance of ME stating no in and out privileges and only a few exceptions would be made.

Regarding the request for additional days with extended hours, Ms. Thompkins explained that there was a Cinco de Mayo program and it wouldn't have been a celebration without dancing. She reiterated that she was not requesting a nightclub setting every day of the week, she was asking to be able to host events that allow dancing. For example, she said on Tuesdays they have Chicago stepping classes from 7-9 p.m. Students have fun, she said, often celebrating birthdays and each other's company and want to stay later. Under the current conditions she said she cannot be a part of these events, or host these events. Ms. Thompkins noted that staff was requesting an extension to 10 p.m., but she was requesting midnight.

In conclusion, Ms. Thompkins said she wanted ME Restaurant and Lounge to be a reputable, mainstay business in the City of Hayward where customers can come and consistently get great food, entertainment and feel safe.

Commissioner Mendall asked Ms. Thompkins if the in and out policy was going to change and she said no, she just didn't want to have to charge patrons to come back in. Commissioner Mendall asked her what the extended hours and having dancing would change. Ms. Thompkins explained that the stepping dance class was a perfect example because the extended hours would allow students to socialize after and enjoy some food. Commissioner Mendall asked if there would be a cover charge some nights during the week and Ms. Thompkins said that was possible, but currently there was no charge for the salsa classes. Referring to Commissioner Lavelle's comments she said if, for example, there was a holiday event there might be a cover charge. Commissioner Mendall asked her if she would hold the event on Monday night and she said no, the event would be held Sunday night. Another example, she said was Thanksgiving; technically she couldn't have a night event on Thursday and that was a popular night to lounge and visit with family. Under current



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conditions she couldn't do anything, and she concluded that it was not just for nightclub activities that she was requesting the change.

Chair Loché said in the report, the stated intent of allowing in and out privileges was to maintain club safety and he asked for clarification on how that privilege would improve safety. Ms. Thompkins reiterated that in and out privileges wouldn't change. Chair Loché suggested that a patron might get angry and cause an issue because they needed to turn their car lights off and then door staff wanted to charge them to come back in and Ms. Thompkins said yes, it was just a simple oversight and she didn't feel patrons should have to double pay. She agreed with Chair Loché that allowing in and out privileges, under some circumstances, would keep patrons happy and give ME staff discretion to enforce a zero tolerance policy.

Chair Loché noted the staff recommendation wanted the two drink minimum be switched to a food service requirement and he asked Ms. Thompkins for her opinion. Ms. Thompkins explained that the original condition prohibited her from collecting a cover charge on nights other than Friday and Saturday and on Sundays they have a comedy show that costs them money to provide. She pointed out that once patrons get in, she can't force them to purchase food or drinks. By having a two drink minimum or food service purchase, she said, they could pay for the event. She acknowledged that having a two drink minimum rather than a cover charge was a play on words, but stated that people didn't like cover charges. Another problem, she said, was patrons would only drink water on Sundays; she needed them to purchase something, whether it was food or drinks, to generate revenue to pay for the entertainment.

Floyd Hood, Castro Valley resident, spoke in support of the ME Restaurant and Lounge. Mr. Hood said ME Lounge was one of the most unique places he'd seen in a long time and would definitely recommend it to someone looking to go out. He said the entertainment was superb and they had a beautiful setting. Mr. Hood said he supported the owners and hoped they'd be around for a long time.

Denise Jeffrey, Atherton Place resident, also spoke in support of ME Lounge. Ms. Jeffrey said she had lived on Atherton Place for 16 years and when first saw ME Lounge was a club she said she had concerns, but concerns led to action and she went and checked it out. She was pleased with what she found, and actually held her father's 80<sup>th</sup> birthday party there. "Loads of 80 years-olds" attended and they felt safe, she said, and she felt safe for them and appreciated the close proximity of the parking lot. Ms. Jeffrey said she was also one of the "mature persons" who partakes in the stepping class and she said that now that she was retired, it was a wonderful thing to go out on a Tuesday evening to learn how to dance. She said she had also participated in wine tasting event that was extremely enjoyable with great food and people of different ages. Ms. Jeffrey said one big concern she had when she moved to Hayward was whether or not it would be diverse; a place where she could feel comfortable to retire and have fun. She said she was very pleased, and comfortable, with the layout of downtown and the venues on B Street. She concluded by saying ME Lounge would continue to have her support, noting it was very safe and comfortable there.

Kim Huggett, business address on Main Street, and president of Chamber of Commerce, said there were 600 businesses and organizations in the Chamber and he knew of a couple of them that would benefit from a workshop on how to run a safe, professional operation from Monica. He brought the list of community service activities the ME Restaurant had participated in including the recent Restaurant Walk which benefitted Leadership Hayward and the after-school library program. Mr. Huggett also noted that for the last two years ME Restaurant had hosted the City and Chamber's Police Officer, Firefighter, Educator and Businessperson of the Year Awards. He said that spoke to the fact that ME was becoming an institution where important civic events were held. Regarding how other businesses in the area felt about ME, Mr.

Huggett pointed out there were six empty storefronts across from ME, so he said the City was fortunate they had some energy on that end of the street. He mentioned the recent event to discuss the City's downtown plan and said what they didn't want was a dead, dark street. He said the Chamber worked extraordinarily hard to bring businesses and families downtown and that was why he was encouraging and urging the Commission to support the endeavors of ME Restaurant and Lounge.

Frank Goulart, with business address on Main Street, said ME Restaurant owners had been his neighbor for the last two years and he knew the minute they started construction that "these people have vision." He said he really liked these folks, and the City could trust them to not push it further than they say they would. He said the patrons he had seen were well-dressed and not at all like the patrons of Kumbala, noting that establishment was really a problem for the City. Mr. Goulart said what ME was requesting was really nightclub activities and he said those activities should be seven nights a week. He said the whole street should be an entertainment zone if it was run properly and he said the folks at ME were "on top of things" when it came to security. He agreed with Commissioner McDermott that when ME hired a private security company they expected them to be licensed, so he said he could "cut them some slack." He noted that the biggest transformation had been Municipal Parking Lot 1; when he first moved in, he said it was horrible with debris everywhere. He explained that Joe and Monica have a guy out there every day picking up garbage and now the parking lot was looking good. They didn't need to do that, but they did, he said, noting that with some landscaping, the lot would look great. He said that although he didn't go downtown in the late evening, when he was down there it looked peaceful, he sees their security walking around, and that was the kind of thing that needed to happen if the downtown was going to be an entertainment zone. Regarding in and out privileges, Mr. Goulart pointed out that the biggest complaint he's heard about the Blues Festival was that people couldn't leave and come back. He said it didn't have a problem with in and outs especially if ME security rechecks patrons. He said he imagined people eating at ME Restaurant, leaving to see some art or a show, and then coming back later for entertainment. He concluded by saying, "Be nice to these folks, they are gems. They're really, really good for Hayward."

Martha Miramontes, a resident of Oakland, representing Ballet Folklorico Las Estrellas, read a letter of support from their director, Tony Starr. She read a statement that said, in part, that dancing and music were tools to educate the youth in the community about the rich Mexican culture. She read that on several occasions, ME Lounge had not only provided a location for fundraising events, they had also donated food, refreshments, and gifts for the raffle. Over \$3500 was raised at each event, she read, and the parents, students, and Mr. Starr were immensely grateful for their generosity. The letter concluded by wishing the Thompkins the "very best in their business" and hoped the relationship continued.

Evelyn Allen, a resident of Fremont, representing the "older set" and the New Hope Baptist Church in Oakland that the Thompkins also attend, read a letter from the administrative minister, Mr. Cunningham, who also wrote in support of ME Restaurant. After reading the letter, Ms. Allen noted that although she was a resident of Fremont, she had spoken in support of ME when they first applied, because she meets her friends from Oakland halfway in Hayward and they have been attending the comedy show, and enjoying the buffet, every last Sunday of the month. Ms. Allen said the comedy was nice and clean and as a group of 65 to 75 year-olds, where else could they go? Ms. Allen concluded by saying "I don't know how much longer I'll be here, but however long they're there, and I'm here, I'll be there."

Avni Desai, a representative for CommPre (Community Prevention for Alcohol-Related Problems) with business address on B Street, stated that CommPre supported local business and economic growth for Hayward and for ME, but asked that the Commission also consider public welfare, the character of the zoning district, and the public health and safety, which was in the findings for approval. She expressed concern regarding the change in the conditions including in and out privileges which could lead to public intoxication, more opportunities for confrontation outside of the establishment, and bar hopping which could lead to unregulated drinking. She asked how policing of in and out privileges would be assured, how loitering would be dealt with, and if going in and out was not that prominent, why make it a condition. She said noise



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levels outside would increase and security would be tied up with rescreening patrons for drugs and weapons instead monitoring conditions inside.

Regarding condition number 32, Ms. Desai said it didn't support public health and welfare and asked what the minimum purchase requirement meant, asked how it would be tracked and whether or not food would be offered at all times when alcohol was offered. She said having this requirement would contribute to problems CommPre already saw. Ms. Desai said to recover their costs a cover charge should be allowed Sunday through Thursday because any type of minimum purchase encouraged more drinking which would create a higher risk environment.

Regarding condition number 41, Ms. Desai said allowing entertainment until 10 p.m. Sunday through Thursday was a concern and she showed the Commission an advertisement on Facebook for an event at ME that stated it would end after 11:30 p.m. and she pointed out that current conditions require events to end at 9 p.m. She also noted \$1 shot ads from 6-9 p.m. on Facebook and asked how that was "family-friendly." She stated that having the conditions in place was an added protection that afforded the Planning Commission the power to regulate and keep police resources low and she asked if easing the conditions would offer the same protection and what kind of revenue the City wanted to generate. Referring back to the Facebook ad, Ms. Desai pointed out that a \$15 cover charge was noted, the event went past 11:30 p.m., and the word "gang" appeared in the text of the ad.

Ms. Thompkins approached the podium and Chair Loché asked her to address the flyer that was just presented. Regarding the flyer, Ms. Thompkins explained that was a private event and ME was closed. She also noted that outside security was never allowed at her facility; her security plan remained in effect at all times no matter what the event. She noted that in the original conditions of approval, it never stated that they couldn't hold a private event, it just couldn't be a ME event. She noted that no proceeds from the event went to ME, she was just paid a facility fee and ME provided security.

Commissioner Mendall asked Planning Manager Patenaude to respond to Ms. Thompkins' comments about the private party and keeping to the existing conditions. Mr. Patenaude explained that the conditions were exclusionary and if there was no stated allowance for something then it was not permitted. Mr. Patenaude said that was why the Commission was looking at reasonable changes to accommodate events and facilities that were deemed positive for the community. Commissioner Mendall said that did not answer his question, and Mr. Patenaude reiterated that if the conditions didn't state private events were allowed, then they were not allowed. Commissioner Mendall commented that perhaps a conversation needed to take place.

DaBora Lovitt, a Diamond Ridge Drive resident, said she was a 21-year homeowner, business owner and a commissioner for Alameda County on human relations, and she spoke in support of ME Restaurant and Lounge. She explained that as a business owner she conducted networking at ME; and as a member of two non-profit organizations she had held fundraisers and award ceremonies at ME. She said the ceremony was a fabulous affair and the food was always excellent. At church on Sunday, she said, one of the members who performed comedy, announced to the membership of over 1000, the comedy event at ME and that the show was open to youth. Ms. Lovitt said the food at ME was impeccable, and staff was always professional with personalized service that made ME Restaurant and Lounge a place where both the consumers and residents of the City of Hayward could come enjoy, have fun, be a part of the community, and build a business that was committed to supporting Hayward. She said she thoroughly enjoyed her time at ME and was in support of the Commission's decision to help continue ME as an investment in the community.

Chair Loché closed the Public Hearing at 9:37 p.m.

Commissioner McDermott stated that she was also a business person and doing business in today's economy was most certainly a challenge. A challenge, she said, to maintain a business, and for that business to be profitable. Commissioner McDermott said it was the Commission's responsibility to consider safety issues and with the testimony from police, and based on the history of ME, she said the Commission should be supportive of the businesses in Hayward, but it was incumbent on them that the issues of safety were not jeopardized. Commissioner McDermott said the Commission had to give the business a chance to expand and based on their history, and that they were not an unknown business. She commended their community outreach and noted they had demonstrated their commitment to the City. She concluded by saying the safety issue had been well addressed and their security plan, although somewhat flawed, had been corrected and they had been made aware of the risks involved.

Commissioner Lavelle thanked everyone for coming down to speak and said it was helpful to hear from fellow residents and business patrons. She noted it was significant that they didn't hear from any residents opposed to the proposed changes. Commissioner Lavelle noted she was one of the skeptics when the application first came before the Commission and had now changed her opinion based on the comments made and ME's track record over the past year. She recalled a former commissioner, who was also a downtown business owner, tell them to give a chance to a Hayward resident to bring a new business forward and give an opportunity for success, which she said had been demonstrated by ME.

Commissioner Lavelle said one of the most important comments in the report was, if the recommendation to change the conditions was approved, the operations of the business would be reviewed by staff and the police department in one year. She said it was incumbent upon them to make sure staff did follow up with that review and let the commission know if any significant elements or reportable topics had come up and that ME was adhering to conditions. Commissioner Lavelle noted that one of the successes of the evening was that the Commission found out that the stringent conditions had been met for the most part. She commented that the report from HPD that there were 26 incident at ME over a year period was not very many for an establishment open every day. She concluded by saying that for the most part, she wanted to support the hard-fought changes the staff had worked with the business to develop. She said she was very impressed with the Planning Department that staff did not just take the requests from the business owner and say "OK!" She said the report showed they went back and forth and didn't just accept them all.

Commissioner Lavelle made a motion to approve staff recommendation that the Planning Commission find the proposed project was categorically exempt from environmental review in accordance with the California Environmental Quality Act (CEQA) guidelines, Section 15301, Existing Facilities, and approve the proposed modifications to the Conditions of Approval of Conditional Use Permit PL-2011-0334, subject to the findings in the report. She made one amendment to Condition number 43 to offer ME the opportunity to allow dancing until late hours Friday, Saturday, Halloween, New Year's Eve, July 4<sup>th</sup>, Cinco de Mayo and St. Patrick's Day, and on Sunday evening's prior to Monday holidays from 9 p.m. to 2 a.m.; Sunday through Thursday 5 to 10 p.m., and past 10 p.m. for private events approved by the Police Department. She noted that would allow for additional late hours on select Sundays when there was a holiday the following day. Commissioner Mendall seconded the motion.

Commissioner Lavelle said she had had concerns about allowing in and out privileges, noting at the time of the original application it seemed reasonable to prohibit in and outs to avoid illegal activities, however, the example given by the business owner seemed reasonable as long as security reviewed the returning patron. She noted that whether or not ME was doing that effectively was what staff should inquiry about in one year. Commissioner Lavelle said she was satisfied with the verbal commitment from the business owner that the current rules of no in and out will continue. She wished Club ME continued success and that, in the future, it be surrounded by other businesses.



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Council Chambers  
Thursday, November 17, 2011, 7:00 p.m.  
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Regarding the proposed amendment to the motion, Planning Manager Patenaude said the day before the holiday may not always be Sunday so he suggested the wording “including the night proceeding the national holiday.” Commissioner Lavelle asked about when July 4<sup>th</sup> was on a Wednesday night, would they allow the evening before and Mr. Patenaude said yes. Commissioner Lavelle asked about Thanksgiving, which is always on a Thursday night, confirming late activities would be allowed Wednesday night but not Thursday night and Mr. Patenaude corrected the language to include the day of the national holiday and the amendment would add the night before. Commissioner Mendall asked for clarification, noting that was not the intent of her amendment, and Commissioner Lavelle confirmed that she meant the Sunday night before a Monday holiday, and for holidays not on Mondays, the evening before the holiday should be allowed. She added that if they were talking about Memorial Day or Labor Day, she said ME didn’t need to be open on the Monday of the holiday until 2 o’clock in the morning. Commissioner Mendell said he agreed with that. Commissioner Lavelle asked what was the point of being open until 2 a.m. if the majority of patrons had to go to work the next day.

Chair Loché said that made sense, but personally he would not have an issue with allowing the holiday and the day before. He pointed out that they were not talking about a lot of days. Commissioner Lavelle pointed out that holidays like Cinco de Mayo were always on the same day of the month and would be celebrated that day.

Planning Manager Patenaude pointed out that including the night before would allow a late night and the proposed changes to the conditions already allowed the day of the national holiday. He also noted that the applicant had stated that the intent, and probably the market, call for a late night on the holiday itself because patrons were returning to work. Commissioner Lavelle said in that case, they could leave it to the discretion of the owner. Mr. Patenaude mentioned that another example that might be difficult to word otherwise was Thanksgiving because many people had the following Friday off. Chair Loché reiterated that he didn’t have an issue with both nights being allowed or leaving it to the owner’s discretion. Commissioner Lavelle asked Mr. Patenaude to repeat the language.

Planning Manager Patenaude stated: “Dancing is permitted on Friday, Saturday, Halloween, New Year’s Eve, on national holidays, including the night proceeding the national holiday from 9 p.m. to 2 a.m. and on Sunday through Thursday from 5 to 10 p.m. and past 10 p.m. at private events as approved by the police department.” He noted he had not added in the other holidays Commissioner Lavelle had mentioned in her motion.

Commissioner Lavelle said it went beyond her original intent, but noted that was one the simplest ways she had heard it said so far so she said she would go along with that wording. Commissioner Mendall said he was fine with that noting they were only talking about eight days.

Commissioner Faria commended Ms. Thompkins and her family for making the business successful and demonstrating that they had fulfilled the restrictions that were set up and their commitment to the City. She reiterated that one of their primary concerns was the safety of everyone who used the downtown area as well as the establishment. Commissioner Faria also commented that if the police department’s evaluation was favorable and the impact on their resources had not been overwhelmed, then she accepted that and would be supporting the proposal.

Commissioner Mendall said he seconded the motion and was obviously in support, but he had a couple of minor condition changes he wanted to make. He asked that Condition 52 be changed to allow solar collectors on the roof. Commissioner Mendall also asked that the condition that, when they were able to, allowed HPD to review security camera footage remotely at Chalk it Up billiard hall, also be added to ME Restaurant and Lounge. He said that once the police department was able to make use of that signal so if there was a call, they could look and see what was going on inside the club before the officer gets there. He said that could be very helpful to officers arriving at the scene. Commissioner Lavelle reminded Commissioner Mendall that the reason they added that condition to Chalk It Up was because it was located below ground. When you drive by Club ME, she said, they have big windows and you can look right in. Commissioner Lavelle asked the owner if she would be OK with that condition and Ms. Thompkins said she had no objection but noted there was clear visual for police approaching the building. Commissioner Mendall acknowledged the situation was different, but said he still wanted the condition added if the owner was willing.

Commissioner Mendall said when the application first came before the Commission he was supportive then and said if anyone could run a nightclub responsibly and well in the downtown it would be Ms. Thompkins and her company. He said she proved that and the City's trust was well placed and he appreciated that. He said the in and out privileges made him a little nervous, but not with this owner because she had proven she would operate the business in a responsible way and the way she said she would, as Mr. Goulart pointed out they won't push it. Commissioner Mendall said he really appreciated that Ms. Thompkins had followed through and was running the business in the way she described it originally. He said he was glad to see that she was following through on all her commitments and he looked forward to ME Restaurant and Lounge being part of downtown for a long time. "We need more entertainment downtown. We need a nightlife downtown and we need it to be safe and the ME Restaurant and Lounge has proven that it's part of that solution," he said.

Chair Loché said he echoed most of what the other Commissioners had said and noted that when the Commission first heard the application more than a year ago the meeting was pretty contentious with a lot of back and forth and a lot of people who were not happy to see this business coming to Hayward. "Obviously a lot of minds have changed," he said. Chair Loché said he supported ME at that time, even though he had concerns, but he felt the business owner deserved a shot, especially given her background in security. Personally, he said, ME owners had exceeded his expectations and he was happy to see that. He said he was also happy with what staff had done in regards to the recommendations. Chair Loché noted ME was a sort of hybrid business that served a number of purposes and the Commission would have to gradually allow the owner to expand the business while at the same time attempt to guarantee public safety. He said that was not easy to do and going forward there more small changes would be probably be made, but the applicant had clearly shown their dedication and ability to run the business very well. Chair Loché he would be supporting the motion.

Commissioner Mendall told Chair Loché he ran the meeting well; that he gave everyone a little extra time noting the difficulty of the issues. He said staff had done a wonderful job and he hoped everyone could come away happy. He noted that the Commission had seen what happened when a nightclub was run poorly, so it was wonderful to see everyone working together to make sure the City had a nightclub that was run well. Commissioner Mendall thanked Officer Cantrell for providing the police department perspective.

The motion passed 5:0:2 (Lamnin absent and Márquez abstaining).

AYES:	Commissioners Faria, Mendall, McDermott, Lavelle Chair Loché
NOES:	
ABSENT:	Commissioner Lamnin
ABSTAINED:	Commissioner Márquez



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**COMMISSION REPORTS**

3. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude reminded the Commissioners and viewers that City was closed next week due to furlough time and Thanksgiving. He also noted that the December 1<sup>st</sup> Planning Commission was cancelled due to Light Up the Season and invited all to come out and enjoy the festivities. Mr. Patenaude announced that the next meeting would be December 15<sup>th</sup>.

4. Commissioners' Announcements, Referrals

Commissioner Mendall repeated Mr. Goulart's question about documentary transfer tax and whether it was being paid on foreclosures and asked staff for report back at the next meeting.

Commissioner Faria mentioned that she participated in the downtown planning event the previous Saturday, and she commended staff for their outstanding work and said it was a pleasure working with the CalPoly students. She said a number of community members also participated and great visual aids helped everyone see some of the different recommendations and probabilities with a lot of exchange. Commissioner Faria said the event worked out really well and was successful. Planning Manager Patenaude, speaking for himself and Director of Development Services Rizk, commended Senior Planner Sara Buizer for her efforts on that project. Commissioner Faria asked when the Commission would see feedback in regards to their findings and Mr. Patenaude said a focus group was meeting December 3<sup>rd</sup>, and Mr. Rizk said a community workshop would be held in February and a joint meeting of Council and Planning Commission would take place in March.

**APPROVAL OF MINUTES**

5. None

**ADJOURNMENT**

Chair Loché adjourned the meeting at 10:05 p.m.

**APPROVED:**

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Mariellen Faria, Secretary  
Planning Commissioner

**ATTEST:**

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Suzanne Philis, Senior Secretary  
Office of the City Clerk