



CITY OF  
**HAYWARD**  
HEART OF THE BAY

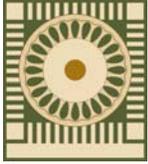
**PLANNING COMMISSION**

**DECEMBER 13, 2012**

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

**AGENDA**  
**SPECIAL HAYWARD PLANNING COMMISSION MEETING**  
**THURSDAY, DECEMBER 13, 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**

**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. For agenda item No. 2, the Planning Commission may make a recommendation to the City Council.

1. Site Plan Review No. PL- 2012-0342 – Electric Guard Dog (Applicant)/ California Auto Dealers Exchange (Owner) – An appeal of Planning Director's decision to deny the installation of an electric security fence. The project is located at 967 Industrial Parkway West, westerly of Huntwood Avenue, in the Industrial (I) District.

[Staff Report](#)

[Attachment I - Area Map](#)

[Attachment II - Aerial Photo of Property and Surrounding Area](#)



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.

- [Attachment III - Findings for Denial](#)
- [Attachment IV - Appeal Letter](#)
- [Attachment V - Site Plan](#)
- [Attachment VI - Fence Elevation](#)
- [Attachment VII - Electric Fence Warning Sign](#)
- [Attachment VIII - Electric Fence Safety Reports](#)

2. Blue Rock (Stonebrae) Country Club Development Agreement - Request to amend the Development Agreement by extending its term for five years. The project is located southeasterly of the intersection of Fairview Avenue and Hayward Boulevard along Walpert Ridge.

- [Staff Report](#)
- [Attachment I - Draft Development Agreement Amendment](#)

**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 section of the agenda).

**WORK SESSION:**

3. Recommended Revisions to Hayward's Alcohol Beverage Outlet Regulations

- [Staff Report](#)
- [Attachment I - Existing Regulations](#)
- [Attachment II - 1-24-12 Joint WS Minutes](#)
- [Attachment III - 6-19-12 CCWS Minutes](#)
- [Attachment IV - Res 12-106](#)
- [Attachment V - ABC License Types](#)
- [Attachment VI - Map](#)
- [Attachment VII - Summary Table](#)
- [Attachment VIII - Linda Pratt Letter](#)
- [Attachment IX - Letter from Richard Ersted](#)

**COMMISSION REPORTS:**

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

**APPROVAL OF MINUTES**

6. [November 15, 2012](#)

**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:** December 13, 2012

**TO:** Planning Commission

**FROM:** Arlynn J. Camire, Associate Planner

**SUBJECT:** **Site Plan Review No. PL- 2012-0342 – Electric Guard Dog (Applicant)/ California Auto Dealers Exchange (Owner) – An appeal of Planning Director’s decision to deny the installation of an electric security fence.**

The project is located at 967 Industrial Parkway West, westerly of Huntwood Avenue, in the Industrial (I) District.

### **RECOMMENDATION**

That the Planning Commission finds that the proposed project is Statutorily Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15303(e), New Construction or Conversion of Small Structures, and upholds the Planning Director’s decision and denies the application, subject to the attached findings (Attachment III).

### **SUMMARY**

On April 19, 2012, the *Electric Guard Dog* company applied for a building permit, proposing to install an electric security fence on top of an existing wall and behind an existing chain link security fence that surrounds the perimeter of California Auto Dealers Exchange. The property is used for the storage of vehicles for Manhiem Auto Auction. On September 20, 2012, the Planning Director determined the fence was not an allowed use in the Zoning Ordinance, since electric fences are not specifically listed as allowed and standards for such fencing are not contained in the ordinance (as is the case with barbed or razor wire fences), and due to potential danger to emergency responders and surrounding property residents and visitors, especially related to this proposal setting policy. The applicant subsequently appealed the Planning Director’s determination, requiring a hearing before the Planning Commission.

### **BACKGROUND**

The applicant proposes an electric security fence at the California Auto Dealers Exchange in the Industrial (I) Zoning District. Fences, in general, are a permitted secondary use in the Industrial District. The Zoning Ordinance provides the regulations for fences, hedges, and walls, including location and height. The Zoning Ordinance also addresses the use of barbed or razor wire where additional security is desired. However, electric fencing is not specifically listed as a security option. Since the City of Hayward Zoning Ordinance is an exclusionary document, meaning that uses that are not listed are prohibited, unless the Planning Director or the Planning Commission

determines that the proposed unlisted use is similar to and not more objectionable or intensive than the uses listed. The Planning Director determined that an electric fence is not similar to barbed or razor wire fences. Barbed or razor wire fencing provides an immediate visual cue to its presence, while electric security fencing may be unsuspected, causing harm and presenting a danger of accidental electrocution. Electric security fencing could also increase the danger and or hindrance to police and fire personal responding to alarms, in-progress thefts, fires or medical emergencies. Staff is also concerned with the approval of such fence prior to the establishment of City standards.

According to the Building Official, the California Electric Code is relatively silent on electric fencing except for the general requirement that a listed and labeled system must be used for any electrical system/fixture. According to the applicant, California Food and Agricultural Code Sections 17151-17153 permit non-lethal electric fencing. This code section states:

*Section 17151. As used in this chapter, "electrified fence" means any fence and appurtenant devices, including, but not limited to, fences and devices used in animal control, and including, but not limited to, a fence consisting of a single strand of wire supported by posts or other fixtures, which has an electrical charge or is connected to a source of electrical current and which is so designed or placed that a person or animal coming into contact with the conductive element of the fence receives an electrical shock.*

*Section 17152. No electrified fences shall be offered for sale, sold, installed, or used in this state, or otherwise connected to a source of electrical current, unless the electrical current is limited and regulated by an electrical controller which meets or exceeds the standards or specifications of the National Electrical Code of the National Fire Protection Association, the New Zealand Standards Institute, the Standards Association of Australia, or the Underwriters Laboratories for intermittent type electric fence or electrified fence controllers.*

*Section 17153. The provisions of this chapter shall not be construed to preclude regulation of electrified fences by cities and counties, including, but not limited to, requiring the installation or use of electrified fences under permit, except that such regulation shall not permit the installation or use of electrified fences which do not conform to the requirements of this chapter.*

According to an article ("Safety of Electric Security Fences" by John G. Webster, Professor Emeritus of Biomedical Engineering, The University of Wisconsin-Madison – Attachment VIII) submitted by the applicant, the electric security fence cannot cause ventricular fibrillations, or stop the heart, because the current flows for only .0003 seconds. However, if the environment is wet and the skin becomes wet, the skin's resistance is lowered and would permit a larger electric current to flow through the body. The current could be large enough to cause ventricular fibrillation and death. According to the article, the mere presence of a security fence discourages unlawful entry, theft, and the destruction of property.

The proposed electric fence business would be located along nearly all of the perimeter of the property. There are two types of barriers on the site: an 8-foot-tall wall along the adjacent property

boundaries, including the New England Village mobile home community, and a decorative metal fence along a portion of the Industrial Parkway West frontage.

## **DISCUSSION**

The proposal adds four feet of electrically charged security fencing on top of the existing eight-foot-tall block walls. The electric fencing will be mounted on the interior of the wall such that it is located twelve inches from any property line, including the common property line with the mobile home park. Along the street frontage, where there is decorative metal fencing, a new non-electric security fence would be located three inches behind the existing fence, and an electric fence would be installed on the existing masonry wall that is located 20 feet from the property line (see Attachment V).

The applicant has stated that the electric fence would be labeled with warning notices and it has been tested for the intended use. Warning signs would be spaced every 60 feet (Attachments VI and VII). The fence would be solar powered. The Building Official requests that if the fence is approved, that the applicant be required to hire a third-party testing agency approved by the City of Hayward.

In the event that the Hayward Police Department has to respond for a call for service for an incident inside this fenced area which would require the officer to hop the fence to gain access, or respond to an incident on the perimeter of this area for any emergency including natural disaster, shooting, etc., the safety of the officer and those in proximity of the fence would be in jeopardy. The Police Department is of the opinion that their ability to effectively do their job is also put at risk since they would have to wait for power to be cut off or wait for the property manager since first responders would not have the ability to cut power to the electric security fence.

Staff recommends that approval of the proposed type of fencing should follow the development of City regulations for such fencing. Such regulations could respond to both aesthetic and safety concerns. Staff had recommended that the applicant apply for a Zoning Text Amendment to incorporate regulations for electrified security fencing.

Site Plan Review Findings - In order for the application to be approved, the following findings must be made (Attachment III):

***A. The proposed use is compatible with on-site and surrounding uses and is an attractive addition to the City.***

As proposed, the electric security fence is not compatible with surrounding uses, especially the adjacent residential mobile home park use, and it is not an attractive addition to the City in that the fence presents a potential threat to adjacent mobile home park residents, first responders and those in proximity to the electric security fence.

***B. The proposal takes into consideration physical and environmental constraints.***

As proposed, the electric fence would act as an impediment to first responders, in addition to possible physical harm and possible electrocution to those who come in contact with the electric fence, if the environment is wet or someone were to come in contact with the fence and fall.

***C. The proposal complies with the intent of City development policies and regulations.***

The City of Hayward currently has no policies or regulations to regulate the use of the proposed type of fencing. Without such regulations, the Hayward Police Department (HPD) cannot support the proposal, because the electric security fence may not permit the Hayward Police Department and the Hayward Fire Department to effectively respond to calls for service in the event of a crime, fire, natural disaster or medical emergency. The fence would not allow the Police Department and the Fire Department to maintain their five-minute response time as called for by policy of the Public Utilities and Services Element in the General Plan.

***D. The proposal will be operated in a manner determined to be acceptable and compatible with surrounding development.***

Without the ability to judge the proposal against local policies and regulations regarding the use of the proposed security fencing, the proposed electric fence could require the California Auto Dealers Exchange to operate in a manner that would be unacceptable and compatible with the adjacent mobile home park and surrounding industrial uses in that in case of a fire or aftermath of a natural disaster, first responders may not be able to safely advert potential danger of fire or explosions due to the barrier of the electric fence.

*Environmental Review* - The proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) Guideline pursuant to Section 15303(e), New Construction or Conversion of Small Structures. The project meets the requirements of the exemption in that the Planning Director denied the building permit to install the electric fence and staff is recommending denial to the Planning Commission. If the Planning Commission indicates that it desires to approve the appeal, and approve the proposed fence, staff would return to the Planning Commission with findings for approval, conditions of approval and the appropriate CEQA determination.

## **PUBLIC CONTACT**

On November 29, 2012, a Notice of this Public Hearing was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest County Assessor's records. As of the date the Planning Commission staff report was prepared, the Planning staff had not received any comments.

## **NEXT STEPS**

The Planning Commission decision begins a 10-day appeal period. If the Planning Commission decision is appealed, the application would be scheduled for a public hearing before the City Council. Alternatively, if the application is denied, the applicant may submit a text change application that would specifically list electric security fencing as an allowed use and would establish standards for such fencing, which would be processed to Planning Commission and then City Council at public hearings.

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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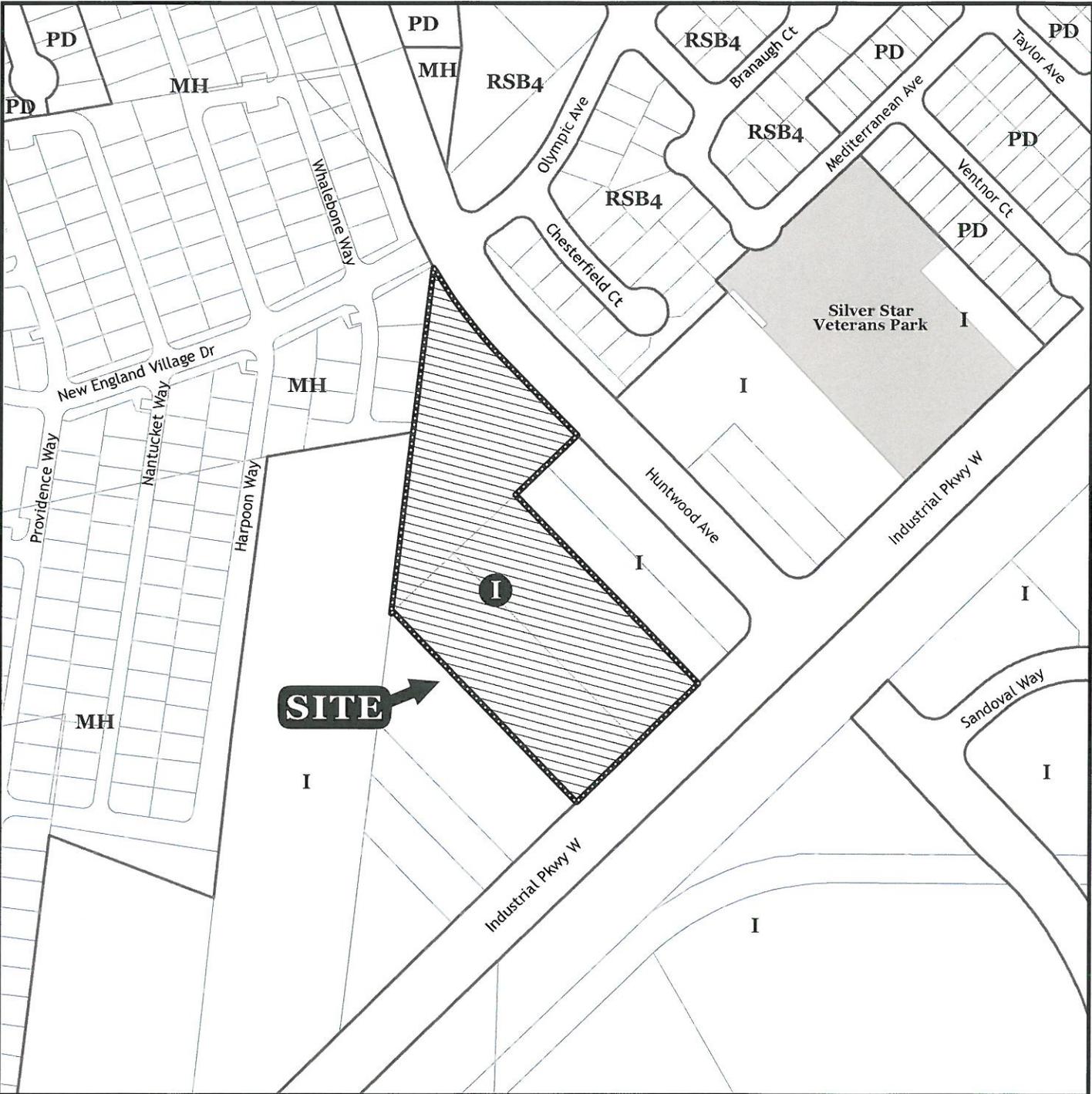
David Rizk, AICP  
Development Services Director

Attachments:

Attachment I	Area Map
Attachment II	Aerial Photo of Property and Surrounding Area
Attachment III	Findings for Denial for the Site Plan Review
Attachment IV	Appeal Letter dated September 20, 2012
Attachment V	Site Plan
Attachment VI	Elevation of Proposed Fence
Attachment VII	Electric Fence Warning Sign
Attachment VIII	Electric Fence Safety Reports submitted by the Applicant



# Area & Zoning Map



### PL-2012-0342 SPR

Address:  
967, 951 Industrial Parkway West

Applicant:  
Michael Pate

Owner:  
California Auto Dealers Exchange

### Zoning Classifications

- RESIDENTIAL**
- MH Mobile Home Park
- RSB4 Single Family Residential, min lot size 4000 sqft
- INDUSTRIAL**
- I Industrial
- OTHER**
- PD Planned Development





**SITE**

**PL-2012-0342 SPR**

Address:  
967, 951 Industrial Parkway West

Applicant:  
Michael Pate

Owner:  
California Auto Dealers Exchange



**CITY OF HAYWARD  
PLANNING DIVISION**

**December 13, 2012**

**Site Plan Review No. PL- 2012-0342 – Electric Guard Dog (Applicant)/ California Auto Dealers Exchange (Owner)** – An appeal of Planning Directions decision to deny the installation of an electric security fence at the California Auto Dealers Exchange.

The project is located at 967 Industrial Parkway West, at Huntwood Avenue, in the Industrial (I) Zoning District .

**FINDINGS FOR DENIAL**

***A. Disapproval of Site Plan Review No. PL-2012-0342 as proposed is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15303(e), New Construction or Conversion of Small Structures.***

***B. The proposed use is compatible with on-site and surrounding uses and is an attractive addition to the City.***

As proposed, the electric security fence is not compatible with surrounding uses, especially the adjacent residential mobile home park use, and it is not an attractive addition to the City in that the fence presents a potential threat to adjacent mobile home park residents, first responders and those in proximity to the electric security fence.

***C. The proposal takes into consideration physical and environmental constraints.***

As proposed, the electric fence would act as an impediment to first responders, in addition to possible physical harm and possible electrocution to those who come in contact with the electric fence, if the environment is wet or someone were to come in contact with the fence and fall.

***D. The proposal complies with the intent of City development policies and regulations.***

The City of Hayward currently has no policies or regulations to regulate the use of the proposed type of fencing. Without such regulations, the Hayward Police Department (HPD) cannot support the proposal, because the electric security fence may not permit the Hayward Police Department and the Hayward Fire Department to effectively respond to calls for service in the event of a crime, fire, natural disaster or medical emergency. The fence would not allow the Police Department and the Fire Department to maintain their five-minute response time as called for by policy of the Public Utilities and Services Element in the General Plan.

***E. The proposal will be operated in a manner determined to be acceptable and compatible with surrounding development.***

Without the ability to judge the proposal against local policies and regulations regarding the use of the proposed security fencing, the proposed electric fence could require the California Auto Dealers Exchange to operate in a manner that would be unacceptable and compatible with the adjacent mobile home park and surrounding industrial uses in that in case of a fire or aftermath of a natural disaster, first responders m not be able to safely advert potential danger of fire or explosions due to the barrier of the electric fence.



**The #1 Theft Deterrent Service in the U.S.**

121 Executive Center Drive • Suite 230

Columbia, SC 29210

(803) 404-6186 x (803) 404-5378

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September 20, 2012

City of Hayward, CA  
Department of Community and Economic Development  
777 B Street  
Hayward, CA 94541-5007

RE: Appeal to decision for proposed electric security fence at 967 Industrial Parkway, Building Permit application number Building Inspector-2012-1087

Mr. David Rizk:

Please accept this letter as official notification of our appeal. Enclosed is the \$7000 check required to initiate said appeal.

You are correct. Our security fencing is completely different from razor or barbed wire both of which can seriously maim people. Unlike those dangerous fencing types, our 100% medically safe security fencing is aesthetically pleasing in that it is almost invisible to vehicular traffic but when approached on foot (pedestrian traffic) we have visible signs which identify the fencing as being electrified using the international symbols for universal identification.

Furthermore, the safety of these devices is unparalleled as no deaths or serious injuries have occurred since the inception of UL69 in 1939 with installations consistent with the UL69 Standard. This can be confirmed through Joel Hawk, Principal Engineer of UL69, Underwriters Laboratories. Bill Fulcher of OSHA, Leader of Enforcement Programs, maintains a data base of accidental death from all causes and no incidents have occurred directly related to the proper installation and operation of an electric fence consistent with the UL69 standards. With the inclusion of a perimeter buffer fence, for all electric security fences as specified in IEC 60335-2-76, the risk of accidental contact is substantially lowered.

We spoke with your Chief Electrical Inspector and he agreed that a tested and labeled device such as ours would be permissible in Hayward. This evidence was presented to him as a condition of issuing a permit and he accepted it.

The Fire Marshal was also engaged about this system. His only concern was that a Knox device be used for emergency personnel access. He agreed to the installation of this system with inclusion of Knox device. Again, please accept this letter as official notification of our appeal to your decision.

Kindly,



Michael Pate

Electric Guard Dog

121 Executive Center Drive, Suite 230, Columbia, SC 29210

Cell: 803-422-3600 / Fax: 803-404-5378 / Email: [mpate@ELECTRICGUARDDOG.com](mailto:mpate@ELECTRICGUARDDOG.com)

**The Electric Guard Dog**

*The #1 Theft Deterrent Service in the U.S.*

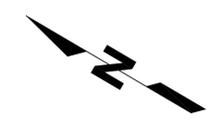
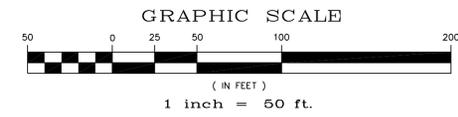
*Perimeter Security that **Stops** Crime Before it Happens*

# SITE PLAN

## REQUEST TO AUTHORIZE AN ELECTRICALLY-CHARGED SECURITY FENCE

### MANHIEM-HAYWARD

ID# 465-50-1-3, 7-3 & 9-3  
HAYWARD, CA 94544



LEGEND	
	ROW LINE
	CENTERLINE
	PROPERTY LINE
	EXISTING PAVED ROAD
	EXISTING DIRT ROAD
	EXISTING CMU WALL
	EXISTING SCREEN FENCE
	PROPOSED ELECTRIC FENCE
	LS LANDSCAPE

PROJECT DATA	
PROPERTY ID #	465-50-1-3, 7-3, 9-3
ACREAGE:	5.19 +/- NET ACRES 5.19 +/- GROSS ACRES
BUILDING FOOTPRINT:	37,462 TOTAL S.F.
LOT COVERAGE:	16.5% COVERAGE
ZONING:	EXISTING: IND-LM PROPOSED: IND-LM
MINIMUM SETBACKS:	FRONT - 10' REAR - 0' SIDE - 0'

**NOTE:**  
COMPLIES WITH FOOD AND AGRICULTURAL CODE - SECTION 17152

**NOTE:**  
WARNING SIGNS TO BE PLACED EVERY SIXTY (60) FEET

**WATER & SEWER:**  
THE UTILITIES FOR THIS PROPERTY. (WATER AND SEWER) AND PUBLIC. NO SEPTIC OR WELL.

**STORM DRAIN:**  
THERE IS NO EXISTING STORM DRAIN ADJACENT TO THE PROPERTY. NO STORM DRAIN IS BEING PROPOSED AS PART OF THIS PROJECT.

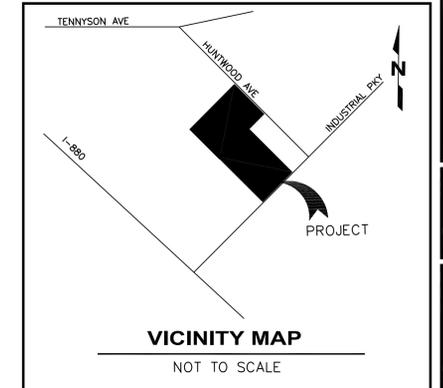
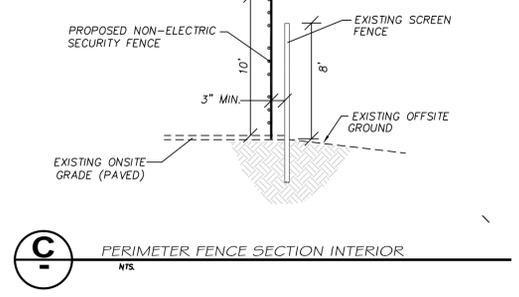
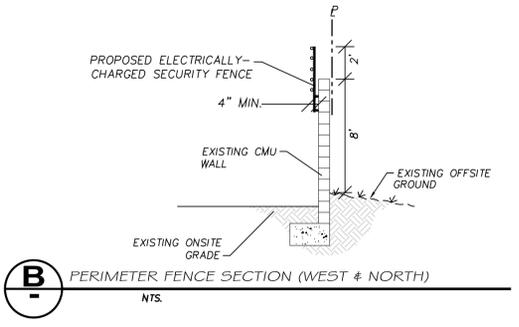
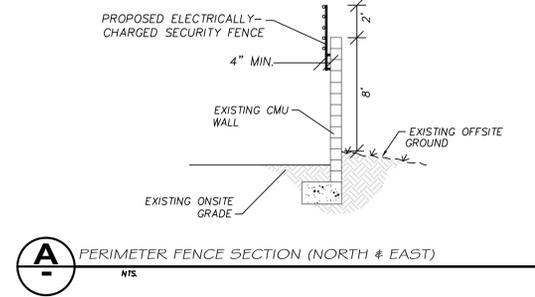
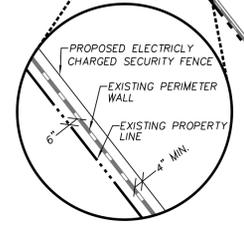
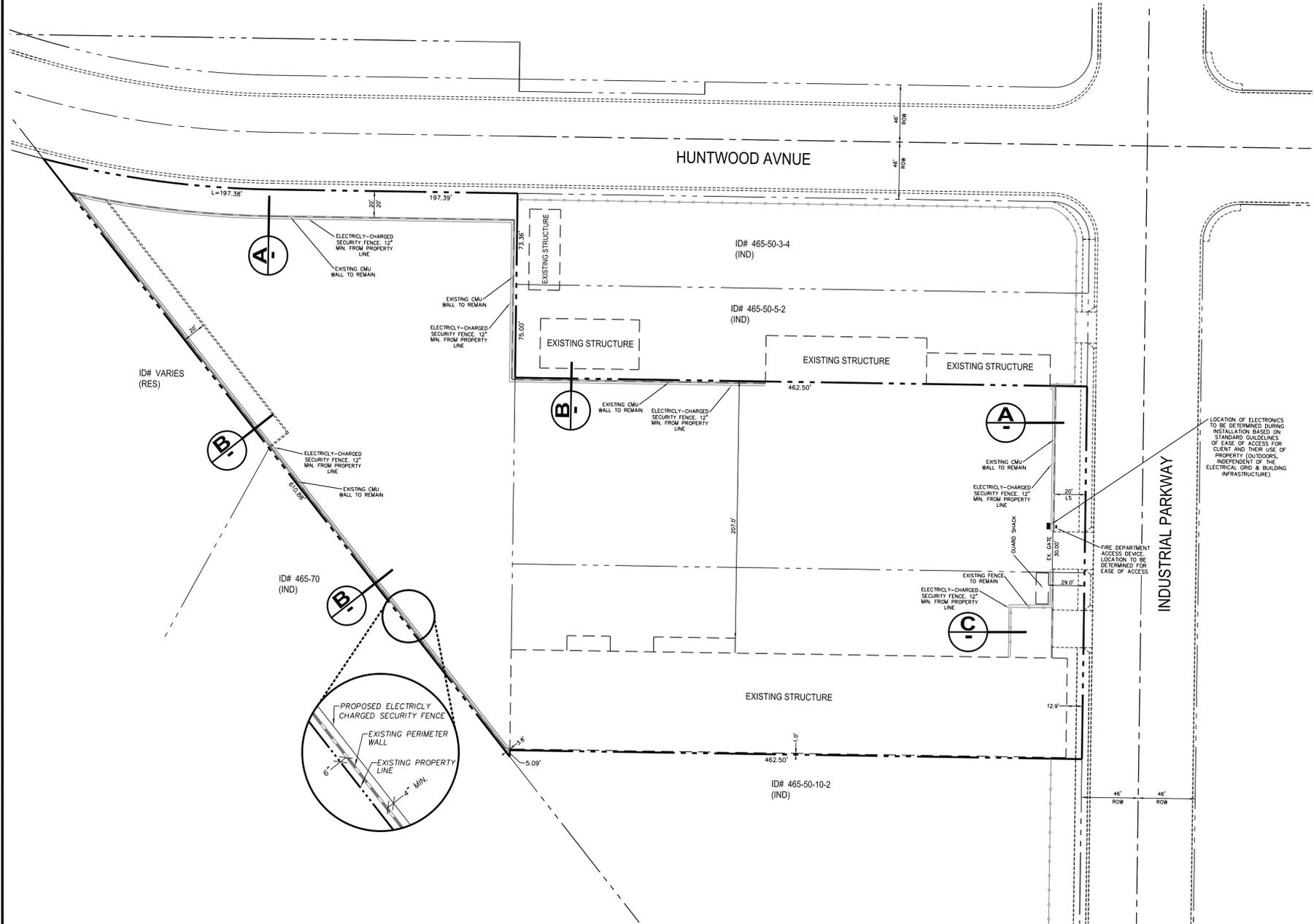
**UTILITY RIGHT-OF-WAY/EASEMENTS NOTE:**  
THERE ARE NO UTILITY RIGHT-OF-WAY OR EASEMENTS LOCATED ON THE PROPERTY.

**DRAINAGE/IRRIGATION NOTE:**  
A PORTION OF THIS PROPERTY IS LOCATED IN THE FLOOD PLAIN. THERE ARE NO IRRIGATION OR DRAINAGE EASEMENTS ON THE PROPERTY.

**LANDSCAPE/RESERVATIONS NOTE:**  
ALL COMMON AREA LANDSCAPE WILL BE MAINTAINED BY A LANDSCAPE MAINTENANCE ASSOCIATION. THERE ARE NO RESERVATIONS FOR PARKS, SCHOOLS OR OTHER PUBLIC USES.

**DEVELOPER**

MANHIEM  
967 INDUSTRIAL PARKWAY  
HAYWARD, CA 94544



#	DATE / DESCRIPTION



**Electric Guard Dog**

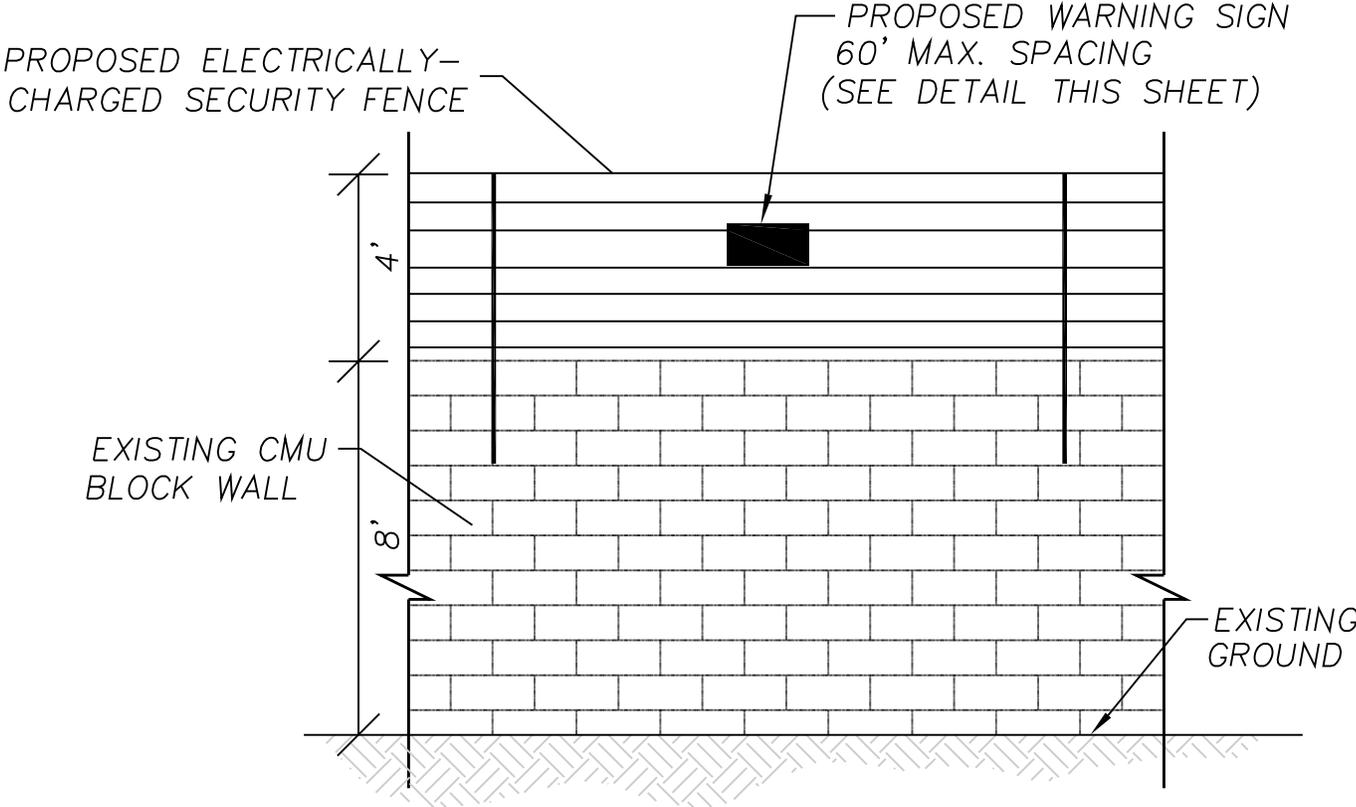
7608 Fairfield Road  
Columbia, SC 29203  
PHONE: 803-786-6333  
FAX: 803-404-5378

PROJECT: REQUEST TO AUTHORIZE AN ELECTRICALLY CHARGED SECURITY FENCE 967 INDUSTRIAL PARKWAY HAYWARD, CA 94544 PROP ID # 465-50-1-3, 7-3 & 9-3

SHEET TITLE: SITE PLAN

DATE: APR. 04, 2012  
SCALE: 1" = 50'

SHEET  
**1 OF 1**



EXISTING PERIMETER WALL ELEVATION  
NTS.





**ADDITIONAL SAFETY MEASURES**

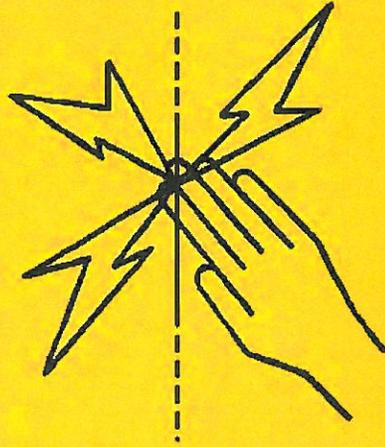
**Fence Warning Sign**

**WARNING ELECTRIC FENCE**

**PELIGRO de alta tension**

**Xin Luu Y Hang Rao Phat Dien**

**7,000 V**





## Safety of electric security fences

John G. Webster

Professor Emeritus of Biomedical Engineering

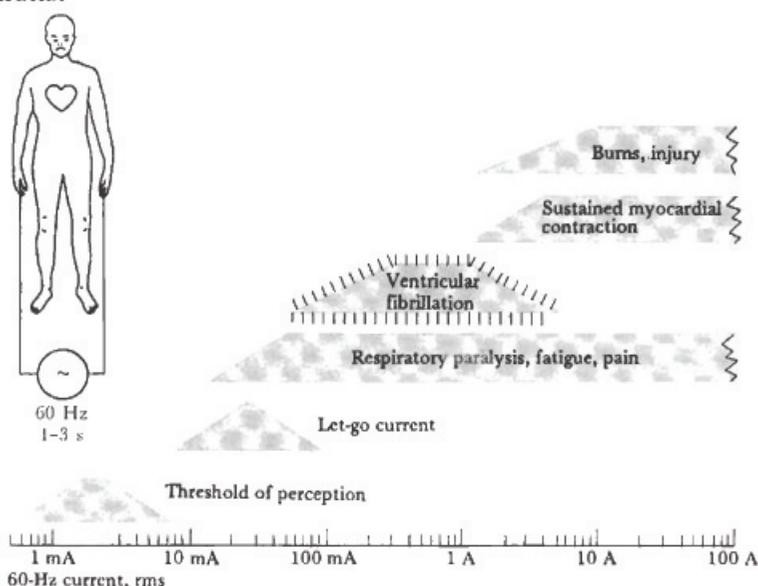
University of Wisconsin-Madison

Madison WI 53706

### Electric current shocks us, not voltage

Most of us can remember receiving an electric shock; it can happen during a regular day. How can that happen and when? Walking across a carpet during dry weather, then touching a doorknob and feeling a spark that jumps to the doorknob is a very common way. Placing a finger inside of a lamp socket that inadvertently was turned on is yet another. Touching the spark plug in a car or lawn mower has happened to many people as well. But why are we all still alive after receiving these electric shocks during a regular day? *We are still alive because even though the voltage is high, not enough electric current flowed through our heart.*

Even when the voltage is high, when the current flows for only a very short duration we can not be electrocuted. Furthermore, it is even hard to get electrocuted in the home because the power line voltage of 120 volts can't drive enough continuous current through the high resistance of our dry skin. Kitchens and bathrooms fall in a different category; they are dangerous places because our skin may be wet. When our skin is wet, our skin resistance is low and permits a large electric current to flow through the body as shown in Figure 1. A large enough current can cause ventricular fibrillation. During ventricular fibrillation the pumping action of the heart ceases and death occurs within minutes unless treated. In the United States, approximately 1000 deaths per year occur in accidents that involve cord-connected appliances in kitchens, bathrooms, and other wet locations.

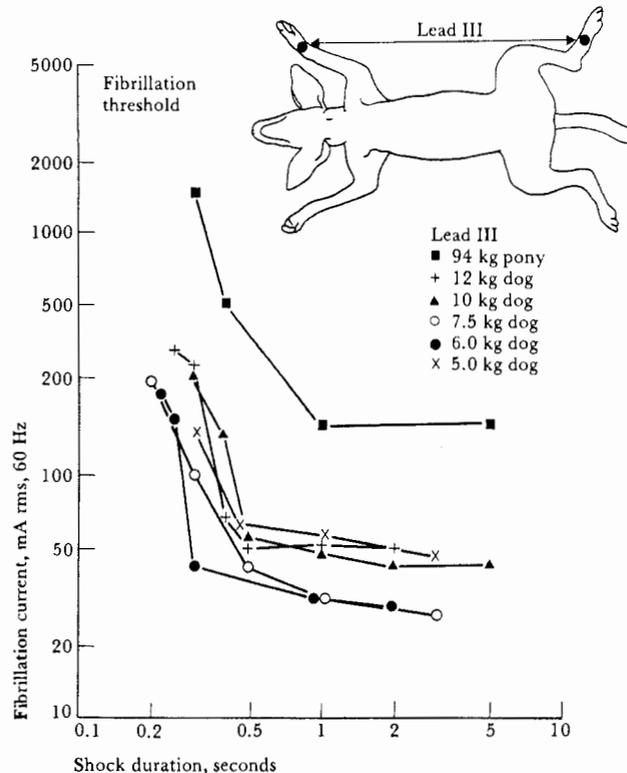


**Figure 1** Physiological effects of electricity. Threshold or estimated mean values are given for each effect in a 70 kg human for a 1- to 3 s exposure to 60 Hz current applied via copper wires grasped by the hands. From W. A. Olson, *Electrical Safety*, in J. G. Webster (ed.), *Medical Instrumentation Application and Design*, 3<sup>rd</sup> ed., New York: John Wiley & Sons, 1998.

Department of Biomedical Engineering

## Short duration pulses are safer than continuous electric current

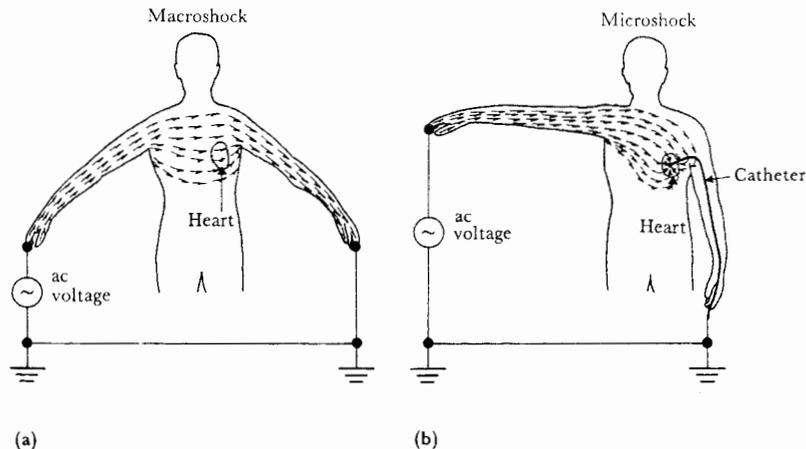
Figure 2 shows that shock durations longer than 1 second are the most dangerous. Note that as the shock duration is shortened to 0.2 seconds, it requires much more electric current to cause ventricular fibrillation. Electric security fences have taken advantage of this fact by shortening their shock duration to an even shorter duration of about 0.0003 seconds. Therefore, electric security fences are safe and do not lead to ventricular fibrillation due to the short 0.0003 second shock duration. .



**Figure 2** Thresholds for ventricular fibrillation in animals for 60-Hz ac current. Duration of current (0.2 to 5 s) and weight of animal body were varied. Fibrillation current versus shock duration for a 70 kg human is about 100 milliamperes for 5 second shock duration. It increases to about 800 milliamperes for 0.3 second shock duration. From L. A. Geddes, *IEEE Trans. Biomed. Eng.*, 1973, 20, 465–468.

## Electricity near the heart is most dangerous

There are four situations where electricity may be applied close to the heart. (1) Figure 3(b) shows when a catheter tube is threaded through a vein into the heart, any accidental current is focused within the heart and a small current can cause ventricular fibrillation. (2) Cardiac pacemakers also pass electric current inside the heart, but the current is kept so small that ventricular fibrillation does not occur. (3) A Taser weapon may rarely shoot a dart between the ribs very close to the heart and apply a 0.0001 second pulse, but this has not been shown to cause ventricular fibrillation. Typically when a person takes an overdose of drugs, he creates a disturbance, police are called, the person refuses to obey, the police Taser him, afterwards he dies of a drug overdose, and the newspapers report, “Man dies after Taser shot.” (4) A defibrillator applies a 0.005 second, 40 ampere electric current. This causes massive heart contraction that can change ventricular fibrillation to normal rhythm and save a life.



**Figure 3** Effect of entry points on current distribution. (a) *Macroshock*, externally applied current spreads throughout the body, (b) *Microshock*, all the current applied through an intracardiac catheter flows through the heart. From F. J. Weibell, "Electrical Safety in the Hospital," *Annals of Biomedical Engineering*, 1974, 2, 126–148.

When comparing an electric security fence to the above examples, we know that an electric security fence is similar to Figure 3(a). Why do we know that? If a person contacts an electric fence, electric current is concentrated in the limbs and causes a deterrent shock; when it continues to pass through the torso, it spreads out and becomes more diffuse. Therefore as shown in Figure 3(a) and in Figure 2 electric security fences are safe because the deterrent shock spreads out and becomes more diffuse and is of a very short duration.

**Only power lines cause ventricular fibrillation**

Table 1 shows that short duration electric pulses, even though applied near the heart do not cause ventricular fibrillation. In contrast, the continuous current from power lines kills 1000 persons per year.

**Table 1** Only power lines cause ventricular fibrillation

	Duration of pulse in seconds	Current in amperes	Likely to be applied near heart?	Caused ventricular fibrillation?
Power lines	Continuous	0.1	No	1000 per year
Electric security fence	0.0003 0.8 times/sec	10	No	No
Taser	0.0001 19 times/sec	2	May be	No
Cardiac pacemaker	0.001 1 time/sec	0.005	Yes	No
Defibrillator	0.005 1 time	40	Yes	Cures ventricular fibrillation
Spark plug	0.00002 1 time	0.2	No	No
Doorknob	0.00002 1 time	0.2	No	No

**Sentry Security Systems, LLC position on the relationship of security fences  
to codes and standards**

Electric fencing is used safely throughout the world, with applications for both animal control and commercial security. In a commercial security setting, security fences deter crime and help apprehend criminals. The mere presence of a security fence discourages unlawful entry, theft and the destruction of property. Additionally, it is easier to apprehend the determined criminal because the owner and police are notified instantaneously when the criminal distorts or breaks the fence. Security fences also protect the people who work at a site, providing business owners and employees significant peace of mind.

The security fence sold by Sentry Security Systems is powered by a 12 volt DC marine (or similar) battery. The National Electric Code does not cover battery powered products such as smoke alarms. Therefore, the security fence sold by Sentry Security Systems is not covered by the NEC.

There is in fact no US standard that addresses security fences whether main or battery powered. UL 69 addresses animal control fences but not security fences. There is, however, a good international standard - IEC 60335-2-76 - that addresses security fences. This standard is attached for your information.

We respectfully request that you determine that, as a battery powered device, security fences do not fall under the National Electric Code.

## Safety of electric fence energizers

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### Abstract

The strength–duration curve for tissue excitation can be modeled by a parallel resistor–capacitor circuit that has a time constant. We tested five electric fence energizers to determine their current-versus-time waveforms. We estimated their safety characteristics using the existing IEC standard and propose a new standard. The investigator would discharge the device into a passive resistor–capacitor circuit and measure the resulting maximum voltage. If the maximum voltage does not exceed a limit, the device passes the test.

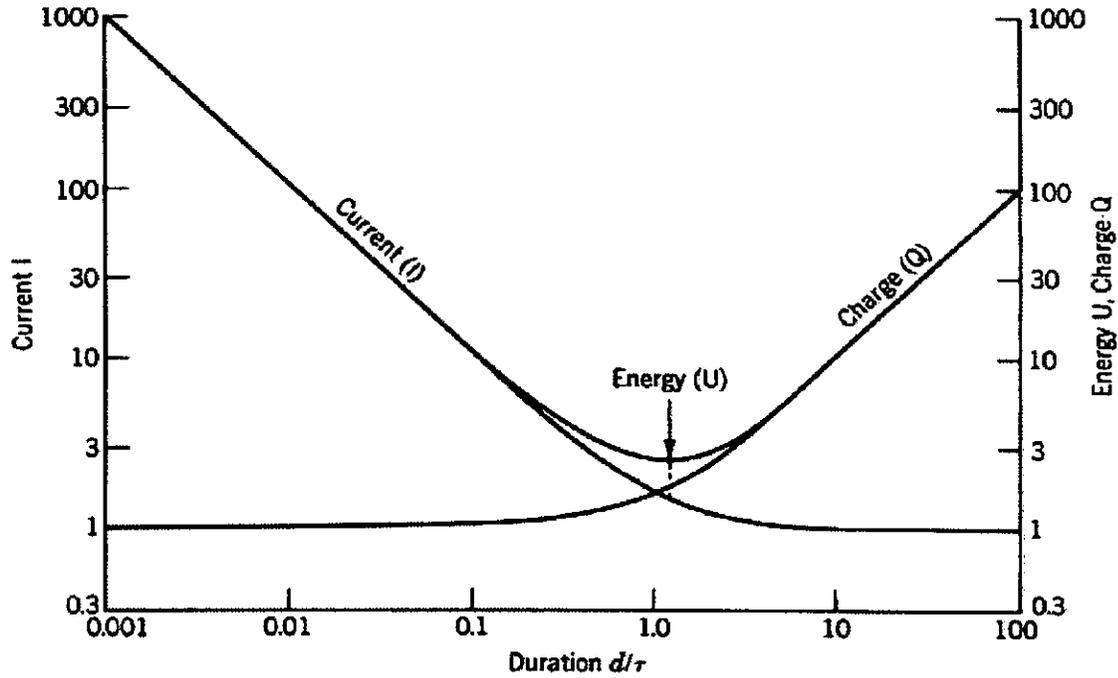
Key words: strength–duration curve, cardiac stimulation, ventricular fibrillation, electric safety, electric fence energizers, standards.

### 1. Introduction

The vast majority of work on electric safety has been done using power line frequencies such as 60 Hz. Thus most standards for electric safety apply to continuous 60 Hz current applied hand to hand. A separate class of electric devices applies electric current as single or a train of short pulses, such as are found in electric fence energizers (EFEs). A standard that specifically applies to EFEs is IEC (2006). To estimate the ventricular fibrillation (VF) risk of EFEs, we use the excitation behavior of excitable cells. Geddes and Baker (1989) presented the cell membrane excitation model (Analytical Strength–Duration Curve model) by a lumped parallel resistance–capacitance ( $RC$ ) circuit. This model determines the cell excitation thresholds for varying rectangular pulse durations by assigning the strength–duration rheobase currents, chronaxie, and time constants (Geddes and Baker, 1989). Though this model was originally developed based on the experimental results of rectangular pulses, the effectiveness of applying this model for other waveforms has been discussed (IEC 1987, Jones and Geddes 1977). The charge–duration curve, derived from the strength–duration curve, has been shown in sound agreement with various experimental results for irregular waveforms. This permits calculating the VF excitation threshold of EFEs with various nonrectangular waveforms. We present measurements on electric fence energizers and discuss their possibility of inducing VF.

### 2. Mathematical background and calculation procedures

Based on the cell membrane excitation model (Weiss–Lapique model), Geddes and Baker (1989) developed a lumped  $RC$  model (analytical strength–duration curve) to describe the membrane excitation behavior. This model has been widely used in various fields in electrophysiology to calculate the excitation threshold. Figure 1 shows the normalized strength–duration curve for current ( $I$ ), charge ( $Q$ ) and energy ( $U$ ). The expression of charge is also known as the charge–duration curve which is important for short duration stimulations.



**Figure 1.** Normalized analytical strength-duration curve for current  $I$ , charge  $Q$ , and energy  $U$ . The  $x$  axis shows the normalized duration of  $d/\tau$ . Note that for  $d \ll \tau$ ,  $Q$  is constant and the most appropriate variable for estimating cell excitation. (from Geddes and Baker, 1989).

The equation for the strength-duration curve is (Geddes and Baker, 1989),

$$\Delta v = IR(1 - e^{-\frac{t}{\tau}}), \quad (1)$$

where  $I$  is a step current intensity,  $R$  is the shunt resistance,  $\Delta v$  is the depolarization potential threshold which is about 20 mV for myocardial cells,  $\tau$  is the  $RC$  time constant, and  $t$  is the time  $I$  is applied.

If we let the stimulation duration go to infinity, the threshold current is defined as the rheobase current ( $I = b$ ). If we substitute  $I$  in equation (1) by  $b$  and define the threshold current  $I_d = \Delta v/R$  for the stimulation with duration  $d$ . Equation (1) becomes,

$$I_d = \frac{b}{1 - e^{-\frac{d}{\tau}}}. \quad (2)$$

We can calculate the threshold charge ( $Q_d$ ) by integrating equation (2) and it becomes,

$$Q_d = I_d d = \frac{bd}{1 - e^{-\frac{d}{\tau}}}, \quad (3)$$

For short duration stimulation ( $d \ll \tau$ ) with duration shorter than 0.1 times the  $RC$  time constant, equation (3) can be approximated by equation (4) and it yields equation (5),

$$1 - e^{-\frac{d}{\tau}} \approx \frac{d}{\tau}, \quad (4)$$

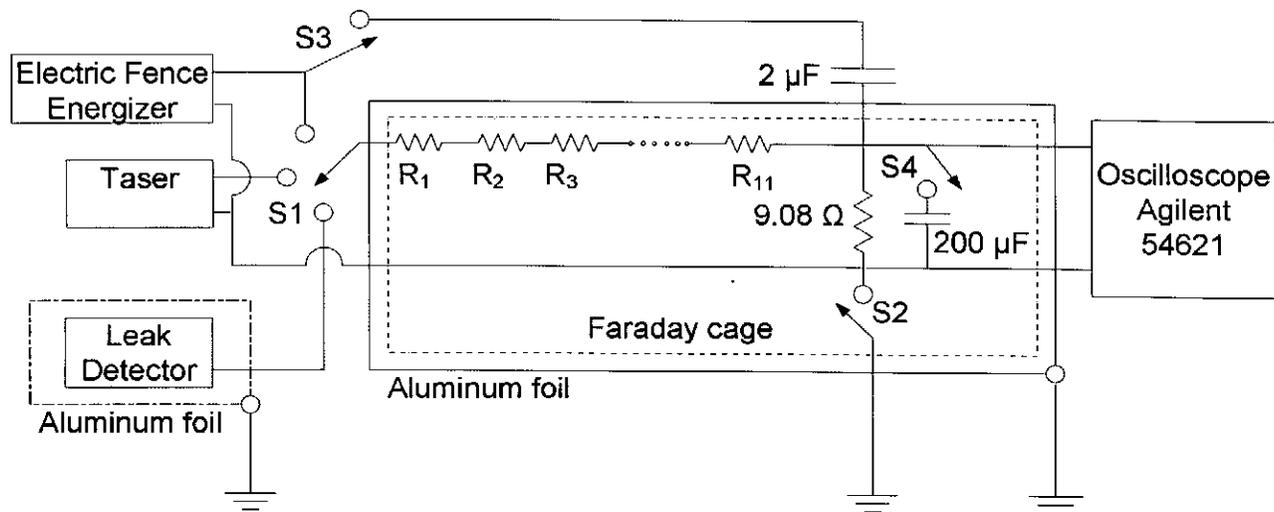
$$Q_d = b\tau \quad (5)$$

Equation (5) suggests that the charge excitation threshold for short duration stimulation is constant and equals the product of the  $RC$  time constant  $\tau$  and the rheobase  $b$ . Geddes and Bourland (1985) showed that the charge–duration curve for single rectangular, trapezoidal, half sinusoid and critically damped waveforms had a good agreement for short duration stimulations. Therefore we used the same model to estimate thresholds for stimulation sources where  $I$  was not constant, under the same stimulation setting.

Cardiac cell excitation has been intensively studied at the 60 Hz power line frequency because most accidental electrocutions occur with 60 Hz current, which has a longer duration relative to the cardiac cell time constant of about 2 ms. However, EFEs operate with pulse durations much shorter than the time constant.

### 3. Methods

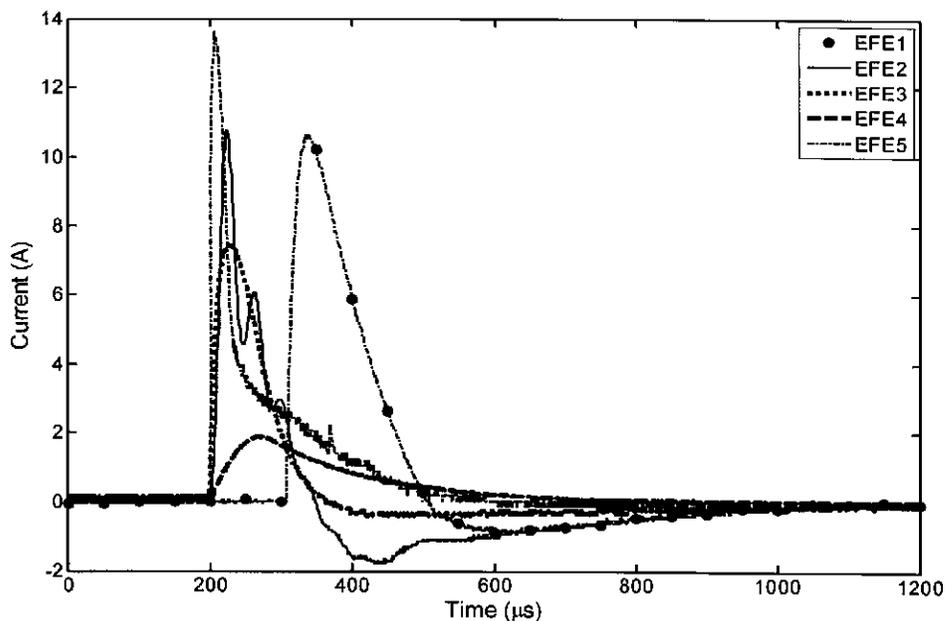
Figure 2 shows our experimental test set-up. The EFEs under test consist of Gallagher Group Ltd PowerPlus B600 (EFE1), Gallagher Group Ltd PowerPlus B280 (EFE2), Speedrite HPB (EFE3), Intellishock 20B (EFE4) and Blitzer 8902 (EFE5) EFEs. The short duration electrical pulses from these EFEs are passed through a series of eleven 47  $\Omega$  (ARCOL D4.29, HS50 47 R F) resistors which measure 518  $\Omega$ , which represents approximately the internal resistance of the human body. It is further connected to two 18  $\Omega$  (RH 10 207 DALE 10 W 3%) resistors connected in parallel which measure 9.08  $\Omega$ . This is used as the sensing resistor across which the oscilloscope measures the output voltage. For these very short pulses it is important to use noninductive resistors because the same current flowing through a resistor that has substantial inductance will measure a larger current than a resistor that is noninductive. To reduce electromagnetic interference, a faraday cage, covered with aluminum foil, was connected to ground. This diverted the electromagnetic interference to ground. The data were collected in EXCEL format from a disk in the Agilent 54621 oscilloscope. The calculations for different parameters presented in Table 1 and the Figures 3–5 were plotted using MATLAB.



**Figure 2.** The EFE is selected by  $S_1$ . The current flows through a string of  $47 \Omega$  resistors  $R_1$ – $R_{11}$  (total  $518 \Omega$ ) which approximates the internal body resistance of  $500 \Omega$ . The  $9.08 \Omega$  yields a low voltage that is measured by the oscilloscope.

### 3.1. Determination of current

EFEs are used in conjunction with fences wires to form animal control fences and security fences. We tested five EFEs (EFE1–EFE5) using the experimental set-up in Figure 2 and obtained the output currents shown in Figure 3.



**Figure 3.** The output current waveform for five EFEs. EFE1 yields about  $7.75 \text{ A}$  for  $151 \mu\text{s} = 1170 \mu\text{C}$ , EFE2 yields about  $3.34 \text{ A}$  for  $345 \mu\text{s} = 1150 \mu\text{C}$ , EFE3 yields about  $5.69 \text{ A}$  for  $91 \mu\text{s} =$

518  $\mu\text{C}$ , EFE4 yields about 1.25 A for 252  $\mu\text{s}$  = 315  $\mu\text{C}$  and EFE5 yields about 5.7 A for 137  $\mu\text{s}$  = 781  $\mu\text{C}$ .

#### 4. Results

Table 1 shows the approximate results for the rms current, power, duration and charge for all the EFEs.

**Table 1** Approximate results for all EFEs.

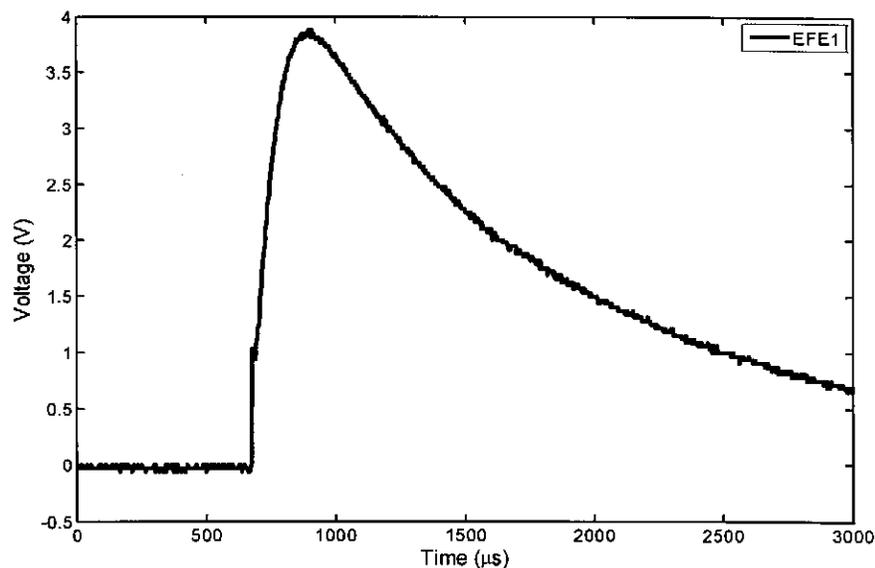
EFEs		EFE1	EFE2	EFE3	EFE4	ECF5
Parameters	Units					
<b>A. (IEC)</b>						
Total Energy	$\text{A}^2\text{ms}$	7.94	4.04	3.10	0.42	4.69
95% Energy Duration	$\mu\text{s}$	129	346	91	253	138
$I_{\text{rms}}$	A	7.65	3.33	5.69	1.25	5.69
IEC Standard $I_{\text{rms}}$	A	13.0	6.21	16.8	7.85	7.37
Pass IEC Standard	Yes/No	Yes	Yes	Yes	Yes	Yes
<b>B. Proposed standard</b>						
Voltage	V	3.88	2.91	NAv	NAv	NAv
Duration	$\mu\text{s}$	233	132			
Current	A	3.33	4.41			
Charge	$\mu\text{C}$	776	582			

NA- not applicable, NAv- not available

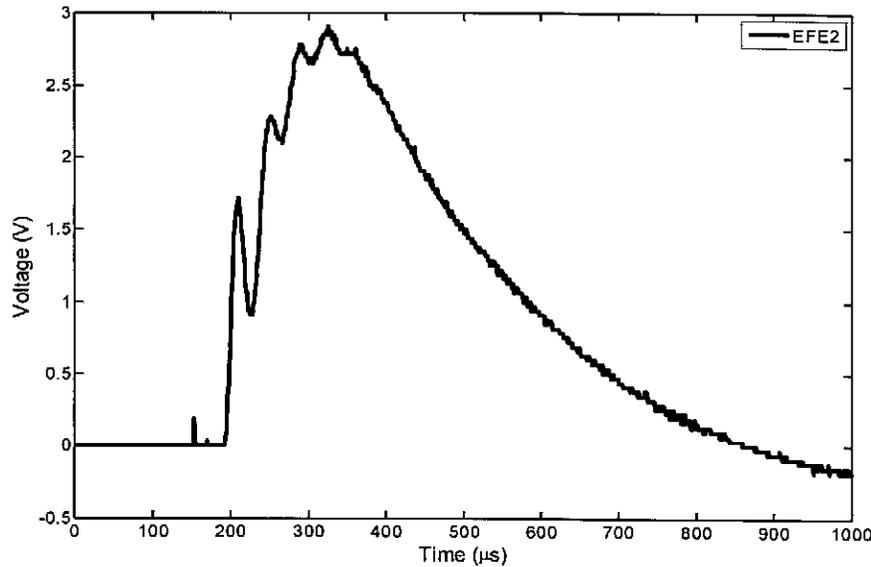
IEC (2006) defines in 3.116 “impulse duration: duration of that part of the impulse that contains 95% of the overall energy and is the shortest interval of integration of  $P(t)$  that gives 95% of the integration of  $P(t)$  over the total impulse.  $I(t)$  is the impulse current as a function of time.” In 3.117 it defines “output current: r.m.s. value of the output current per impulse calculated over the impulse duration.” In 3.118 it defines “standard load: load consisting of a non-inductive resistor of  $500 \Omega \pm 2.5 \Omega$  and a variable resistor that is adjusted so as to maximize the energy per impulse or output current in the  $500 \Omega$  resistor, as applicable.” In 22.108, “Energizer output characteristics shall be such that – the impulse repetition rate shall not exceed 1 Hz; – the impulse duration of the impulse in the  $500 \Omega$  component of the standard load shall not exceed 10 ms; – for energy limited energizers the energy/impulse in the  $500 \Omega$  component of the standard load shall not exceed 5 J; The energy/impulse is the energy measured in the impulse over the impulse duration. – for current limited energizers the output current in the  $500 \Omega$  component of the standard load shall not exceed for an impulse duration of greater than 0.1 ms, the value specified by the characteristic limit line detailed in Figure 102; an impulse duration of not greater than 0.1 ms, 15 700 mA. The equation of the line relating impulse duration (ms) to output current (mA) for  $1\,000 \text{ mA} < \text{output current} < 15\,700 \text{ mA}$ , is given by impulse duration =  $41.885 \times 10^3 \times (\text{output current})^{-1.34}$ .” We used these definitions and calculated the total energy, the shortest duration where 95% of the total energy occurs, the rms current for that duration from Figure 3 for the EFEs (EFE1–EFE5). Similarly we calculated the output current using the relationship impulse duration =  $41.885 \times 10^3 \times (\text{output current})^{-1.34}$ , provided by the IEC for all the EFEs (EFE1–EFE5). Table 1 lists these under the heading “A. (IEC)”. Table 1 shows that all the EFEs pass the IEC standard.

## 5. Proposed new standard

IEC (2006) uses the rms current for the shortest duration where 95% of the total energy occurs as the standard to determine if the EFE is safe for use. Geddes and Baker (1989) have shown that for pulses shorter than the cardiac cell time constant of 2 ms, the electric charge is the quantity that excites the cells. We propose a simple experimental set-up shown in Figure 2 to determine the maximum amount of charge that would flow from the EFEs and cause cardiac cell excitation. The cardiac cell is modeled as an  $RC$  circuit in Fig. 2 with  $R = 9.08 \Omega$  and  $C = 200 \mu\text{F}$  (GECONOL 9757511FC  $200 \mu\text{F} \pm 10\%$  250 VPK) with the  $RC$  time constant of 1.82 ms. For the EFEs (EFE1 and EFE2) the switches S1 and S4 are closed. This allows the  $200 \mu\text{F}$  capacitor to charge rapidly (about  $100 \mu\text{s}$ ) and discharge fairly slowly ( $\tau = RC = 1.82 \text{ ms}$ ). Figures 4 and 5 show the voltage vs time waveforms for the different EFEs. The test was not performed for electric fence energizers EFE3–EFE5.



**Figure 4.** Output voltage waveform for EFE1. The maximal charge that flows through the cardiac cell model is given by  $Q = CV = 200 \mu\text{F} \times 3.88 \text{ V} = 775 \mu\text{C}$ , the current during which the capacitor charges to maximal value is given by  $I = CV/T = (200 \mu\text{F} \times 3.88 \text{ V})/233 \mu\text{s} = 3.33 \text{ A}$ .



**Figure 5.** Output voltage waveform for the electric fence energizers EFE2. The maximal charge that flows through the cardiac cell model is given by  $Q = CV = 200 \mu\text{F} \times 2.91 \text{ V} = 582 \mu\text{C}$ , the current during which the capacitor charges to maximal value is given by  $I = CV/T = (200 \mu\text{F} \times 2.91 \text{ V})/132 \mu\text{s} = 4.41 \text{ A}$ .

## 6. Discussion

Geddes and Baker (1989) have shown that for pulses shorter than the cardiac cell time constant of 2 ms, the electric charge is the quantity that excites cardiac cells. Because the first half wave is the largest, the charge integrated in the first half wave determines cardiac cell excitation. The next half wave discharges the cardiac cell capacitance and does not contribute to cardiac cell excitation. Thus we list integral  $I(t) = \text{charge } Q$  in Table 1.

IEC (2006) integrates  $P(t)$ , which is roughly equal to  $I(t)$ . Their Figure 102 roughly follows charge.

We propose revising EFE standards for measuring current to determine a safety standard to prevent VF. The new standard would measure cardiac cell excitation. It would not require the complex calculations required to determine “The current which flows during the time period in which 95 percent of the output energy (is delivered).” It would use a simple circuit similar to that in Figure 2 composed of resistors and a capacitor. The investigator would discharge the device into the circuit and measure the maximum voltage. If the maximum voltage does not exceed 5 V (as a conservative estimate), the EFE passes the test. The 500  $\Omega$  resistor closely approximates the resistance of the body and determines the current that flows through the body.

## Acknowledgements

We thank L Burke O’Neal and Silas Bernardoni for their help and suggestions.

## References

- Geddes L A, and Baker L E 1989 *Principles of applied biomedical instrumentation* (New York: John Wiley & Sons) pp 458–61
- Geddes L A and Bourland J D 1985 The strength-duration curve. *IEEE. Trans. Biomed. Eng.* **32(6)** 458–9
- IEC 1987 *International Electrotechnical Commission IEC Report: Effects of current passing through the human body* (IEC 60479-2) pp 47
- IEC 2006 *Household and similar electrical appliances – Safety – Part 2-76: Particular requirements for electric fence energizers*, (IEC 60335-2-76, Edition 2.1)
- Jones M and Geddes L A 1977 Strength duration curves for cardiac pacemaking and ventricular fibrillation *Cardiovasc. Res. Center Bull.* **15** 101–12

**DATE:** December 13, 2012

**TO:** Planning Commission

**FROM:** Richard E. Patenaude, AICP, Planning Manager

**SUBJECT:** Blue Rock (Stonebrae) Country Club Project Development Agreement - Request to Amend the Development Agreement by Extending Its Term for Five Years - The Project is Located Southeasterly of the Intersection of Fairview Avenue and Hayward Boulevard along Walpert Ridge

### **RECOMMENDATION**

That the Planning Commission recommends to the City Council that it approves the Development Agreement amendment to extend the term for five years, subject to the required finding that such amendment is consistent with the General Plan.

### **SUMMARY**

The City Council approved the Blue Rock Country Club project, now known as Stonebrae Country Club, in January 1998. Shortly thereafter, Stonebrae and the City of Hayward entered into a Development Agreement, which was recorded on April 16, 1998. The term of the Development Agreement is for ten years, with five-year extensions allowed with mutual consent of the parties. Due to the impact of the economic recession on housing construction, the project will not be fully constructed within the existing term of the Development Agreement, which includes a five-year extension approved in 2008. Stonebrae is requesting a second five-year extension to the terms of the Development Agreement, which allows them to complete construction of the project by 2018.

### **BACKGROUND**

The City Council approved the Blue Rock Country Club project (now known as the Stonebrae Project) in January 1998. Pursuant to those approvals, on April 8, 1998, Stonebrae LP's predecessor, Hayward 1900, Inc., and the City of Hayward entered into the Blue Rock Country Club Project Development Agreement (Development Agreement). The Development Agreement was recorded on April 16, 1998.

The City Council approved the final subdivision map for Village A (Tract 5354) in April 2005, and the final map was recorded on July 29, 2005. Construction of homes within Village A is ongoing, with ninety-five percent of the lots occupied. The City Council approved the final subdivision map for Village B (Tract 7736) in November 2006, and the final map was recorded on May 24, 2007. Work under the City-approved improvement plans has been completed; home construction has

proceeded with two additional construction phases planned of 40 homes each. In addition, the golf course is complete and staff is processing permit applications for the clubhouse at the golf course.

The economic recession has affected the timetable for completing Stonebrae. The infrastructure for the first homes in the 214-lot Village A was completed in 2006, ahead of the recession. In contrast, the 150-lot Village B was improved in 2008, during the steepest decline in real estate demand and value in recent history. Despite this situation, approximately one-third of the Village B homes are complete and in 2013, a total of three home builders will offer homes in this village, and Stonebrae will develop plans for its next village (see discussion below). The economic downturn slowed the schedule for completing Village B and, therefore, the rest of the community by several years. With the increasing pace of the recovery, and with the construction of its signature amenity, the permanent golf and community clubhouse, Stonebrae anticipates completion of the community by the end of the extended term in 2018.

The extension would extend the term of the Development Agreement an additional five years from the date it otherwise would expire, or until February 26, 2018. The developer is in compliance with the Development Agreement and extension of the term will facilitate completion of the project.

## **DISCUSSION**

In order to approve the Development Agreement Extension, the Planning Commission must make a finding that the provisions of the agreement are consistent with the City of Hayward General Plan and any applicable specific plan. The Amendment to the Development Agreement to extend its term is authorized under the Agreement with the mutual consent of the parties. The Amendment does not propose new or amended provisions which modify the development authorized under the Agreement and other City approvals.

The project continues to be under construction, with the following elements:

- **Overall project:**
  - The donation of approximately 1,000 acres of land to the East Bay Regional Park District (EBRPD) is expected in spring-summer 2013. The State has fully executed the conservation easement to assure proper use and management of the lands in perpetuity for habitat, as well as public enjoyment. With EBRPD staff, Stonebrae is currently working out all of the details for long-term easements and maintenance between Stonebrae and EBRPD, in accordance with the existing agreements.
  - The off-site Fairview Avenue improvements are scheduled to begin with development of the scope of work in 2013 with a neighborhood working group, with construction of the roadway in 2014, in roughly the same timeframe as development of Village E.
- **Build-out of residential villages:**
  - The Stonebrae community currently has about 250 occupied homes, including ninety-five percent of the 214-home Village A. Monthly sales rates are approximately two homes per month.

- The community has active Homeowners Association (HOA) participation, both as Directors on the HOA Board and in meetings; the HOA's ongoing efforts include security, water conservation, and building a sense of community via social networking and social events. The Landscape and Lighting District, which funds maintenance of the entry area, is fully operational and funded.
  - In Village B, Stonebrae launched a unique custom home program on Stonebrae Road, the main drive leading to the clubhouse. The homes will be mainly single story with strong indoor-outdoor relationships to capture a distinctive component of the market.
  - Home builder participation in Village B is growing. Pulte Homes will expand into a new 40-home phase and, soon, Stonebrae will announce that another high-quality builder will create another new 40-home phase.
  - The Stonebrae real estate group is working closely with the builders on site to ensure that the new homes will succeed in the still challenging East Bay market.
  - Stonebrae anticipates completing final engineering construction plans for Village E in 2013 and starting site construction in 2014. Village E will contain approximately 100 homes.
- **Clubhouse:**
    - In 2012, Stonebrae launched plans for the permanent clubhouse, to be built across the street from the existing temporary clubhouse and near the driving range. Similarly to the existing clubhouse, it will serve multiple functions: golf club, banquet events, fitness and dining/social – but on a more complex and larger scale. The dining opportunities will be significantly enhanced, with the new building oriented to take advantage of sweeping bay and golf views. The recreational experience will benefit from larger locker rooms, a bigger gym, class and special events rooms, bocce ball courts, an outdoor spa, and a pool. Stonebrae will continue to offer golf club, fitness and social memberships and golf tournaments with a wider audience.
    - The clubhouse plans are in process, with submittal to the City in November 2012. The construction start is planned for spring 2013 with completion a year later in 2014. During construction, the existing temporary clubhouse will be open and fully operational. The annual PGA tournament will be postponed to facilitate smooth construction progress and ease the transition to the new clubhouse for the 2014 event (see the 11/27/12 PGA TOUR and TPC Stonebrae announcement at: <http://www.pgatour.com/2012/h/11/27/tpc-stonebrae-event/index.html> ).
  - **Golf club**
    - The club is focusing on building memberships and hosting more tournaments and other events to increase course visibility.  
Ongoing management includes examining irrigation needs and increasing irrigation efficiency in light of increasingly costly City water and the sparse 2012 rainfall.

*Environmental Review* - The City certified the Final Supplemental Environmental Impact Report (FSEIR) for the Project in 1998, and thereafter adopted an Addendum to the FSEIR when it approved the Precise Development Plan and Vesting Tentative Map in 2002. There is no substantial change proposed in the Project or in the circumstances under which the Project is being

undertaken, nor is there any new information, which would require additional environmental review.

## **PUBLIC CONTACT**

On December 3, 2012, a notice of public hearing was published in *The Daily Review* newspaper and mailed to property owners owning property within 300 feet of the Stonebrae Country Club development.

## **NEXT STEPS**

The Planning Commission recommendation will be forwarded to the City Council who will take action on the proposed Development Agreement modification. If the Development Agreement extension is approved, the new agreement with a modified term will be recorded and the construction of the approved improvements will continue in accordance with the modified development agreement.

*Prepared and Recommended by:*



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Richard E. Patenaude, AICP  
Planning Manager

*Approved by:*



---

David Rizk, AICP  
Development Services Director

Attachments:

Attachment I - Draft Development Agreement Amendment

**STONEBRAE DEVELOPMENT AGREEMENT**  
**Draft Amendment #2 – Redline**

Amend the Blue Rock (Stonebrae) Country Club Project Development Agreement as follows:

5.1 Annual Review. CITY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every twelve (12) month period from the Effective Date. The CITY's reasonable costs of monitoring this Agreement shall be paid by OWNER. As part of such annual monitoring review, within thirty (30) days after each anniversary of this Agreement, OWNER shall deliver to CITY:

- (a) a then current build-out phasing plan for the Project; and
- (b) all information reasonably requested by CITY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has ~~compiled~~ complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

If as a result of such periodic review, CITY finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, CITY may terminate this Agreement as provided in Section 10.2.

7.1 Stated Term. This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for ~~(10)~~ twenty (20) years. Notwithstanding the foregoing, in the event that the parties determine that a longer period is necessary to achieve the foregoing purposes, the term of the Agreement may be extended an additional five (5) years by the further written agreement of the parties in accordance with Section 8. The Parties may renew this Agreement in writing in accordance with Section 8 for additional periods of time, each of which shall not exceed five (5) years, as long as OWNER has demonstrated continued compliance with this Agreement and Development Approvals for the Property.

**DATE:** December 13, 2012  
**TO:** Planning Commissioners  
**FROM:** Director of Development Services and Chief of Police  
**SUBJECT:** Recommended Revisions to Hayward’s Alcohol Beverage Outlet Regulations

**RECOMMENDATION**

That the Planning Commission reviews and provides comment on this report and the staff recommendations for revisions to Hayward’s alcohol beverage outlet regulations.

**SUMMARY**

Staff is recommending revisions to Hayward’s alcohol beverage outlet regulations to achieve the following major objectives:

1. Amend regulations in order to better promote and attract desirable alcohol-serving businesses, especially full-service restaurants and boutique specialty shops in the Downtown and other target areas.
2. Ensure future alcohol-serving uses will be operated in a safe and responsible manner and contribute positively to the Hayward community;
3. Develop more aggressive ways to proactively and immediately shut down undesirable businesses that serve alcohol that result in large or frequent events that demand significant responses from, and allocation of resources by, the Hayward Police Department; and
4. Provide a funding structure to support City staff activity associated with enforcement of City regulations associated with alcohol establishments.

Attachment VII is a table that summarizes Hayward’s existing regulations and the proposed staff-recommended changes to them, and who would potentially be impacted with such changes.

**BACKGROUND**

*City Policies* - Existing policies and strategies from the Hayward General Plan seek to strike a balance between promoting economic growth and business choices for the public, while minimizing negative impacts to quality of life in residential and retail neighborhoods. For example, the Economic Development Chapter of the General Plan contains the following strategies:

- Preserve and enhance Hayward's assets and character, which make it attractive as a residential community and as an economic investment.
- Approve development opportunities that result in minimal adverse impacts to the City's environment.
- Work cooperatively with local business and industrial associations to improve the general business climate and to stimulate new business investment.
- Promote Hayward as a destination for nonresidents.
- Business attraction efforts should focus on sales tax and employment generators; high performance, fast-growing firms and community-serving retail as well as high technology and other industries that will enhance the local economy.

The Land Use Chapter of the General Plan contains the following applicable strategies:

- Emphasize making the downtown a focal point for the City within a pedestrian-friendly environment.
- Recognize the importance of continuous retail frontage to pedestrian shopping areas by discouraging unwarranted intrusion of other uses that weaken the attractiveness of retail areas; encourage residential and office uses to locate above retail uses.
- Encourage both commercial and residential development in the area surrounding the Downtown BART Station.
- Encourage residential development in the downtown area to increase market support for business and to extend the hours of downtown activity.

Additionally, the purposes of various commercial zoning districts seek to promote economic growth, as reflected below:

- The purpose of the Central City - Commercial (CC-C) Subdistrict is to establish a mix of business and other activities which will enhance the economic vitality of the downtown area. Permitted activities include, but are not limited to, retail, office, service, lodging, entertainment, education, and multi-family residential uses.
- The Neighborhood Commercial (CN) District shall be subject to the following specific regulations in addition to the general regulations hereinafter contained, in order to make provision for a number of areas throughout the City carefully located in relationship to other Commercial Districts and to the Residential Districts served. The products and services intended are those primarily represented by convenience goods and services purchased frequently.

California Department of Alcohol Beverage Control - The California Department of Alcohol Beverage Control (ABC) has sole authority related to permitting and licensing alcohol sales. ABC issues a variety of licenses related to alcohol service. Attachment V includes a list of the most common license types. Four of the most common types of licenses issued by ABC for on-site sale of alcohol are Type 41, Type 42, Type 47, and Type 48 licenses. Type 41 (restaurants that serve beer and wine) and Type 47 (restaurants that serve beer, wine, and distilled spirits) are required by ABC to have at least fifty-one percent of sales to be non-alcohol related. Generally, ABC defines

such establishments as restaurants that allow minors during business hours and serve meals. Type 42 (sale of beer and wine) and Type 48 licenses (sale of beer, wine, and distilled spirits) are typically associated with a bar, tavern, or nightclub, into which minors are not allowed to enter and food service is not required.

According to ABC staff, alcohol sales are taxed by the State Board of Equalization, which checks restaurant receipts. If there is more than fifty percent alcohol sales (in violation of the standard ABC Type 47 license for a restaurant), then the State Board of Equalization contacts ABC, which will open up an investigation. The Hayward Police Department is contacted when an establishment is under investigation by ABC. Typically, due to limited resources, Hayward Police Department does not check receipts, but will work with ABC if complaints are received about an establishment.

*History of City's Alcohol Beverage Outlet Regulations* – The City's original Alcoholic Beverage Outlet regulations were adopted in 1993, and the stated purpose of those regulations was to stem the proliferation of establishments selling alcoholic beverages within the City, with the notion that they present problems which adversely impact residents, businesses, property owners, visitors, and workers of Hayward. The regulations were intended to address problems associated with establishments engaged in the sales of alcoholic beverages by restricting their locations in relation to one another and to their proximity to facilities primarily devoted to use by children and families with children. Such regulations entailed establishing a requirement for conditional use permits for new establishments engaged in the sale of alcoholic beverages, where conditions could be established to prevent the undesirable impacts on the community. Several changes to the original regulations were made, particularly related to the Downtown.

The City last comprehensively revised its alcohol beverage outlet regulations in 2006. According to the record, the City Council was interested in: (1) pursuing changes to the regulations that focused on the Downtown, liquor stores, and bars; (2) the extent of alcoholic beverages permitted to be sold by physical volume (e.g., cubic feet) rather than percentage of floor area; and (3) re-examining the relevance of the current separation requirements between establishments involved in the sale of alcoholic beverages. The January 17, 2006 City Council staff report and attachments are available at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2006/rp011706-03.pdf> and the minutes from that meeting are at <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/rp/2006/rp012406-01.pdf>.

*Overview of City's Current Regulations* – The purpose of the current, existing regulations (see Attachment I) is stated at the beginning of those regulations in the Zoning Ordinance. The stated specific purpose of the regulations is “to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.”

Most new alcohol-serving establishments in Hayward are required to operate via a conditional use permit approved by the Planning Commission (or City Council upon appeal) via a noticed public hearing. As reflected in subsection (b)(3) on page 4 of Attachment I, exceptions to such requirement include “full-service” restaurants (see subsequent discussion); retail stores having at least 10,000 square feet of floor area and which devote not more than five percent of such area to alcohol sales, display, and storage; and special event functions, such as neighborhood or community festivals (provided other required permits and licenses are obtained for such events). With the

exception of these three use types, all other new alcohol-serving establishments require a conditional use permit.

If establishments operating under a use permit become problematic or operate in conflict with their use permit conditions, the City can revoke such use permits and seek to shut down such establishments. However, many establishments within Hayward have existed for several years, before the current regulations that require conditional use permits were adopted (called nonconforming uses). Therefore, without that Conditional Use Permit, the City does not have the same clear authority to regulate these establishments. (Such locations still require ABC licenses, and are subject to the same ABC regulations as newer establishments.)

The bottom of page six of the attached existing regulations (Attachment I) provides direction regarding nonconforming uses. Those provisions indicate such businesses may operate without a use permit, unless a change to their liquor license occurs or there is a substantial change in the mode or character of operation of an establishment. Such change could mean, “an expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.” For problematic businesses, such provisions would likely entail involvement of the City Attorney to show such threshold has been met and possibly to seek a court order to force a business to obtain a conditional use permit. As will be discussed later, in addition to existing remedies, staff is recommending new regulations that would provide additional opportunity to make it easier to address problematic establishments that create public nuisances or imminent threats to public health, safety, and welfare on a regular basis.

Full Service Restaurants – Pages two and three of the attached existing regulations (Attachment I) define a “full service restaurant” and identify operating standards. Restaurants that meet the definition and operating standards stated in the ordinance are allowed to serve alcohol without benefit of a conditional use permit. Such standards require that the primary function of the establishment be that of a sit-down restaurant (fast-food establishments and delicatessens do not qualify), at least sixty percent of gross sales receipts be from the sale of meals, that meal service be offered at all times when alcohol is served, and that no dancing be allowed. Regarding city regulations, which are separate from those of ABC, the City Council has temporarily authorized the playing of live or recorded music until midnight and “happy hour” alcohol sales from 4:00 to 9:00 pm at such restaurants.

Night Club - A “night club” is defined on page three of Attachment I as, “any alcohol beverage sales commercial activity which engages in the sale of alcohol beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 pm to 2:00 am, regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.” Such definition is the only specific one for uses that entail selling alcohol for on-site consumption, aside from the full-service restaurant definition. Also, such definition does not differentiate between establishments that have live entertainment and those that do not. As noted later, staff is recommending that new provisions be created that would require establishments such as night clubs or bars that offer entertainment to obtain a dance/entertainment permit or license from the Police Department, in addition to a conditional use permit, and that such permits only be issued

subject to written operating standards. Such standards would relate to security and management of such activities.

Other New Alcohol-Serving Establishments – Page five of the attached existing regulations provides standards for new on-sale establishments (where alcohol is sold and consumed on-site) and off-sale establishments (where alcohol is sold at the location and consumed off-site), related to proximity to other alcohol establishments and schools, libraries, parks, and other similar uses. New full-service restaurants that sell alcohol; grocery stores selling, displaying and storing alcohol in no more than five percent of their floor area; and public events are exempt from such standards.

New on-sale establishments outside Downtown cannot be located closer than 500 feet to another on-sale or off-sale establishment, unless approved by the City Council upon recommendation by the Planning Commission “if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.” Within Downtown, the separation requirement is 100 feet (only to off-sale establishments and schools, parks, libraries, etc., but not to other on-sale establishments) and no more than two on-sale establishments are allowed per block side or face. The provisions do not require a separation distance to schools, parks, libraries, etc. for new on-sale establishments on Main Street between A and C Streets and on B Street between Watkins Street and Foothill Boulevard.

Like new on-sale establishments outside Downtown, new off-sale establishments outside Downtown are required to be a minimum 500 feet from other on-sale or off-sale establishments and from schools, public parks, libraries, playgrounds, recreational centers, child care centers, or other similar uses.

Pages 5 and 6 of Attachment I list possible conditions that could be required for new alcohol establishments, but such conditions are not stated as being required. Although recent practice is to incorporate such conditions into conditional use permits approved for new establishments, staff would recommend that the listed conditions be stated as being required. These would be in addition to recommended new standards that are discussed later in this report.

Existing Establishments – In staff’s opinion, the section of the alcohol regulations most in need of updating are those related to existing establishments. As indicated by the Hayward Police Department, most problematic alcohol-serving/selling establishments in Hayward are legal nonconforming businesses that operate without conditional use permits. “Legal, nonconforming” means the business was established legally (i.e., prior to the current applicable regulations), has continued in operation since being established, and is not subject to nor in compliance with current regulations that require a conditional use permit (i.e., is legally, non-conforming as defined above.) As stated near the bottom of page six of Attachment 1 (subsection 10), an establishment not otherwise exempt would be required to obtain a conditional use permit if its operation associated with alcohol sales expands, discontinues for more than six consecutive months, or is associated with “a pattern of conduct in violation of other laws or regulations.”

Recent Council Action and Direction - As indicated by City Council during a joint work session with Planning Commissioners on January 24<sup>1</sup> and a meeting on June 19<sup>2</sup> of this year, the City's Alcohol Beverage Outlet Regulations in the Zoning Ordinance (Attachment I) need to be revised. Concerns have been expressed by the public, Council members, and Planning Commissioners in the past as to whether the regulations (1) encourage needed restaurants and other desirable retail and entertainment establishments in target areas of the City, particularly Downtown; (2) provide adequate guidance regarding approval of alcohol serving establishments that have the potential to generate negative impacts and usurp scarce public safety resources; and/or (3) provide law enforcement with the necessary tools to take effective action against problematic locations selling alcohol. Also, concerns have been expressed that some of the standards and regulations are not business-friendly for full-service restaurants and may prevent some of those restaurants, which can operate without benefit of a conditional use permit, from reaching maximum business potential. The minutes from the January and June meetings are included as Attachments II and III to this report.

In response to promoting full-service restaurants, the City Council adopted Resolution 12-106 on June 19, 2012 (Attachment IV), which allows at full-service restaurants only through December 26, 2012 during a temporary trial period, live or recorded music until midnight (no dancing) and reduced price alcohol sales (happy hour) from 4:00 to 9:00 pm. Music must be in compliance with the City's noise regulations and happy hours must also include appetizers and non-alcoholic beverages at reduced prices. The City Council directed staff to return prior to December 26, 2012, with recommended "comprehensive revisions to the City's alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of the City." As shown in the attached June 19 meeting minutes, Council also directed staff to "assess the possibility of allowing dancing after the trial period."

The City Council discussed staff's proposed revisions at a work session on December 4. Generally, the Council was supportive of staff's recommendations and expressed interest in having the revisions vetted through the public and Commissioners, and agreeable to having code changes and cost recovery provisions presented in the spring of 2013. City Council expressed support for the four objectives outlined in the summary section of this report, giving maximum flexibility to those establishments that are well-managed, and aggressively seeking to close those that are poorly operated that cause disturbances and nuisances. There were also concerns expressed with a recommended administrative use permit process (versus conditional use permit process involving a public hearing and more robust opportunities for public input) for certain uses that staff recommends be considered in order to attract desired alcohol-serving uses (see later discussion). Finally, the Council stressed the importance of differentiating between restaurants that serve alcohol and night clubs/bars.

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<sup>1</sup> January 24, 2012 Joint Work Session staff report and attachments at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca012412full.pdf> (agenda item number one)

<sup>2</sup> June 19, 2012 City Council meeting staff report and attachments at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca061912full.pdf> (agenda item number ten)

The following sections of this staff report include staff’s general recommendations for comprehensive revisions to the City’s alcohol regulations.

## DISCUSSION

Attachment VI is a map that shows the location of retail establishments in Hayward with ABC licenses. Not surprisingly, establishments are concentrated in Downtown and along major arterial corridors, many of which are legal, nonconforming, which means they operate without benefit of a conditional use permit, which was not required when they began operating. Of the 209 retail establishments that operate via an ABC license, twenty-six have conditional or administrative use permits from the City (the locations of which are indicated on the map in Attachment VI). Below is a table that summarizes the number of retail establishments in Hayward that have an active ABC license.

ABC License Types	Number of Establishments	Establishments with a CUP or AUP	Approximate Number of Stores >10,000 sf in Size	Assumed Number of Nonconforming Establishments
20,21: Off-Sale (stores)	78	8	27	43*
41,47: On-Sale (Restaurants)	106	14	NA	0*
40, 42, 48: On-Sale (Bars, Nightclubs)	21	4	NA	17
58, 63, 70, 86: On & Off-Sale (Misc-hospitals, etc.)	4	0	NA	4
<b>TOTALS</b>	<b>209</b>	<b>26</b>	<b>27</b>	<b>64</b>

*\*Staff has not conducted a detailed survey to confirm restaurants are operating in compliance with the standards for full-service restaurants and that no more than five percent of the floor areas of stores are being used for alcohol sales, display, and storage. Meeting such standards would eliminate the need for a conditional use permit (CUP) for those establishments.*

In summary, and assuming all restaurants are operated in compliance with full-service restaurant standards, there are approximately sixty-four alcohol-selling retail establishments in Hayward that are nonconforming. The later discussion related to establishing deemed approved status relates to nonconforming establishments.

During the last several months, staff has reviewed the alcohol regulations from various cities, including the cities of Emeryville, Fremont, Pleasanton, San Francisco, San José, San Diego, Ventura, and Walnut Creek. The following recommendations are based on the best practices gleaned from that research, which included in-person discussions with both regulatory and enforcement staff from some of those cities.

Amend regulations in order to better promote and attract desirable alcohol-serving businesses, especially full-service restaurants and boutique specialty shops in the Downtown and other target areas. – To achieve this objective, staff recommends the following code revisions:

Formalize temporary revisions to allow happy hours and music at full-service restaurants – Given that no problems have arisen at full-service restaurants during the last six months associated with temporary allowance of happy hour alcohol sales from 4:00 to 9:00 pm (with reduced price appetizers and non-alcoholic drinks) and music until midnight (with no dancing), staff recommends that such provisions be codified. Also, in response to some Council members’ comments at the June 19, 2012 Council meeting to possibly allow dancing at full-service restaurants, staff is also recommending that dancing be allowed at such restaurants with a dance/entertainment permit issued by the City Manager or designee.

Consider Allowing Certain Alcohol Uses with an Administrative Use Permit – To encourage certain desirable alcohol-serving uses, staff recommends that certain uses be allowed to operate with an administrative use permit (AUP) versus a conditional use permit (CUP). Both an AUP and CUP require the same findings to be made, but an AUP is typically issued by the Planning Director or his/her staff designee. Notices of an AUP application are sent to owners within 300 feet of an establishment, allowing for concerned neighbors and owners to voice concerns. Staff has the authority to refer any AUP application to the Planning Commission, and action by the Planning Director on an AUP is appealable to the Planning Commission.

One such use staff would recommend for consideration is a wine and cheese shop that meets certain standards, such as being operated and managed by a certified sommelier or oenologist and involving no sales of liquor/distilled spirits. If Council and the Commission are supportive of such approach, staff will incorporate new provisions to define and allow such use via an AUP.

Also, to reflect the desirability of responsible alcohol service related to economic growth in entertainment areas of Hayward, like Downtown and the Hesperian Corridor, staff recommends the following provision be added to the ‘Purpose’ section of the alcohol regulations: “It is also recognized that regulations that promote responsible alcohol sales and consumption can help contribute to economic vitality, particularly in designated areas of Hayward.”

Ensure future alcohol-serving uses will be operated in a safe and responsible manner that contribute positively to the Hayward community – Currently, new alcohol-serving establishments are required to operate via a conditional use permit approved by the Planning Commission (or City Council on appeal) after a noticed public hearing. Also, the City can revoke a conditional use permit for an establishment that is not being operated in compliance with the conditions of the use permit.

New Entertainment Establishment License/Permit Provisions – To better differentiate between alcohol-serving establishments that include live entertainment, dancing, and/or disc jockeys (i.e., nightclubs) and those that do not (i.e., bar with no bands, etc.), staff is recommending that a new definition be developed in the alcohol beverage outlet regulations for an alcohol-serving entertainment establishment, the operations of which do not include food service associated with a permitted full-service restaurant.. Staff recommends such an establishment be defined as, “An

establishment where alcohol is served and live entertainment is provided by or for any patron or guest, including but not limited to singing, playing music, dancing, acting, holding a fashion show, performing pantomime, performing comedy or other act or performance, either as the main purpose for such gathering or as an incident to some other purpose. Such establishments shall not include full-service restaurants.” For such establishments, staff also recommends that a dance/entertainment establishment permit be obtained from the City Manager or designee and that provisions/operating standards, review process, etc. for such establishments be included in Chapter 6, Article 2 of the Hayward Municipal Code, where the City’s existing Public Dance Regulations are located (<http://www.ci.hayward.ca.us/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/MUNICIPAL-CODE/MiscellaneousBusinesses.pdf> ).

Currently, the Chief of Police issues dance permits. Such updates would include standards to operate an entertainment establishment, including minimum security staffing and training requirements, requirement for on-site manager(s) to be present, etc. In the recommended and updated ordinance, the dance/entertainment permit would be issued by the City Manager<sup>3</sup> or designee (usually the Chief of Police), and would be in addition to any requirements for obtaining conditional use permits. A new fee would be established to cover the actual costs for processing the permit. Currently, a dance permit application fee is \$42.

In summary, any establishment that entails the sale of alcohol and includes entertainment would be required to obtain a dance/entertainment permit from the City Manager or designee, including full-service restaurants.

Miscellaneous Revisions - Although recent conditional use permits contain provisions to ensure establishments will be operated in a manner that will not negatively impact surrounding areas, there is opportunity to codify operating standards for both on-sale and off-sale establishments to further ensure no incidents occur.

1. As stated previously, some of the conditions noted in the code as possible conditions for new establishments should be listed as performance standards – similar to full-service restaurants, which are required to operate in conformance with specific standards listed in the code. Such standards include proper lighting, size and type of containers for off-site consumption, etc.
2. To ensure the number of bars and liquor stores in the Downtown and throughout the City will not increase in areas with an “undue concentration”<sup>4</sup> of such uses, staff

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<sup>3</sup>This language is consistent with that used in all recent ordinance updates. In the case of dance permits, the City Manager’s designee is currently assumed to be the Police Chief.

<sup>4</sup> Business and Professions Code Section 23958.4:

(a) For purposes of Section **23958**, "undue concentration" means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises

recommends that language be added to subsection 13 (page 7 of Attachment 1) to prohibit the Planning Director from issuing public letters of convenience or necessity for new bars or liquor stores in areas where there is an undue concentration of such uses. Such language would be consistent with a resolution adopted by City Council in 2006 that states, “no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of bars or liquor stores in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses.” Note that this would apply to liquor stores, not wine and cheese shops (see later discussion) and specialty boutique stores that sell specialty alcohol. Staff will develop definitions in the regulations that differentiate such uses from liquor stores.

Develop more aggressive ways to proactively and immediately shut down undesirable businesses that serve alcohol, and which business operations result in large or frequent events that demand significant responses from, and allocation of resources by, the Hayward Police Department – The City has the authority to abate any public nuisance, including violations of our municipal code. The Community Preservation Division performs the majority of investigations into municipal code violations and issues "notices to abate" where a violation is confirmed. However, other City departments are also involved in abatement of municipal code violations, such as when the Building Division issues an order to repair or demolish a dangerous building. The majority of nuisances are currently abated by way of this notice process.

Where the City is unable to obtain voluntary compliance with its notices to abate or orders to abate, the matter may be referred to the City Attorney's Office for further review, investigation and possible court action. The City Attorney's Office also has the capacity to perform investigations and issue its own orders to abate a nuisance. For example, the City Attorney's Office has issued "cease and desist" orders to medical marijuana dispensaries, unpermitted commercial enterprises, and other code violators. If all else fails, the last step is City-initiated court action where the City will seek judicial approval of nuisance abatement and cost recovery.

To augment these existing abatement remedies or “tools”, staff is proposing major additions to the alcohol regulations to meet the objective stated above. Following is a description of those recommended additions.

‘Deemed Approved’ Regulations - Such provisions would require that all legal nonconforming alcohol-serving establishments meet basic operating standards. Per these regulations, such establishments would be considered ‘deemed approved’ and no longer nonconforming. The purpose of such provisions, similar to those of other cities, like Oakland and Walnut Creek, would be to establish a process where establishments would be notified of their ‘deemed approved’ status and expectation to be operated in compliance with basic

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are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

standards, describe the procedure associated with establishments that are not operated in compliance with basic performance standards that would require such establishments be operated per a conditional use permit and associated conditions of approval, and establish a procedure for appealing imposition of conditions and/or revocation of the ‘deemed approved’ status.

Staff envisions a noticed public hearing before the Planning Commission related to an operators’ appeal of the Planning Director’s decision that basic operating standards (see below) per the ‘deemed approved’ status are not being followed. Also, a hearing before the Planning Commission would occur associated with a requirement for a conditional use permit and associated conditions of approval for an establishment that loses its ‘deemed approved’ status. As with other land use decisions, an appeal of the Planning Commission decision to the City Council would be available for any aggrieved party. Although such process will likely take some time to implement, including conferring ‘deemed approved status’ on nonconforming establishments and responding to establishments that do not comply with basic operating standards, this process will help in establishing formal operational standards for such uses, and a process to respond if such standards are not followed.

‘Deemed approved’ operating standards would be identified in the new provisions, similar to those below regarding operation of an establishment:

- A. That it does not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area;
- B. That it does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- C. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
- D. That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;
- E. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.

In summary, all establishments, except those currently exempted from the regulations (retail stores greater than 10,000 square feet where not more than five percent of their floor area is devoted to sale, display and storage of alcohol; full-service restaurants; and special public events/festivals), would operate either under a conditional use permit, administrative use permit, or per a ‘deemed approved’ status.

Summary Suspension Provisions – Such regulations would allow an executive team (“Team”), likely to consist of the City Manager, City Attorney, and the Chief of Police (or their designees) to take action to abate imminent threats to public health, safety, or welfare. The

provisions would establish an informal procedure whereby the Team would attempt to contact the establishment permittee to seek immediate voluntary compliance with measures to eliminate an imminent public threat. The Team would have authority to summarily suspend for up to thirty days the City permit or license to operate if the initial communication fails, if the permittee fails to implement voluntary measures to effectively and immediately eliminate the imminent threat to the public, the voluntary compliance measures are not effective, or the Team determines the threat is so urgent that compliance with voluntary measures will further jeopardize the public health, safety, or welfare. The provisions would also establish a process where the involved permittee would be able to request an immediate hearing before a hearing officer, and also an appeal process to City Council for any decision by the hearing officer/designee with which the permittee disagrees. The City of San José utilizes a summary suspension process that is similar to the process suggested here.

The determination that there is an imminent threat to the public health, safety or welfare would be based on one or more factors, such as the following:

1. There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within 150 feet of the licensed or permitted premises; or
2. There has been a violation of a permit or license condition or other requirement associated with the establishment that creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises; or
3. The licensee or permittee has conducted the licensed or permitted business in a manner that creates or results in a public nuisance, as defined in the Hayward Municipal Code or in Sections 3479 and 3480 of the California Civil Code, and that public nuisance creates an imminent danger to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed or permitted premises.

Such provisions are supported by Hayward's Chief of Police and would give more authority to respond quickly to such threats.

*Provide a funding structure to support City staff activity associated with enforcement of City regulations associated with alcohol establishments* – Several municipalities have regulations that generate funding to support public safety oversight of alcohol-serving establishments or entertainment venues. For example, the City of Emeryville not only requires a conditional use permit from the Emeryville Planning Commission, but also a cabaret permit from the Emeryville Police Department (similar to the entertainment permit described previously). Such regulations require that operators pay an annual permit fee to offset the costs of administering the regulations, give broad authority to the City to inspect the books and premises (to which the operators give advance consent), and prohibit the cabaret permit from being transferred or sold. For problematic establishments, a cabaret permit can be revoked, meaning the operator could sell alcohol, but not conduct any cabaret activities. A similar dual permitting process with associated fees to recover costs is recommended for alcohol-serving establishments that provide entertainment.

## **ECONOMIC IMPACT**

With revisions to the city's alcohol regulations that would provide more enforcement authority for problematic establishments and greater flexibility to attract desired alcohol-serving establishments, there would be expected to be positive economic benefits through an enhanced and attractive Downtown and business environment. Establishments that demonstrate responsible alcohol service and sales contribute to the economic vitality and activity in entertainment areas of cities that seek to attract residents and visitors. The recent success of allowing happy hours and music at full-service restaurants as part of a trial program is a good example of how regulations can positively impact economic growth and assist desirable businesses.

## **FISCAL IMPACT**

At a future meeting, along with recommended Code revisions, staff will provide a fiscal impact analysis associated with administering and enforcing the City's regulations. Such analysis will include recommended new fees to recover costs currently borne by the General Fund pertaining to City staff, including Police Department staff, for enforcement, education, compliance inspections, and administrative costs associated with the approximately 210 ABC-licensed retail establishments in Hayward.

Also, staff envisions including new Code language that would require reimbursement to the City for costs incurred in association with certain major activities, such as summary suspension or abatement actions. This would be in addition to recovering costs that could be obtained through court action through the City Attorney's Office. All recommendations will seek cost recovery and be in compliance with Proposition 26.

## **PUBLIC CONTACT**

A LEADS (Licensee Education on Alcohol and Drugs) training class was conducted at City Hall on November 14 by ABC and Hayward Police Department staffs, which was attended by approximately thirty people who worked at various alcohol-serving establishments in Hayward. Notices of the class were sent to all ABC licensed establishments in Hayward. The class included instruction on checking various forms of identification, detecting and preventing illegal activity, liability laws and more.

Also, staff provided notice of this work session to the Chamber of Commerce, Downtown homeowners' associations, all ABC licensees in Hayward, and other interested parties. Also, notices were sent to all ABC licensees and interested parties of an upcoming December 11 community meeting and a December 13 Planning Commission work session associated with suggested revisions to the city's alcohol regulations.

Staff received two communications from the public prior to the City Council meeting, which are attached. One letter, included as Attachment VIII, is from Linda Pratt, Program Director of CommPre (Community Prevention of Alcohol-Related Problems), which expresses concerns with staff's recommendations related to making it easier for restaurants to become bars. Staff does not feel this is the case in that all establishments other than restaurants would be required to obtain a conditional use permit and restaurants, even with live music and a dance permit issues by Hayward Police, would be required to operate as a restaurant and dancing would be limited. Also, Ms. Pratt

encourages that the deemed approved provisions apply to all nonconforming uses. Finally, Ms. Pratt expresses concerns, as did some Council members, with the recommended administrative use permit process for certain uses.

The other letter, Attachment IX, is from Richard Ersted, part owner of a property in Hayward. Mr. Ersted recommends:

1. that the City establish separate processes for temporary or permanent entertainment permits and more rigorous standards for the latter, as well as other related recommendations (staff notes that the issues associated with entertainment will be discussed and addressed at a public hearing in association with a conditional use permit application, and other uses that do not require a conditional use permit, but may seek an entertainment permit, will be reviewed by the Hayward Police Department; staff will review and assess the recommendations particularly related to this latter category of situations);
2. that all deemed approved determinations require Planning Commission review and hearing, as well as a conditional use permit (staff is not supportive of such approach due to the staff resources required for such hearings, the fact that most establishments will not have issues, and because the public would still be able to report concerns for such establishments after the initial deemed approved status);
3. that deemed approved operating standards include additional items (staff is reviewing and assessing the recommendations); and
4. that the summary suspension process be more formalized and specific (again, staff is reviewing and assessing the recommendations).

## **NEXT STEP**

Staff will incorporate input from Council, from the public at the December 11 community meeting, and from the Planning Commission at this work session, to develop recommended comprehensive code amendments regarding Hayward's alcohol regulations. Such amendments will be presented to the Planning Commission for consideration in early spring and to the City Council in mid to late spring.

*Prepared by:* David Rizk, AICP, Development Services Director  
Diane Urban, Chief of Police

Approved by:



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David Rizk, AICP  
Development Services Director

## Attachments

- Attachment I: Hayward Municipal Code Section 10-1.2735(b) et al (Alcohol Beverage Outlet Regulations)
- Attachment II: January 24, 2012 Joint Work Session Minutes
- Attachment III: June 19, 2012 City Council Meeting Minutes
- Attachment IV: Resolution No. 12-106
- Attachment V: List of Most Common ABC License Types
- Attachment VI: Location of Hayward Establishments with ABC Retail Licenses (map, per November 14, 2012 data from ABC)
- Attachment VII: Table Summarizing Proposed Revisions
- Attachment VIII: December 4, 2012 letter from Linda Pratt of CommPre
- Attachment IX: December 3, 2012 letter from Richard Ersted

- (c) Within 500 feet of any other adult entertainment activity as herein defined.
- (4) Public Display of Certain Matter Prohibited.  
No person shall place, maintain, display or exhibit any material in a manner which exposes to public view photographs or illustrations of "specified sexual activities" or of poses which emphasize or direct the viewer's attention to "specified anatomical areas." As used herein, "exposes to public view" means exposes to the view of persons outside the building in which said material is placed, maintained or displayed.
- (5) Discontinuance of Nonconforming Activities.  
No later than September 19, 1980, all adult entertainment activities made nonconforming by reason of the provisions hereof, except those activities rendered nonconforming because of being within 500 feet of any other adult entertainment activity, shall be discontinued or shall be brought into full conformance with the provisions hereof, except that such activities may be allowed to continue for an additional period upon the approval of a variance with the finding that the activity is obligated by written lease entered into before the effective date of this section for a period exceeding two years from such effective date, or that the activity involves investment of money in leasehold or improvements of such that a longer period is necessary to prevent undue financial hardship.

b. Alcoholic Beverage Outlet Regulations.

- (1) Purpose.  
In addition to the general purposes listed in Section 10-1.110: General Provisions, the specific purpose of the Alcoholic Beverage Outlet Regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer.
- (a) In adopting these regulations, it is recognized that the proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers of Hayward.
- (b) Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- (c) It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- (d) These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- (e) The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming

from such uses by the imposition of reasonable conditions upon the operation of such uses.

(2) Definitions.

For the purpose of these regulations, certain terms and words shall have the following meanings:

- (a) **Alcoholic Beverage Sales Commercial Activity.** “Alcoholic Beverage Sales Commercial Activity” means the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, excluding full-service restaurants that comply with the below-listed definition of full-service restaurant.
- (i) “On-sale Alcohol-related Commercial Activity” shall mean any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises. This section shall be interpreted to include bars, exclusive of night clubs.
- (ii) “Off-sale Alcohol-related Commercial Activity” shall mean any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- (iii) “Liquor store” shall mean any business of less than 10,000 square feet (gross) where beer, wine or distilled spirits are sold for off-sale consumption.
- (b) **Downtown Entertainment Area.** The “Downtown Entertainment Area” shall mean that area generally between A and D Streets and between Second Street and Grand Street.
- (c) **Restaurant – Full Service.** A “full service restaurant” shall mean a sit-down commercial activity which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants or delicatessens. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon 72 hours’ prior written notice. To be considered a full service restaurant, the commercial activity must meet the criteria listed below. Restaurants that fail to meet these criteria must apply for a conditional use permit. In the event that the establishment fails to obtain a conditional use permit, the establishment shall be in violation of these regulations and subject to the penalties and enforcement provisions set forth in Section 10-1.2850 of the Zoning Ordinance.

- (i) A full service restaurant shall serve meals to guests at all times the commercial activity is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (ii) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (iii) A full service restaurant shall not offer or permit any form of live or recorded entertainment; including by way of example and not limited to, the playing of recorded music by a disc jockey, karaoke, dancing, video or mechanical games. Background music complementary to a dining experience may be provided as determined by the Chief of Police.
- (iv) A full service restaurant shall not offer any type of reduced price promotion for alcoholic beverages served on the premises.
- (v) A full service restaurant is one that abides by all of the following performance standards:
  - (a) That it does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
  - (b) That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
  - (c) That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and
  - (d) That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
  - (e) That all its employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within 90 days of being employed; and
  - (f) That it complies with all of the Retail Operating Standards of the California Department of Alcoholic Beverage Control; and
  - (g) That it does not sell alcoholic beverages to minors.
- (d) Night Club. “Night club” shall mean any alcoholic beverage sales commercial activity which engages in the sale of alcoholic beverages in conjunction with providing live entertainment (including the playing of recorded music by a disc jockey) or dancing between the hours of 6:00 p.m. to 2:00 a.m. regardless of whether such establishment is simultaneously offering full restaurant meal service or charges an entry fee or increases the sale price of beverages.

(3) Conditional Use Permit for New Establishments.

Except as otherwise provided herein, no new alcoholic beverage sales commercial activity may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit shall not be required if the establishment is one of the following:

- (a) Retail stores having 10,000 square feet or more of floor area and which devote not more than 5 percent of such floor area to the sale, display, and storage of alcoholic beverages;
- (b) Full-service restaurants; or
- (c) Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
  - (i) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
  - (ii) The person, group, business, or organization sponsoring the event obtains a temporary on-sale license from the State of California Department of Alcohol Beverage Control for each of the dates the event will be held; and
  - (iii) The duration of the event does not exceed three consecutive days or five days in any single calendar year.

(4) Posting of Conditions of Approval.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

(5) Findings.

- (a) In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration in the area of establishments dispensing alcoholic beverages.
- (b) The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

(6) Application For Conditional Use Permit.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- (a) The type of Alcoholic Beverage Control license the applicant is seeking for the establishment; and
- (b) The true and complete name and address of each lender or share holder with a 5 percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- (c) A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

(7) Requirements For New On-Sale Alcohol-Related Commercial Activities.

(a) With the exception of the downtown entertainment area, no new on-sale alcohol-related commercial activity shall be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreational center, day care center, or other similar use.

(b) Notwithstanding the above:

(i) Outside the downtown entertainment area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate space requirement and that alternative measures to assure public health and safety are provided with respect to sale and use of alcoholic beverages.

(ii) Within the downtown entertainment area, no on-sale alcohol-related commercial activity shall be established or maintained within a radius of 100 feet of any off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol related commercial activities which front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.

(iii) Within the downtown entertainment area, no more than two on-sale alcohol-related commercial activities shall be permitted per block side or face, with the exception of new or existing establishments that are exempted by subsection (3) above. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related commercial activity on a block between the two immediate cross streets.

(8) Requirements For New Off-Sale Alcohol-Related Commercial Activities.

With the exception of the downtown entertainment area, no new off-sale alcohol-related commercial activity will be permitted within a radius of 500 feet of any other on-sale or off-sale alcohol-related commercial activity (with the exception of new or existing establishments which are exempted by subsection (3) above), or within 500 feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

(9) Conditions.

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and in subsection (1) above, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise shall be independent grounds for permit revocation. These conditions may include, but are not limited to:

- (a) Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) Such criminal offense is found to be detrimental to the public health, safety, or general welfare.
  - (b) Alcoholic beverage sales commercial activities shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
  - (c) Alcoholic beverage sales commercial activities with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
  - (d) Alcoholic beverage sales commercial activities shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
  - (e) No beer or malt liquor shall be sold in bottles or containers larger than 12 ounces for off-site consumption;
  - (f) Beer and malt liquor in containers of 12 ounces or less shall not be sold in units of less than one six-pack for off-site consumption;
  - (g) Wine shall not be sold in bottles or containers smaller than 750 ml and wine coolers shall not be sold in containers smaller than 12 ounces and in units of less than one four-pack for off-site consumption;
  - (h) Distilled spirits shall not be sold in bottles or containers smaller than 750 ml for off-site consumption; and
  - (i) Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment;
  - (j) Alcoholic beverage sales commercial activities shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.
- (10) Existing Establishments Selling Alcoholic Beverages.

Any alcoholic beverage sales commercial activity lawfully operating prior to the effective date of these regulations and licensed by the State of California for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations. Upon the occurrence of either of the following, however, operation of the establishment shall require approval of a conditional use permit:

- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a license classification; or
- (b) There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" shall include, but not be limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six months or more.

- (11) Modifications in Permitted Alcoholic Beverage Sales Commercial Activities.  
Any permitted alcoholic beverage sales commercial activity operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:
- (a) The alcoholic beverage sales commercial activity changes its type of liquor license within a classification; or
  - (b) There is a substantial change in the mode or character of operations of the alcoholic beverage sales commercial activity as defined in subsection (11) above.
- (12) Notice.  
In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within 300 feet of the perimeter of the subject property for which use permit approval is sought.
- (13) Letter of Public Convenience or Necessity.  
The Planning Director is authorized to issue letters of public convenience or necessity to the State Department of Alcoholic Beverage Control for alcoholic beverage sales commercial activities that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit.

c. Catering Truck Standards.

All catering truck operations shall comply with the following standards:

- (1) Catering trucks shall only park on private property with the permission of said property owner(s).
- (2) Catering trucks shall not park on any City streets, rights-of-way or property.
- (3) Catering trucks shall not be located on a single parcel more than 20 minutes at a time.
- (4) Catering trucks shall not be located within 300 yards of a food vendor as defined in this Ordinance.
- (5) Catering trucks shall not return to the same location within less than two hours.
- (6) Catering trucks shall obtain all necessary approvals for the County Health Department and City of Hayward Police Department.

d. Christmas Tree and Pumpkin Patch Lot Regulations.

All Christmas tree and pumpkin patch lots shall comply with the following standards:

- (1) Pumpkin Patch lots shall not be established before October 1 of each year and Christmas tree lots shall not be established before November 22 of each year. Annual permits must be obtained from the Fire Department and the Building Division.
- (2) Prior to opening for business, all Fire Department and the Building Division permits shall be obtained. The lot shall be maintained and operated in compliance with all Fire Department and the Building Division requirements.
- (3) No merchandise, equipment, vehicles, refuse, or other material associated with the proposed lot shall block circulation or parking aisles outside fenced areas .



**MINUTES OF THE SPECIAL JOINT CITY  
COUNCIL/REDEVELOPMENT AGENCY/HOUSING  
AUTHORITY MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, January 24, 2012, 7:00 p.m.**

The Special Joint City Council/Redevelopment Agency/Housing Authority Meeting was called to order by Mayor/Chair Sweeney at 7:00 p.m., followed by the Pledge of Allegiance led by Council/RA/HA Member Salinas.

**ROLL CALL**

**Present:** COUNCIL/RA/HA MEMBERS Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson  
MAYOR/CHAIR Sweeney  
**Absent:** COUNCIL/RA/HA MEMBER None

**CLOSED SESSION ANNOUNCEMENT**

Mayor Sweeney reported that the Council met concerning four items: Public Employment regarding City Attorney; Conference with Labor Negotiators regarding all bargaining units; Conference with Legal Counsel regarding California Redevelopment Association, et al v. Matosantos, California Supreme Court Case No. S194861; and Conference with Legal Counsel regarding Nanette Dillard v. Alameda County Associated Community Action Program Governing Board Alameda County Superior Court No. RG11572661. There were no reportable items.

**PUBLIC COMMENTS**

Mr. Ron Teague, General Manager at Mimi's Cafe in Hayward, expressed support for removing the prohibition of reduced price alcohol sales "happy hour." Mr. Teague noted that Mimi's Cafe has 57 locations in California and the ban in Hayward does not allow them to participate in company-wide alcoholic beverage programs and also places them at a disadvantage with competitors in neighboring cities. He added that the sales generated from a happy hour program would increase tax revenue and potentially increase employment opportunities for local residents.

Mr. Jason Jago, District Manager of the Elephant Bar Restaurant in the Bay Area, noted that the ban on "happy hour" in Hayward places them at an economic disadvantage. Mr. Jago added that reduced prices on alcohol beverage coupons issued by Elephant Bar restaurants have a disclaimer that coupons are valid everywhere except Hayward. Mr. Jago mentioned that employees are cognizant that the restaurant is a full-service restaurant and are properly trained to handle situations related to alcoholic beverages. Mr. Jago favored instituting a "happy hour" from 3:00 p.m. to 7:00 p.m., similar to other locations.

Mr. Sassan Pirzaden, Shift Manager at the Elephant Bar Restaurant, favored a "happy hour" for his restaurant, noting that employees are properly trained about alcohol sales. Mr. Pirzaden noted that the Elephant Bar is at an economic disadvantage with Applebee's restaurant because the restaurant has reduced price alcohol sales.

Mr. Jesús Armas, with a business address on Main Street, invited all to the second annual “Fire and Salsa Game II,” a basketball fundraising match between Los Chilonos de Hayward and Hayward Firefighters, Local 1909, on February 4, 2012, at noon at the Mateo Jimenez Gym. Mr. Armas noted that the proceeds would benefit the Hayward Youth Commission.

Mr. Doug Ligibel, Grand Terrace resident, relayed questions from Alcohol and Drugs Specialists (ADS) about the consideration of a “happy hour” at local restaurants. The questions related to happy hour and public safety, crime, nuisance, youth eating at restaurants, overconcentration of on-site alcohol outlets, and hours of service. Mr. Ligibel shared arrest records that reflected several driving under the influence offenses, and arrests that showed a problem with youth females drinking and driving. Mr. Ligibel was concerned about the 9:00 p.m. to close happy hour consideration and urged Council to pay attention to the 9:00 p.m. to 2:00 a.m., happy hour policies of some restaurants.

Mr. Kim Huggett, Chief Executive Officer of Hayward Chamber of Commerce, supported removing the prohibition against restaurants offering alcoholic beverages for a reduced price promotion because the prohibition placed Hayward restaurants at a competitive disadvantage, compared to neighboring communities, reduced restaurant income, impacted City sales tax, and jobs. He noted that the prohibition erroneously presumed that owners and managers of our restaurants did not know how to train their employees and how to responsibly serve alcoholic beverages. Lastly, on behalf of Buffalo Bills’ owner, Geoff Harries, he relayed to Council Mr. Harries’ support for removing the ban against restaurants offering discounted alcoholic beverages.

Ms. Julie McKillop, Neumanali Restaurant owner, stated that she was not aware of the City’s ordinance banning discounted alcohol beverages. Ms. McKillop favored happy hour as a good marketing tool and not necessarily something that increased alcohol consumption. She disapproved seeing Hayward restaurants at a competitive disadvantage and asked for a compromise on this issue.

## **SPECIAL JOINT CITY COUNCIL/PLANNING COMMISSION WORK SESSION**

### **1. Revisions to the Alcohol Beverage Outlet Regulations in the Zoning Ordinance**

Staff report submitted by Development Services Director Rizk and Police Chief Urban, dated January 24, 2012, was filed.

Mayor Sweeney invited Planning Commissioners to join Council at the dais. Development Services Director Rizk provided a synopsis of the report.

Mayor Sweeney said it seemed inappropriate to modify regulations for alcohol-serving establishments without having a tangible plan for enforcing the regulation of any undesirable uses that might drain limited City resources.

Council Member Henson noted that the purpose of revising the City’s regulations on alcoholic beverage sales at full-service restaurants was an attempt to balance the economic needs of such restaurants with the need to eradicate problematic establishments.



**MINUTES OF THE SPECIAL JOINT CITY  
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Mr. Henson shared that other cities offered cabaret licenses and/or entertainment permits. Development Services Director Rizk noted that upon receiving direction from Council, staff could conduct research on the topic. In response to Council Member Henson's request to address the concerns raised by Mr. Ligibel, Director Rizk commented that full-service restaurants would have to adhere to regulations that required that 60% of restaurant sales come from food, and noted that, according to the Police Department, full-service restaurants were typically not a large source of calls for service. Council Member Henson pointed out there should be a clause in the City's ordinance addressing the actions that could be taken if things got out of hand.

Council Member Peixoto supported a compromise on the timing of happy hours, noting that the ordinance could be revised to restrict happy hours during the late night period.

Council Member Peixoto commented that the City's priorities were in place to develop a thriving downtown and believed that happy hours would encourage customers to stay at the full-service restaurant and have a meal. He agreed with Mayor Sweeney's concerns about potential safety issues that may arise from permitting happy hours after 9:00 p.m.

Planning Commissioner Lamnin favored instituting happy hours for full-service restaurants and suggested the following: that the revised ordinance require full-service restaurants to also offer low priced appetizers in addition to the discounted drinks; that the training provided to restaurant personnel be consistent for all of the full-service restaurants offering a happy hour; that the ordinance contain language for violations of the happy hour provision; and that full-service restaurants participate in crime prevention through environmental design standards. Commissioner Lamnin asked staff to look into whether or not dancing could be permissible at certain establishments. Due to concerns regarding the added costs resulting from the institution of a happy hour, Commissioner Lamnin shared that some cities had implemented an alcohol and tobacco retailer's license to assist in offsetting the cost of enforcement. She further stated that as a reward for businesses that were compliant with the City's regulations, a business might receive a discount in their permit fee.

Planning Commissioner Lavelle favored lifting the restriction on happy hours because it would allow local full-service restaurants to compete with other restaurants in the Bay Area. Commissioner Lavelle noted that the Elephant Bar in Hayward was the only Elephant Bar restaurant in Northern California lacking a happy hour. She expressed that having one early happy hour time would be adequate for restaurants and customers and added that discounted drinks being available late at night could contribute to driving under the influence. Ms. Lavelle supported Commissioner Lamnin's suggestion of discounted appetizers. Ms. Lavelle asked staff to explore the possibility of permitting music of a variety of sources at the full-service restaurants, and when permitted, would be in concurrence with the City's noise regulations. Ms. Lavelle noted that she did not read any references to Community Prevention of Alcohol-Related Problems (COMMPRE) and hoped that a representative would share their views regarding the proposed happy hour regulations.

In response to Planning Commissioner Mendall's question regarding situations that would necessitate changing back to the former regulation such as due to an increase in the number of service calls, Assistant City Attorney Conneely stated that staff could propose a trial period during which to test the revised regulation. Mr. Mendall asked if the City could place restrictions on problematic establishment. Development Services Director Rizk noted that the establishment would not be in compliance with the criteria of full-service restaurant and, therefore, would need to obtain a conditional use permit. Commissioner Mendall was supportive of revising the ordinance to allow happy hour for full-service restaurants, but only if regulating mechanisms were in place. He was amenable to a 3:00 p.m. to 7:00 p.m. happy hour timeframe, but was not comfortable with the late night happy hour. He added that the funding mechanism would need to be proportional to the size of the establishment or the amount of alcohol being served.

Planning Commissioner Faria pointed out that Applebee's restaurant had a conditional use permit, but was not on the list provided. Ms. Faria noted that in an effort to promote growth and business in the City, she would support lifting the prohibition of happy hour for full-service restaurants. She supported a funding mechanism for the oversight of the ordinance.

Planning Commissioner Márquez stated support of loosening the restrictions placed on full-service restaurants; however, she also believed that there needed to be additional research in terms of handling problematic businesses and maintaining compliance. In response to Commissioner Márquez' question of what intervening agency would respond to a problematic business, Police Chief Urban responded that it would be a shared responsibility between the Police Department and Alcohol and Beverage Control (ABC). Commissioner Márquez noted that the City needed to have fees associated with a revised ordinance and noted that a trial period made sense. She was in support of restricting happy hour from 3:00 p.m. to 7:00 p.m.

Planning Commission Chair Loché concurred with the comments made. Chair Loché noted that businesses that were poorly managed, whether they served alcohol or not, were the businesses that drained City services and he noted the importance of addressing that issue. In terms of a funding structure, he suggested cabaret fees. He added that a funding structure could help eliminate poorly run businesses and, on the same token, could help incentivize well run businesses.

Council Member Zermeño agreed with Planning Commission Chair Loché's comments regarding problematic businesses. Mr. Zermeño noted that he had been a proponent of eliminating the provision that prohibited happy hours, but disagreed that there needed to be more research for a funding structure to enforce regulations. He mentioned that the City was in need of economic vitality. For the time being, he agreed with the 3:00 p.m. to 7:00 p.m. happy hour timeframe. Furthermore, he mentioned that he wanted to see no limit to the number of restaurants that could be next to each other on a particular block.

Council Member Salinas stated that he was in agreement with the comments expressed by Council and Planning Commissioners. Mr. Salinas mentioned model businesses that were doing well. He liked the fact that bartenders were educated and skilled to identify and take care of problem customers. He added that full-service restaurants had a good opportunity to work with cab companies. He was supportive of lifting the provision that prohibits happy hour for full-service



**MINUTES OF THE SPECIAL JOINT CITY  
COUNCIL/REDEVELOPMENT AGENCY/HOUSING  
AUTHORITY MEETING OF  
THE CITY OF HAYWARD  
City Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, January 24, 2012, 7:00 p.m.**

restaurants, allows music in those restaurants up until 10:00 p.m., and allows staff to conduct further research on alcohol sales.

Council Member Halliday mentioned that the Elephant Bar, Mimi's Cafe, Olive Garden, and Applebee's restaurants were relatively new to the Southland Mall area and appreciated staff's efforts to bring them into conformity with other cities in the area. In response to Council Member Halliday's question, Director Rizk explained that the State Board of Equalization would notify the Department of Alcohol Beverage Control (ABC) if a full-service restaurant had exceeded 40% of alcohol sales, and ABC would then work with the Hayward Police Department to address the issue. She agreed that having happy hour extended later into the night could prove problematic and therefore she favored allowing the earlier times for happy hours at full-service restaurants and allowing music and use permits for dancing. She was supportive of proper training for employees and researching a funding structure to regulate uses.

Council Member Quirk agreed with his fellow Council Members and, in particular, with Council Member Zermeño about getting the happy hour started right away. Mr. Quirk asked staff to poll participants of the restaurant tour about the importance of late night happy hours. He mentioned that if there was no evidence of problems, then he would not have a reason to be concerned about late night happy hours.

Council Member Henson said he was in favor of going forward and exploring the funding to support public safety oversight of alcohol-serving establishments. Mr. Henson noted that during this economic environment it was appropriate to give restaurants the opportunity to be competitive.

Mayor Sweeney stated there was general consensus among the two bodies and asked staff to provide options when the item comes back to Council. Mayor Sweeney noted that there was consensus to restrict the hours of the happy hour, with the exception of Council Member Quirk's request that staff poll restaurants and conduct a survey of late night happy hours, and bring back findings. Mayor Sweeney mentioned the suggestion offered by Commissioner Mendall to have a trial period with restrictions and at the end of the trial there would be a recommendation to establish a happy hour or leave the ordinance as is. Mayor Sweeney brought up Commissioner Lamnin's suggestion to consider adding discounted appetizers to the happy hour of full-service restaurants. He also pointed out that an effective strategy needed to be developed to address problem businesses that drain Police resources. Lastly, Mayor Sweeney commented that a stronger strategy needed to be developed to improve Hayward's economy.

**2. Presentation of the Alternative Scenarios for the Regional Sustainable Communities Strategy**

Staff report submitted by Development Services Director Rizk, dated January 24, 2012, was filed.



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Tuesday, June 19, 2012, 7:00 p.m.**

Attachment III

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Resolution 12-104, “Providing Notice of Scheduled Adoption of Appropriations Limit for Fiscal Year 2013 Pursuant to Article XIII B of the Constitution of the State of California”

8. Extension of 72-Inch Effluent Pipeline Shoring at the Water Pollution Control Facility

Staff report submitted by Senior Utilities Engineer Clark, dated June 19, 2012, was filed.

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

Resolution 12-105, “Resolution Authorizing the City Manager to Negotiate and Execute an Agreement with McGuire and Hester to Extend 72 Inch Effluent Pipeline Shoring at the Water Pollution Control Facility”

**LEGISLATIVE BUSINESS**

9. Introduction of Ordinance to Amend the Hayward Municipal Code Section 11-3.255 Regarding Sewer Connection Fees to Allow for Longer Payment Terms – Continued to June 26, 2012

Staff report submitted by City Manager David, dated June 19, 2012, was filed.

Mayor Sweeney noted that staff was recommending continuation of the item to June 26, 2012.

There being no public comments, Mayor Sweeney opened and closed the public hearing at 7:55 p.m.

It was moved by Council Member Halliday, seconded by Council Member Henson, and carried unanimously, to continue the item to June 26, 2012.

10. Temporary Revisions to the Alcohol Beverage Outlet Regulations to Allow on a Trial Basis Happy Hours from 4:00 to 9:00 p.m. and Music until 10:00 p.m. at Full-Service Restaurants

Staff report submitted by Director of Development Services Rizk and Chief of Police Urban, dated June 19, 2012, was filed.

Development Services Director Rizk provided a synopsis of the report.

Council Member Zermeño asked about the prohibition of dancing during the trial period. Development Services Director Rizk noted that dancing could be allowed with a conditional use permit and he added that the recommendation was for music to be complementary to a full-service restaurant dining experience.

In response to Council Member Henson’s inquiry related to dancing, Police Chief Urban said that music was secondary to the full-service dining experience and reiterated that dancing could be allowed by applying for a conditional use permit. Mr. Henson supported the proposed licensee education classes/trainings (LEADS) that the Hayward Police Department and the Department of Alcohol Beverage Control (ABC) plan to offer to ABC establishments.

In response to Council Member Halliday’s inquiry related to the terms of Applebee’s happy hour, Development Services Director Rizk noted that Applebee’s Conditional Use Permit did not specify happy hour and he added that staff will look into an enforcement mechanism.

Mayor Sweeney opened the public hearing at 8:08 p.m.

Mr. Kim Huggett, President of the Hayward Chamber of Commerce, spoke on behalf of Hayward Chamber restaurant owners expressing support for the staff recommendation and noting that the current prohibition of reduced price alcohol sales places restaurant and chains at a disadvantage. Mr. Huggett added that musical entertainment improves the quality of life and would add to the success of local restaurants.

Ms. Francesca Lomotan, Second Street resident and representing the Hayward Coalition for Healthy Youth, spoke in support of allowing, on a trial basis, happy hours and musical entertainment at full service restaurants with three amendments: change happy hours from 5:00 to 7:00 p.m., remove “all you can drink” and “two for one” specials. Ms. Lomotan said the proposed amendments would reduce the possibility of binge drinking and over-consumption. Ms. Lomotan urged Council to support the Coalition’s recommendations.

Mr. Ravai Bhatnagar, representing the Golden Peacock Banquet and Restaurant on Santa Clara Street, expressed support for the trial period in which happy hours and musical entertainment would be allowed. Mr. Bhatnagar also welcomed the licensee education classes/training. He added that dancing would allow Hayward restaurants to be competitive with other cities.

Mr. Tony Everfield, representing Mimi’s Café on Hesperian Boulevard, mentioned that happy hour increased low volume sales, increased patronage, and allowed establishments to hire more employees. Mr. Everfield emphasized the importance of a good management team that would not allow underage drinking or binge drinking.

Mr. Ronald Gruel, Voyager Way resident, supported restricting happy hours from 5:00 to 7:00 p.m. Mr. Gruel urged Council to consider the current prohibitions carefully. He noted that dancing could cause negative situations and he mentioned there was a high density of liquor licenses in Hayward.

Mr. Richmond Apande, prospective B Street business owner, spoke in support of the staff recommendation. Mr. Apande noted that surrounding cities that offer happy hour promotions



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generate more business. He added that he would take proper measures to keep customers safe, bring entertainment, and provide appropriate training for his employees.

Mr. Aric Yererino, representing the Dirty Bird Lounge on Mission Boulevard, spoke in support of the staff recommendation. Mr. Yererino said he planned on opening a full service restaurant in downtown, but current regulations created roadblocks to open a successful downtown business. He mentioned Hayward needed to attract a younger population.

Ms. Monica Thompkins, Stonehaven Court resident and ME Restaurant owner, thanked Chief Urban for Police department support in providing the licensee education classes/training and asked Council to consider the staff recommendation. Ms. Thompkins mentioned that the happy hour promotion would generate revenue, walk-in-traffic, and needed jobs.

Mr. Ronnie Stewart, Executive Director of the Blues Society, spoke in support of the staff recommendation and, as a musician, commented that happy hours helped improve economic vitality and create a destination point. He also noted that the happy hour time frame could be extended.

Mr. Jason Jago, Elephant Bar Restaurant District Manager, noted that the Hayward location was the only restaurant that did not have a happy hour and added that through social media, Yelp being one, he received complaints from customers. Mr. Jago mentioned that Elephant Bar Restaurants provide alcohol awareness training for its employees and said that staff was responsible for alerting management if there were any alcohol-related issues.

Mayor Sweeney closed the public hearing at 8:39 p.m.

Council Member Salinas indicated he was in support of the staff recommendation noting the City needed to develop strategies for businesses to generate revenue. Mr. Salinas mentioned he frequents downtown establishments in order to patronize local businesses, along with other young urban professionals, and he had not witnessed any problems. Mr. Salinas noted that college students relayed to him that there was nothing to do in the downtown. Mr. Salinas supported the staff recommendation with an amendment to extend live or recorded musical entertainment from 10:00 p.m. to midnight.

Council Member Quirk seconded the motion. In response to Council Member Quirk's inquiry about the Police Department foreseeing any problems with extending musical entertainment until midnight, Police Chief Urban said the trial period would be a great opportunity to evaluate all concerns. Development Services Director Rizk noted that music must be in compliance with the Noise Ordinance.

Council Member Zermeño said he was in support of the staff recommendation and the amendment to extend musical entertainment until midnight. Mr. Zermeño pointed out that there would be consequences if businesses did not abide by the regulations and commented that the

recommendations offered by Ms. Lomotan were unnecessary. In response to Mr. Zermeño’s inquiry, Development Services Director Rizk indicated that if an establishment wanted to allow dancing, it would need to apply for a Conditional Use Permit which would go to the Planning Commission and noticed as a public hearing.

Council Member Peixoto was in support of the staff report. Mr. Peixoto indicated that one of Council’s priorities was to revitalize downtown and he noted that by allowing, on a trial basis, happy hours, more restaurants would come into downtown and generate needed revenue. He noted that effective management was a significant factor for problematic alcohol-serving establishments.

Council Member Henson was strongly in favor of allowing, on a trial basis, happy hours, noting it would help revitalize downtown and other areas where full-service restaurants were in operation. Mr. Henson added that the temporary revisions would make the City competitive, and if missteps happened during the trial period, he suggested allowing them to work it out through training. He was in favor of allowing dancing during the trial period.

Council Member Halliday supported the staff recommendation noting that happy hours would create equity for Hayward’s full-service restaurants with other cities. Ms. Halliday mentioned downtown was a good place for entertainment, and noted that establishments that provide music and dancing in other residential areas of the City needed to use common sense and comply with the Noise Ordinance. She said she was in support of the motion because this was a trial period that would provide an opportunity to see how it worked while staff developed more permanent regulations.

Council Member Quirk offered an amendment to the motion directing staff to assess a suitable regulation to allow dancing after the trial period without disrupting the restaurant business. Council Member Salinas was amenable to the motion.

Mayor Sweeney noted that he was going to vote against the motion because of his concern with happy hours. Mr. Sweeney noted that “two for one” and “all you can drink” specials did not encourage patrons to reduce the amount of drinks. He added that drinking and encouraging drinking often leads to tragedy. He noted that Council’s first priority was to protect the public. He did not agree that extending happy hour opportunities would improve economic activity.

It was moved by Council Member Salinas, seconded by Council Member Quirk, and carried with Mayor Sweeney voting against, to adopt the staff recommendation with an amendment to allow until midnight, during a six-month trial period, recorded or live musical entertainment without dancing at full service restaurants, and to direct staff to assess the possibility of allowing dancing after the trial period.

Resolution 12-106, “Resolution Allowing Reduced Price Alcohol Sales from 4:00 P.M. to 9:00 P.M. and Musical Entertainment without Dancing until Midnight at Full Service Restaurants During a Six-Month Trial Period”

11. Revised Community Promotions / Neighborhoods Arts Events Funding Recommendations - FY 2013

HAYWARD CITY COUNCIL

RESOLUTION NO. 12-106

Introduced by Council Member Salinas

RESOLUTION ALLOWING REDUCED PRICE ALCOHOL SALES FROM 4:00 P.M. TO 9:00 P.M. AND MUSICAL ENTERTAINMENT WITHOUT DANCING UNTIL MIDNIGHT AT FULL SERVICE RESTAURANTS DURING A SIX-MONTH TRIAL PERIOD

WHEREAS, the Hayward City Council and Hayward Planning Commission held a joint work session on January 24, 2012, to discuss possible revisions to the City of Hayward's Alcohol Beverage Outlet regulations; and

WHEREAS, local restaurants and the Hayward Chamber of Commerce have requested authorization to offer happy hours and musical entertainment at full-service restaurants, which activities are currently permitted under the City's Zoning Ordinance only with a conditional use permit, in order to allow Hayward's full service restaurants the opportunity to compete favorably with restaurants in surrounding communities; and

WHEREAS, direction was provided at the joint work session for staff to develop options for the City Council to consider, including a requirement that full-service restaurants offer reduced price appetizers and reduced price non-alcoholic drinks during happy hours, and for staff to develop a comprehensive set of revisions in the near future to address problem establishments and fiscal impacts to the City.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Hayward hereby authorizes, on a temporary, trial basis for a period of up to six months (to expire not later than December 26, 2012), a Happy Hour Trial Program, permitting the following activities without the need to obtain a conditional use permit:

a) Reduced price alcohol sales (also referred to as "Happy Hour") from 4:00 p.m. to 9:00 p.m. at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that each full-service restaurant offering reduced price alcohol beverages also offer reduced prices for appetizer food items and non-alcoholic drinks during Happy Hour; and

b) Live or recorded music until midnight at full-service restaurants as defined in Hayward Municipal Code Section 10-1.2700(b)(2)(c); provided, however, that dancing is not allowed with such music and such musical entertainment does not violate provisions of the City's Noise Ordinance.

BE IT FURTHER RESOLVED, that full-service restaurants may participate in the Happy Hour Trial Program only if the restaurant operator has an ABC license in good standing and is in compliance with all applicable requirements of the City's Municipal Code. This Happy Hour Trial Program does not confer a vested right on operators, owners and/or licensees of full-service restaurants to continue to offer happy hours and/or music after the conclusion of the Happy Hour Trial Program.

BE IT FURTHER RESOLVED, that staff is directed to return to Council with a report should an increase in incidents associated with alcohol sales at restaurants occur during the Happy Hour Trial Program, at which time the City Council may unilaterally terminate the Happy Hour Trial Program without further notice.

BE IT FURTHER RESOLVED, that City staff is directed to return to City Council prior to December 26, 2012, with recommended comprehensive revisions to the City's alcohol beverage outlet regulations, to include identification of processes to regulate more effectively and/or eliminate problem establishments and to recover costs for administering and enforcing the alcohol regulations of the City.

IN COUNCIL, HAYWARD, CALIFORNIA June 19, 2012

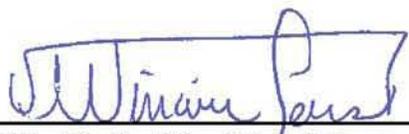
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Quirk, Halliday, Peixoto, Salinas, Henson

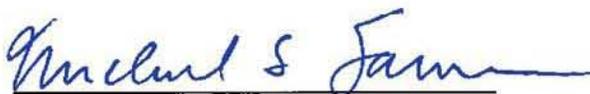
NOES: COUNCIL MEMBERS: None  
MAYOR: Sweeney

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:   
City Clerk of the City of Hayward

APPROVED AS TO FORM:

  
City Attorney of the City of Hayward

## COMMON ABC LICENSE TYPES AND THEIR BASIC PRIVILEGES

LICENSE TYPE	DESCRIPTION
01	<b>BEER MANUFACTURER - (Large Brewery)</b> Authorizes the sale of beer to any person holding a license authorizing the sale of beer, and to consumers for consumption on or off the manufacturer's licensed premises. Without any additional licenses, may sell beer and wine, regardless of source, to consumers for consumption at a bona fide public eating place on the manufacturer's licensed premises or at a bona fide eating place contiguous to the manufacturer's licensed premises. May conduct beer tastings under specified conditions (Section 23357.3). Minors are allowed on the premises.
02	<b>WINEGROWER - (Winery)</b> Authorizes the sale of wine and brandy to any person holding a license authorizing the sale of wine and brandy, and to consumers for consumption off the premises where sold. Authorizes the sale of all wines and brandies, regardless of source, to consumers for consumption on the premises in a bona fide eating place that is located on the licensed premises or on premises owned by the licensee that are contiguous to the licensed premises and operated by and for the licensee. May possess wine and brandy for use in the preparation of food and beverage to be consumed at the bona fide eating place. May conduct winetastings under prescribed conditions (Section 23356.1; Rule 53). Minors are allowed on the premises.
20	<b>OFF SALE BEER &amp; WINE - (Package Store)</b> Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are allowed on the premises.
21	<b>OFF SALE GENERAL - (Package Store)</b> Authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises.
23	<b>SMALL BEER MANUFACTURER - (Brew Pub or Micro-brewery)</b> Authorizes the same privileges and restrictions as a Type 01. A brewpub is typically a very small brewery with a restaurant. A micro-brewery is a small-scale brewery operation that typically is dedicated solely to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.
40	<b>ON SALE BEER - (Bar, Tavern)</b> Authorizes the sale of beer for consumption on or off the premises where sold. No wine or distilled spirits may be on the premises. Full meals are not required; however, sandwiches or snacks must be available. Minors are allowed on the premises.
41	<b>ON SALE BEER &amp; WINE - EATING PLACE - (Restaurant)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. Distilled spirits may not be on the premises (except brandy, rum, or liqueurs for use solely for cooking purposes). Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
42	<b>ON SALE BEER &amp; WINE - PUBLIC PREMISES - (Bar, Tavern)</b> Authorizes the sale of beer and wine for consumption on or off the premises where sold. No distilled spirits may be on the premises. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
47	<b>ON SALE GENERAL - EATING PLACE - (Restaurant)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the licenses premises. Authorizes the sale of beer and wine for consumption off the licenses premises. Must operate and maintain the licensed premises as a bona fide eating place. Must maintain suitable kitchen facilities, and must make actual and substantial sales of meals for consumption on the premises. Minors are allowed on the premises.
48	<b>ON SALE GENERAL - PUBLIC PREMISES - (Bar, Night Club)</b> Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.
49	<b>ON SALE GENERAL - SEASONAL -</b> Authorizes the same privileges and restrictions as provided for a Type 47 license except it is issued for a specific season. Inclusive dates of operation are listed on the license certificate.



## SPECIAL EVENTS

The Department also issues licenses and authorizations for the retail sale of beer, wine and distilled spirits on a temporary basis for special events. The most common are listed below. Other less common ones are found in Business and Professions Code Section 24045.2, et seq.

**SPECIAL DAILY BEER AND/OR WINE LICENSE - (Form ABC-221)** Authorizes the sale of beer and/or wine for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to non-profit organizations. (Rule 59, California Code of Regulations)

**DAILY ON SALE GENERAL LICENSE - (Form ABC-221)** Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. No off-sale privileges. Minors are allowed on the premises. May be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State. In some instances, the local ABC office may require the applicant to obtain prior written approval of the local law enforcement agency. Issued to political parties or affiliates supporting a candidate for public office or a ballot measure or charitable, civic, fraternal or religious organizations. (Section 24045.1 and Rule 59.5 California Code of Regulations)

**CATERING AUTHORIZATION - (Form ABC-218)** Authorizes Type 47, 48, 51, 52, 57, 75 and 78 licensees (and catering businesses that qualify under Section 24045.12) to sell beer, wine and distilled spirits for consumption at conventions, sporting events, trade exhibits, picnics, social gatherings, or similar events. Type 47, 48 and 57 licensees may cater alcoholic beverages at any ABC-approved location in the State. Type 51 and 52 licensees may only cater alcoholic beverages at their licensed premises. All licensees wishing to cater alcoholic beverages must obtain prior written authorization from the Department for each event. At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises and violation of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399 and Rule 60.5 California Code of Regulations)

**EVENT AUTHORIZATION - (Form ABC-218)** Authorizes Type 41, 42, 47, 48, 49, 57, 75 and 78 licensees to sell beer, wine and distilled spirits for consumption on property adjacent to the licensed premises and owned or under the control of the licensee. This property shall be secured and controlled by the licensee and not visible to the general public. *The licensee shall obtain prior approval of the local law enforcement agency.* At all approved events, the licensee may exercise only those privileges authorized by the licensee's license and shall comply with all provisions of the ABC Act pertaining to the conduct of on-sale premises (including any license conditions) and violations of those provisions may be grounds for suspension or revocation of the licensee's license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399)

**WINE SALES EVENT PERMIT - (Form ABC-239)** Authorizes Type 02 licensees to sell bottled wine produced by the winegrower for consumption off the premises where sold and only at fairs, festivals or cultural events sponsored by designated tax exempt organizations. The licensee must notify the city and/or county where the event is being held and obtain approval from ABC for each event (Form ABC-222). The licensee must also comply with all restrictions listed in Business and Professions Code Section 23399.6.

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### Note:

1. "Minor" means any person under 21 years of age.
2. Consult Section 25663(b) regarding age of employees in off-sale premises; consult Sections 25663(a) and 25663.5 regarding age of employees in on-sale premises.
3. In certain situations, ABC may place reasonable conditions upon a license, such as restrictions as to hours of sale, employment of designated persons, display of signs, restrictions on entertainment or dancing, etc. If a license has been conditioned, it will be endorsed as such on the face of the license. (Conditional licenses, Sections 23800-23805.)
4. Licensees whose license allows minors on the premises may have a "house policy" restricting minors from entering certain areas of the premises or prohibiting minors in the premises during certain hours.
5. This handout contains only abbreviated information. Contact your local ABC office for full information before doing anything which may jeopardize your license. Also available from the ABC: Quick Summary of Selected ABC Laws (form ABC-608); Alcoholic Beverage Control Act (complete laws); Rules & Regulations; and P-90 (describes privileges of non-retail licenses).

Department of Alcoholic Beverage Control  
**NON-RETAIL ABC LICENSE TYPES  
 AND THEIR BASIC PRIVILEGES**

State of California  
 Edmund G. Brown Jr., Governor

LICENSE TYPE	DESCRIPTION
01	<p><b>BEER MANUFACTURER</b> - (Large Brewery over 60,000 barrels per year) This license is required by makers of beer in this State. An exception under State and Federal law allows a person to produce up to 100 gallons of beer a year for his/her own consumption (maximum of 200 gallons per household). See also <u>Small Beer Manufacturer</u> (Type 23) for brewpubs and micro-breweries. "Beer manufacturer" means any person, except those manufacturing pursuant to Section 23356.2 (home brew), engaged in the manufacture of beer (Section 23012).</p>
02	<p><b>WINEGROWER</b> - (Winery) The following pertains to new winegrowers' licenses issued after September 17, 1965. A winegrower must have facilities and equipment for the conversion of fruit into wine and engage in the production of wine (Section 23013). Federal Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations permit a winegrower to use the facilities and equipment of another winegrower to produce wine. This is commonly referred to as an "alternating proprietorship." Separate winegrower licenses are issued to each legal entity manufacturing wine under its own bonded winery permit. Wine must be made from the fermentation of agricultural products to which may be added brandy that is distilled from the same agricultural product from which the wine is made. Thus, neutral grain or other distilled spirits cannot be used to fortify wine - only brandy of a specific type. No more than 15% added flavoring or blending material may be added. (Section 23007).</p>
03	<p><b>BRANDY MANUFACTURER</b> - The following pertains to brandy manufacturers' licenses, and to duplicate brandy manufacturer's licenses issued after September 17, 1965. This license authorizes the holder to manufacture only brandy and not other distilled spirits (Section 23014). Brandy made by the distillation of wine or fermented fruit.</p>
04	<p><b>DISTILLED SPIRITS MANUFACTURER</b> - The following pertains to new distilled spirits manufacturer's licenses issued after September 18, 1959. The Act defines a distilled spirits manufacturer as "...any person who produces distilled spirits from naturally fermented materials or in any other manner" (Section 23015). The functions of this type of license, in addition to that of production, include packaging, bottling, rectifying, flavoring and others as found within Section 23356. The functions apply only to distilled spirits; they do not include wine or beer.</p>
05	<p><b>DISTILLED SPIRITS MANUFACTURER'S AGENT</b> - This license authorizes any of the following:</p> <ul style="list-style-type: none"> <li>(a) The possession of distilled spirits in public or private warehouses.</li> <li>(b) The exportation of distilled spirits.</li> <li>(c) The cutting, blending, mixing, flavoring, and coloring of distilled spirits for his own account or for the account of a distilled spirits manufacturer, manufacturer's agent, rectifier, or wholesaler.</li> <li>(d) Whether cut, blended, mixed, flavored, or colored by him, or any other person, the packaging and the sale or delivery of distilled spirits only to holders of distilled spirits manufacturer's, rectifier's or distilled spirits wholesaler's licenses.</li> </ul> <p>A person need not actually engage in the cutting, blending, or bottling of distilled spirits in order to qualify for a distilled spirits manufacturer's agent's license.</p>
06	<p><b>STILL</b> - The following applies to still licenses used for the making of alcoholic beverages or capable of such use. A still is "...any apparatus capable of being used for separating alcohol, or alcoholic vapors or solutions from alcohol or alcoholic solutions or mixtures ..." Stills used for laboratory purposes or stills used solely for producing distilled water or other non-alcoholic beverages are exempt from licensing (Section 23034). (Generally, this license is not required to produce fuel alcohol.)</p>
07	<p><b>RECTIFIER</b> - This type of license is frequently referred to as a "distilled spirits rectifier's license", which is incorrect since the license also permits the rectification of wine. This licensee is authorized to cut, blend, rectify, mix, flavor and color distilled spirits and wine upon which excise tax has been paid and, whether rectified by the licensee or another person, to package, label, export and sell the products to persons holding licenses authorizing the sale of distilled spirits (Sections 23016 and 23368). This licensee may sell distilled spirits and wine without the need for any other license, but he/she may <u>not</u> sell wine to a person who does not hold a license that also authorizes the sale of distilled spirits. A rectifier may also elect to function as a distilled spirits wholesaler, but when doing so, he/she must comply with all of the provisions applicable to a distilled spirits wholesaler (Section 23371).</p>

LICENSE TYPE	DESCRIPTION
08	<b>WINE RECTIFIER</b> - The wine rectifier's license is one in very limited use. Presently, there are no active Type 08 licenses. A rectifier's license (Type 07) includes wine rectification privileges in addition to allowing distilled spirits rectification privileges. A wine blender's license allows most of the same privileges as the wine rectifier's license. A wine rectifier may only deal in "tax-paid" wine, unlike a wine blender who may process "in-bond" (non-tax paid) wine. A wine rectifier's license authorizes the person to whom issued to cut, blend, mix, flavor, or color wine upon which excise tax has been paid, and whether so cut, blended, rectified, mixed, flavored, or colored by him, or any other person, to package, label, export, and sell the products to persons holding licenses authorizing the sale of wine (Section 23372).
09	<b>BEER AND WINE IMPORTER</b> - This license is only issued to a person who holds another type of license which permits the sale of beer and wine for resale. This license has no sale privileges. It only permits the holder to import and export alcoholic beverages and to transfer the beverages to him/herself under another license (Section 23374).
10	<b>BEER AND WINE IMPORTER'S GENERAL</b> - This type of license is one frequently issued to agents for out-of-state breweries or wineries who refer to themselves as "brokers." Such agents differ greatly from true brokers as is shown in the functions they perform. This license should also be held by companies representing manufacturers/suppliers where such companies have a physical marketing presence in California. This presence may consist of a regional sales office or one person/employee working out of his/her home while performing general missionary work. Another common situation requiring the holding of this license is where an out-of-state vendor imports beer or wine in its own name and uses the services of a licensed public warehouse for importation, storage and distribution of beer and wine to authorized licensees. Section 23374.6 authorizes the person to whom this license is issued to become an importer of beer or wine and to sell State tax-paid beer and wine to beer manufacturers, winegrowers, beer and wine wholesalers, wine rectifiers, and other beer and wine importer's general licensees.
11	<b>BRANDY IMPORTER</b> - This license is only issued to a person who holds another type of license which permits the sale of brandy for resale. It, however, may not be issued to a California Brandy Wholesaler. (Section 23378.1) Brandy is included in the definition of distilled spirits (Section 23005).
12	<b>DISTILLED SPIRITS IMPORTER</b> - This license is only issued to a licensee who has another type of non-retail distilled spirits license. This license has no sale privileges. It only permits the holder to import and export alcoholic beverages, and to transfer the beverages to him/her under another license (Section 23374).
13	<b>DISTILLED SPIRITS IMPORTER'S GENERAL</b> - This type of license is one most frequently issued to agents for out-of-state rectifiers, distilleries, or nation-wide import companies. Such agents differ greatly from true brokers as is shown in the functions they perform. This license should also be held by companies representing manufacturers/suppliers where such companies have a physical marketing presence in California. This presence may consist of a regional sales office or one person/employee working out of his/her home while performing general missionary work. Another situation requiring the holding of this license is where an out-of-state vendor imports distilled spirits in its own name and uses the services of a licensed public warehouse for importation, storage and distribution of distilled spirits to authorized licensees. A distilled spirits importer's general license authorizes the person to whom issued to become an importer of distilled spirits and to sell distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, rectifiers and distilled spirits general importers (Section 23374.5).
14	<b>PUBLIC WAREHOUSE</b> - A public warehouse license is required for a warehouseman who provides warehouse service for alcoholic beverage licensees. This is distinguished from private warehouse permits, where a licensee has a leasehold or ownership interest and provides his/her own help at a premises other than that where licensed. The Act defines a public warehouse as "...any place licensed for the storage of, but not for sale of, alcohol, or alcoholic beverages, for the account of other licensees..." (Sections 23036 and 23375). A public warehouse is one of the types of premises to which imports may come to rest (Section 23661). It is also one of the types of premises from which a distilled spirits wholesaler may make deliveries if it is in the county where he/she is licensed (Section 23355.1).

LICENSE TYPE	DESCRIPTION
15	<p><b>CUSTOMS BROKER</b> - This type of licensee will generally be located near the dock area in seaports or at international airports. The Customs Broker is also frequently located in port cities in building where many foreign consulates or commercial attaches have their offices.</p> <p><b>Special Note:</b> This Department has taken the position that where a customs broker makes either entry or withdrawal in his own name, is identified as the responsible person and has a possessory right, the possibility of unlawful diversion into the internal commerce of the State exists. Under these circumstances, we believe he/she should be subject to State control and, therefore, licensed. On the other hand, if the customs broker is solely engaged as an agent for licensed importers and if all entries and/or withdrawal documents disclose the licensed importer as the principal, he/she need not be licensed by this Department. However, we strongly suggest that such persons apply for and hold Type 15 licenses to permit the flexibility needed to handle unforeseen special circumstances requiring licensure.</p> <p>"Customs broker" means every person who is authorized to act as agent or broker for a person licensed as an importer of for a person whose place of business is without the State, in regard to the importing of alcoholic beverages into the State in United States Internal Revenue bond or in United States Customs bond. (Section 23019). The principal function of a customs broker is handling the paperwork and paying the duty on behalf of his principals on imported merchandise.</p>
16	<p><b>WINE BROKER</b> - A wine broker is an independent contractor who acts as the agent in the sale of wine products. Typically, wine broker's services are contracted by smaller wineries and wholesalers who cannot maintain their own in-house marketing representatives. A wine broker means every person, other than a salesman who is regularly employed by a licensee, who engages as an agent in the sale or purchase of wine for or on behalf of another or others for a fee or commission (Section 23020).</p>
17	<p><b>BEER AND WINE WHOLESALER</b> - The following pertains to beer and wine wholesalers generally. This permits incidental sales to other supplier-type licensees. However, to qualify as a bona fide wholesaler, a licensee <u>must</u> sell to retailers generally (Section 23779).</p>
18	<p><b>DISTILLED SPIRITS WHOLESALER</b> - The following pertains to distilled spirits wholesalers generally. However, specific mention will be made of certain "grandfather" privileges with regard to tied-house situations and in regard to sales of merchandise other than alcoholic beverages. "Wholesale sale" means a sale of distilled spirits to any licensee for the purpose of resale (Section 23027). This permits incidental sales to other supplier-type licensees. However, to qualify as a bona fide wholesaler, a licensee <u>must</u> sell to retailers generally (Section 23779, Rule 28).</p>
19	<p><b>INDUSTRIAL ALCOHOL DEALER</b> - An industrial alcohol dealer sells alcohol for use in the trades, professions, and industries, but not for beverage use. He/she may sell to non-licensees only if they have a use permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB). Section 23022 defines an industrial alcohol dealer as one who sells alcohol or distilled spirits in packages of more than one gallon for use in the trades, professions, or industries, but not for beverage use. Section 23380 authorizes a dealer to sell undenatured ethyl alcohol in packages of more than one gallon for use in the trades, professions, or industries and not for beverage consumption. It also authorizes the importation and exportation of undenatured ethyl alcohol. Undenatured ethyl alcohol is alcohol that is fit for beverage purposes as differentiated from denature alcohol which is not fit for beverage purposes.</p>
22	<p><b>WINE BLENDER</b> - The following pertains to new wine blender's licenses issued on and after February 3, 1968. A wine blender is a person authorized to operate a bonded wine cellar pursuant to a Federal Basic Permit issued by the Alcohol and Tobacco Tax and Trade Bureau (TTB) who does not have facilities or equipment for the conversion of fruit into wine and does not engage in the production of wine (Section 23013.5). Wine must be made from the fermentation of agricultural products to which may be added brandy which is distilled from the same agricultural product from which the wine is made. No other type of distilled spirits may be used to fortify wine. No more than 15% added flavoring or blending material may be added (Section 23007). A wine blender is not required to engage in blending, processing, or bottling wine. He/she may elect to operate only a warehouse facility for the storage of non-tax paid ("in-bond") wine. This activity requires a Bonded Wine Cellar permit from TTB in addition to the wine blender license (Section 23770). Normally, the application fee for a wine blender license varies according to the total wine gallonage blended; however, an applicant who intends to operate only a bonded warehouse should pay the minimum fee.</p>

LICENSE TYPE	DESCRIPTION
23	<p><b>SMALL BEER MANUFACTURER</b> - (Less than 60,000 barrels per year) The privileges and limitations for this type of license are the same as for other beer manufacturers . The only difference is the license fees. (See also Type 1 - Beer Manufacturer.) This license formerly related only to Steam beer. "Steam" beer is made by fermentation at cellar temperature rather than near freezing as is the case with other beers. It is made using only one type of malt--malted barley. It contains no corn, rice or other cereal grains as regular beers normally do. The method of carbonation is entirely natural and involves a process known as <u>Krausening</u>. This process requires taking beer which has been completely fermented and adding to it beer which is still fermenting. This causes a second fermentation to occur. The Krausening process in beer corresponds closely to the "bulk process" in making some types of sparkling wines. The most common users of this license are operators of micro-breweries and brewpubs. These designations are not to be construed as legal definitions. Their use below is only for descriptive purposes.</p> <p><u>"Micro-brewery"</u>: A small-scale brewery operation that generally produces approximately 15,000 barrels a year. Its beer products are primarily intended for local and/or regional consumption. Typically, these operations are solely dedicated to the production of specialty beers, although some do have a restaurant or pub on their manufacturing plant.</p> <p><u>"Brewpub"</u>: Typically, a very small brewery with a restaurant where the beer it produces is sold in draft form exclusively at its own premises. This operation often sells other supplier's bottled beer, including other hand-crafted or micro-brewed beers as well as wine to patrons for consumption on its premises. See "Special Note" below.</p> <p><u>Special Note</u>: A brewpub-restaurant (Type 75) license, authorized under Section 23396.3, has a limited brewing privilege and may sometimes be referred to as "brewpub." However, the Type 75 is an <u>on-sale retail</u> license with significant differences/limitations in license privileges from those of a true "beer manufacturer" (either Type 01 or Type 23).</p>
24	<p><b>DISTILLED SPIRITS RECTIFIER'S GENERAL</b> - A distilled spirits rectifier's general license is similar to a rectifier's license except that a distilled spirits rectifier's general licensee may <u>not</u> rectify wine or sell distilled spirits to retailers. A distilled spirits rectifier's general license authorizes the person to whom issued to cut, blend, rectify, mix, flavor, and color distilled spirits, and whether so cut, blended, mixed, flavored, or colored by him or any other person, to package, label, export, and sell the distilled spirits to distilled spirits manufacturers, distilled spirits manufacturer's agents, distilled spirits wholesalers, distilled spirits general importers, rectifiers, and distilled spirits general rectifiers (Section 23368.1).</p>
27	<p><b>CALIFORNIA WINEGROWER'S AGENT</b> - A California winegrower's agent acts as the sole representative for a California winegrower or brandy manufacturer (Section 23373.2). This license authorizes the holder to possess wine and brandy produced in this State in public and private warehouses; to sell only to wholesalers for his/her own account or to solicit and make sales of wine or brandy made in California only to wholesalers for his/her principal, and to invoice and collect payments for orders solicited by him/her (Section 23373). This license does not authorize the holder to represent an out-of-state winegrower or brandy manufacturer.</p>
29	<p><b>WINE GRAPE GROWER'S STORAGE</b> - This license was authorized by legislation in 1982 to enable wine grape growers to more effectively deal with unpredictable market conditions that periodically caused an oversupply of grapes. Subsequent legislation in 1985 expanded the number of licensees to whom a wine grape grower could sell wine. A wine grape grower's storage license authorizes the holder to store bulk wine, made from grapes produced by the holder, on the premises of a licensed winegrower and to sell that wine, within this State to winegrowers, distilled spirits manufacturers, brandy manufacturers, wine blenders, and vinegar producers. (Section 23358.3).</p>

## DEFINITIONS

**Beer** - "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake, known as Japanese rice wine. (Section 23006 Business and Professions Code)

**Brandy** - "Brandy" means a liquor which is obtained from the distillation of wine or a fermented mash of fruit. (London, R., & London, A. [1953]. In Cocktails and snacks [pp. 11-20], Cleveland, OH: World Pub. Co.)

**Wine** - "Wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made and other rectified wine products and by whatever name and which does not contain more than 15 percent added flavoring, coloring, and blending material and which contains not more than 24 percent of alcohol by volume, and includes vermouth and sake, known as Japanese rice wine. . . . (Section 23007 Business and Professions Code)

**Distilled Spirits** - (Section 23005) "Distilled spirits" means an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof. (Section 23005 Business and Professions Code)

**Importer** - "Importer" means:

(a) Any consignee of alcoholic beverages brought into the State from without this State, when the alcoholic beverages are for delivery or use within this State.

(b) Any person, except a public warehouse licensed under this division, to whom delivery is first made in this State of alcoholic beverages brought into this State from without this State for delivery or use within this State.

(c) Any person, licensed as an importer, selling alcoholic beverages to nonlicensees within an area over which the United States Government exercises jurisdiction, when delivery of the alcoholic beverages is made to the nonlicensees by a common carrier transporting the alcoholic beverages from a point outside this State.

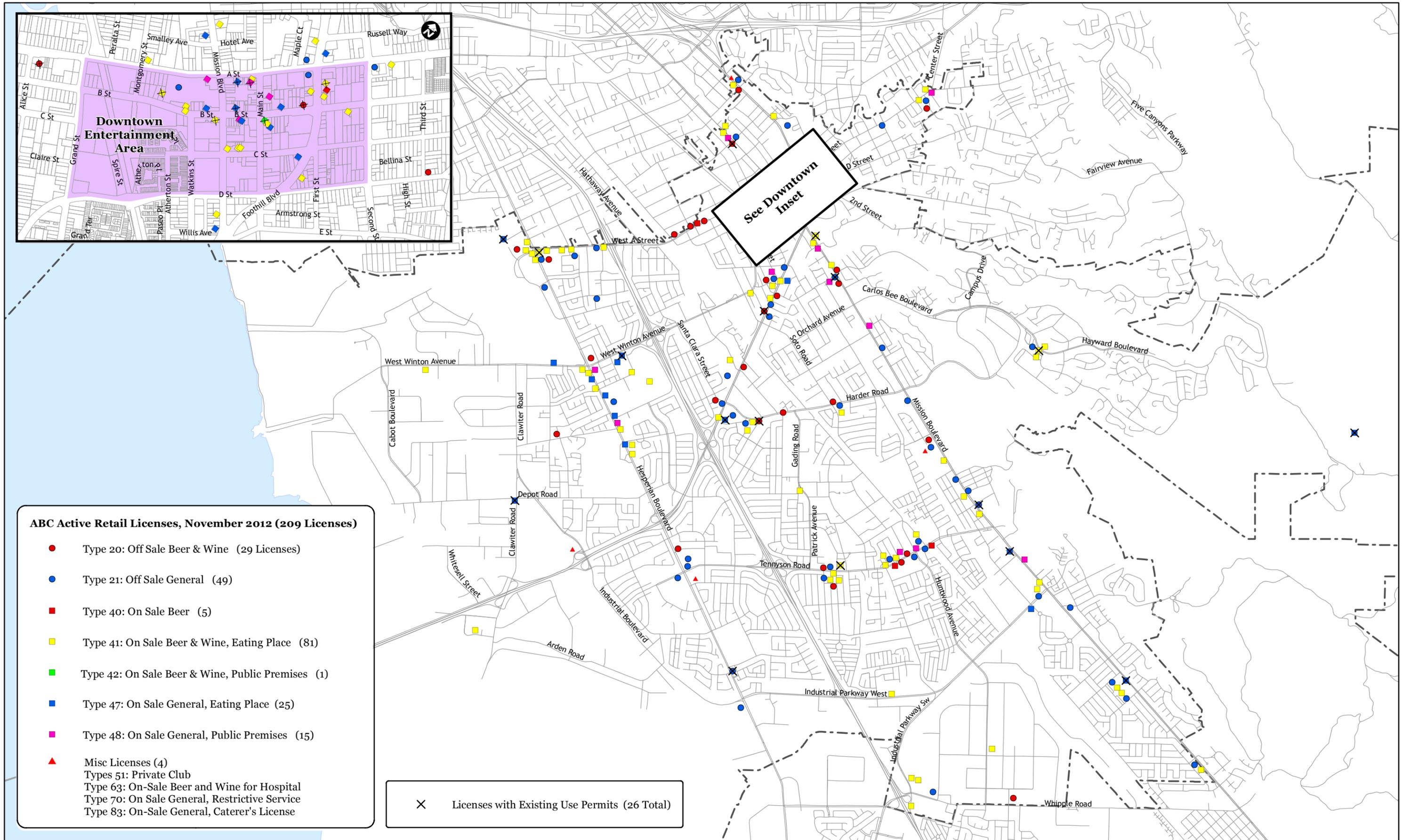
(d) Any person bringing alcoholic beverages into this State from without this State which are not consigned to any person and which are for delivery or use within this State.

A person licensed as a customs broker who is acting as an agent for a licensed importer or for another person whose place of business is without the State shall not be deemed to be the importer of alcoholic beverages consigned in United States internal revenue bond or in United States customs bond to the licensed customs broker. (Section 23017 Business and Professions Code)

**Wholesale Sale** - "Wholesale sale" or "sale at wholesale" means a sale to any licensee for purposes of resale. (Section 23027 Business and Professions Code)



# ABC Retail Licenses in Hayward



Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(1) Purpose	To provide for the orderly integration of alcohol-related uses and identify reasons such provisions are needed	Add additional text: "It is also recognized that regulations that promote responsible alcohol sales and consumption can help contribute to economic vitality, particularly in designated areas of Hayward."	To recognize the value of responsible alcohol sales and service to businesses and economic growth for the city.	No direct impacts
(2) Definitions	To define various uses/items: On-sale and Off-sale Alcoholic-Related Commercial Activity, Liquor Store, Downtown Entertainment Area, Full-Service Restaurant, and Night Club	<p>Add the following new definitions for:</p> <ol style="list-style-type: none"> <li>1. Alcohol-serving Entertainment Establishment</li> <li>2. Wine and Cheese Shop</li> <li>3. Specialty/boutique store</li> </ol> <p>Modify the definitions for:</p> <ol style="list-style-type: none"> <li>4. Bar/Tavern (modification of definition for Night Club)</li> <li>5. Full-Service Restaurant (to codify the happy hour trial period provisions: reduced price alcohol drink sales allowed from 4:00 to 9:00 pm with reduced price non-alcohol drink sales and reduced price appetizers, and live or recorded music allowed until midnight in compliance with the City's noise regulations; dancing allowed as a secondary use to the restaurant with an entertainment permit approved by the Chief of Police)</li> </ol> <p>→Will also entail more comprehensive dance/entertainment provisions in Chapter 6, Article 2 of the Muni Code that are administered by the Police Department</p>	To better differentiate between establishments that have entertainment from those that don't, to better attract full-service restaurants, and to distinguish between typical liquor stores and specialty shops that sell alcohol (related to public convenience and necessity)	More flexibility for full-service restaurants; more restrictions on traditional bars and liquor stores (related to public convenience and necessity); more formal process for allowing entertainment

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(3) Conditional Use Permit for New Establishments	Clarifies uses subject to a conditional use permit (CUP) and those that are not; exemptions: (a) a retail store >10,000 square feet that devotes no more than five percent of its floor area to the sale, display, and storage of alcohol; (b) a full-service restaurant; or (c) a special community or neighborhood event or festival that secures all required permits from the City and ABC and is no longer in duration than three consecutive days or five days in a calendar year	Allow specialty stores to operate with an administrative use permit, versus conditional use permit	To encourage establishment of such uses	TBD
(4) Posting of Conditions of Approval	Requires that a copy of the conditions associated with a CUP be posted in a place "where it may readily be viewed by the general public"	None		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(5) Findings	Identifies additional findings required to be made by the Planning Commission or City Council in approving a conditional use permit	None		
(6) Application for Conditional Use Permit	Identifies additional information required in addition to information required for a conditional use permit application	None		
(7) Requirements for New On-Sale Alcohol-Related Commercial Activities	Establishes separation standards for such activities (exempting those uses in subsection (3) above)	None		
(8) Requirements for New Off-Sale Alcohol-Related Commercial Activities	Establishes separation standards for such activities (exempting those uses in subsection (3) above)	None		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(9) Conditions	Lists ten conditions the Planning Commission or City Council may consider requiring as conditions associated with approval of a CUP	<ol style="list-style-type: none"> <li>1. Require compliance with these conditions as standards for a new establishment</li> <li>2. Establish additional standards for entertainment establishments</li> </ol>	To provide clearer and consistent direction on the expectations for operating new establishments	Will impact future establishments that seek conditional use permits to operate
(10) Existing Establishments Selling Alcoholic Beverages	Indicates a CUP is required for a nonconforming use if the ABC license type changes within a license classification, or there is a substantial change in the "mode or character of operation"	<ol style="list-style-type: none"> <li>1. Develop "Deemed Approved" Provisions</li> <li>2. Develop "Summary Suspension" Provisions</li> <li>3. Require a dance/entertainment permit from the Police Department for entertainment activities</li> </ol>	To establish expected minimum operating standards for nonconforming uses and to provide additional tools for addressing problematic establishments, including those that create an imminent threat to public health, safety, and welfare	Will affect nonconforming uses
(11) Modifications in Permitted Alcoholic Beverage Sales Commercial Activities	Requires an amendment to a CUP for an establishment operating under a CUP if any of the situations specified in subsection (10) above occur	None, other than incorporating "deemed approved" provisions (see above)		

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
(12) Notice	Requires notices for new CUP applications or appeals of administrative use permit applications to be sent to occupants in buildings within 300 feet of the parcel of the proposed use (not just property owners)	No change is proposed, since staff already sends all public hearing notices to occupants, in addition to property owners		
(13) Letter of Public Convenience or Necessity	Authorizes Planning Director to issue letters of public convenience or necessity to ABC for alcoholic beverage sales commercial activities that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit.	Codify language in City Council Resolution 06-005: "no finding of public convenience or necessity shall be made to the Department of Alcoholic Beverage Control in connection with the licensing of <u>bars or liquor stores</u> in any census tract in which the ABC indicates that there is an over-concentration of ABC licenses".	To formalize City policy related to such establishments	No new bars or liquor stores will be allowed in such over-concentrated areas

Number and Title of Subsection	Purpose of Subsection	Staff Recommended Changes	Purpose of Changes	Impacts of Changes
OTHER		<p>Recommendation to add text to address cost recovery for actions conducted by and permits issued by City staff in administering and enforcing these provisions (Example: separate fees for conditional use permits (as exists), entertainment/dance permits (will be greater than current \$42), and alcohol serving establishments (to cover basic compliance checks by PD staff, etc.))</p>	<p>To reduce the impact to the City's General Fund and place the burden of such costs on those establishments that create the need for enforcement and administration of the provisions</p>	<p>Will impact most businesses that sell alcohol, though minimally for those that do not require a conditional use or dance/entertainment permit from the City and that do not create disturbances that create significant and/or ongoing enforcement requirements</p>

December 4, 2012

Hayward Mayor and City Council Members  
City of Hayward  
777 B Street,  
Hayward, CA 94541

Re: Proposed Revisions to Hayward's Alcohol Regulations

Dear Mayor Sweeney and Honorable Council Members:

We have reviewed the staff report and recommendations pertaining to happy hours, deemed approved status, and a number of other changes being proposed.

We were hoping that the City would be considering strengthening regulations to provide better 'tools' for the City in reviewing future alcohol license applications. Instead, it appears that staff is recommending reducing regulations so that there is less opportunity for public input, greater access for higher risk alcohol uses to start up and more opportunities for youth to access alcohol in restaurant/bar settings.

Although we are in support of the deemed approved policy as an effective tool for dealing with nuisance activities at establishments, it is unfortunate that it doesn't apply to the majority of legal non-conforming alcohol uses in Hayward.

I have detailed below specific sections that we think should be addressed and further scrutinized by the City Council:

It is being proposed that ABC license types that currently require a CUP (and public hearing process) no longer will have that requirement. For example, on Pg. 22: 'Certain' alcohol uses, such as a 'wine and cheese shop' would be allowed under an Administrative User Permit (AUP) approved by staff.

Problems:

1. This type of use would require a License type 20 for off-sales of alcohol. Currently License type 20 requires a CUP public hearing process. Under this proposal, the public hearing process would be taken away.
2. State ABC law does not allow the City to exclude beer sales from License type 20. Therefore, an applicant would have the ability to sell beer and wine. In addition, the store could also sell fortified wines. The City can't condition beer sales away.
3. There is no definition provided of uses that would come under an AUP. 'Certain' is a vague term. Staff report says it would need to meet "certain standards", but doesn't state those standards.

New entertainment license/permit, which will allow alcohol sales with entertainment. Although the City states that it wants to promote full-service restaurants, this proposed change

does not require food, it promotes nightclubs. A dance/entertainment permit would be issued through an administrative procedure.

Problems:

1. Currently the ordinance requires nightclub applications to apply for a CUP and go through the public hearing process. This process will be taken away and replaced with an administrative procedure.
2. The effect of this regulation would be to allow more bars/nightclubs. It will allow full-service restaurants (License type 47) to morph into bars (License type 48).
3. No safeguards are written into the ordinance to prevent sales and service to youth when a License type 47 restaurant selling food to minors would at some point during the day turn into a bar selling only alcohol.

Add language that prohibits the Planning Director from issuing PC&N for new bars or liquor stores in areas where there is an undue concentration of such uses. This would apply to 'liquor stores' not 'wine and cheese' shops and 'specialty boutique alcohol' stores.

Problems:

1. This isn't true since License 20 establishments ('wine' and cheese) shops would be able to be approved by the Planning Director. In addition, License 48 nightclubs/bars with entertainment can be approved by the Planning Director. Staff are simply re-naming these uses while not attempting to reduce the concentration of alcohol licenses. How many would be allowed under this ordinance?
2. In addition, 'Specialty boutique alcohol stores' are not defined by these revisions.

Add 'Deemed Approved Regulations' requiring that all legal nonconforming alcohol-serving establishments meet basic operating standards. If standards are not met the City can declare an establishment has lost its 'deemed approved' status, and must apply for a CUP.

Problems:

1. Most establishments are exempt. It doesn't apply to most of the legal non-conforming licensees in Hayward. For example, it won't apply to:
  - Restaurants 41 & 47 = 92.
  - Stores with > 10,000 sq. feet = 27.
  - Establishments with CUP = 26
  - Miscellaneous, hospitals, etc. = 4
2. It would only apply to these establishments:
  - Off sales convenience and liquor stores (Lic. 20 & 21) = 43.
  - Bars (with no entertainment) = 17.

According to these revisions, Deemed Approved status would exclude all restaurants, new nightclubs (which are really bars with entertainment establishments with AUP's (wine & cheese stores and others), and grocery stores. Therefore, it would only apply to 60 licensees, or 29% of all alcohol-licensed establishments.

We understand that staff will be providing a fiscal impact analysis associated with enforcing the alcohol regulations. We hope that it will include crime data within at least a one mile radius

of downtown, since research shows that problems arising at alcohol establishments are experienced within a radius of the outlets, and not solely within the premises.

In addition, we think that the City should study the impacts specifically of full-service restaurants, since they will become increasingly bars and nightclubs, which are more intensive and result in more crimes and quality of life issues. The report acknowledges that staff has not conducted research to confirm that restaurants are operating in compliance with the standards for full-service restaurants and that no more than 5% of floor areas are being used for alcohol sales, display and storage. Without this research, we don't think staff can indeed assume this is happening.

In summary, we are strongly opposed to the revisions that take away the public hearing processes. We think that deemed approved status should apply to ALL licenses that do not have CUP's, which is similar to other city ordinances. Why shouldn't all licenses operate under 'minimum operating standards'?

Further, since the goal of the regulations is to "strike a balance between promoting economic growth, while minimizing negative impacts", we think it would be a critical mistake to allow restaurants that serve children to be allowed to turn into bars, with no safeguards in the ordinance to prevent access to minors.

We respectfully request that the Council instruct staff to provide more balance in how the regulations are written. There should be greater protections for the public, including providing the public hearing process, protecting youth from greater alcohol access, and deemed approved status for all license types (excluding those establishments that have a CUP).

Thank you for your consideration.

Sincerely,

Linda Pratt, M.A.  
Program Director

Linda A. Pratt, M.A.  
Program Director, CommPre  
a program of Horizon Services, Inc.



RICHARD C. ERSTED ET AL.  
rcersted@ircoc.com

VIA EMAIL

December 3, 2012

Mayor Sweeney, Mayor Pro Tempore Peixoto, and Council Members Halliday, Zermeño, Salinas, Jones & Mendall  
City of Hayward  
777 B Street  
Hayward CA 94541-5007

Re: Alcohol Beverage Outlet Regulations: Recommended Revisions  
3 December 2012 City Council Meeting: Work Session: Item 2

Subject: Suggested or Recommended Revisions

Mayor & Council Members:

Together with certain others, I own the real property more particularly identified as Alameda County APN 078C-461-1-13 and -14; I'm writing today in regards to the above-referenced matter.

We are pleased by the efforts of City of Hayward Development Services staff; the report by David Rizk is a good starting point for the City's upcoming discussions.

We respectfully wish to make several suggestions or recommendations to those outlined in the report. We believe the City would be wise to consider same, particularly in light of certain recent events at or near certain State-licensed on-sale alcohol establishments within the City. Such events include, but are not limited to, the recent shootings within the Dirty Bird Lounge at 29308 Mission Boulevard.

Our suggestions and recommendations are as follows:

1. Page 22 of the staff report reads in part as follows:

"... staff is recommending a new definition be developed in the alcohol beverage outlet regulations for an alcohol-serving entertainment establishment, the operations of which do not include food service associated with a permitted full-service restaurant..."

"For such establishments, staff also recommends that a dance/entertainment establishment permit be obtained from the City Manager or designee and that provisions/operating standards, review process, etc. for such establishments be included in Chapter 6, Article 2 of the Hayward Municipal Code ... In the recommended and updated ordinance, the dance/entertainment permit would be issued by the City Manager or designee (usually the Chief of Police), and would be in addition to any requirements for obtaining conditional use permits."

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C/O INDUSTRIAL REALTY COMPANY OF CALIFORNIA  
1091 INDUSTRIAL ROAD, SUITE 101, SAN CARLOS, CALIFORNIA 94070-4118  
(650) 592-5425 [VOICE] ❖ (650) 592-5488 [FAX] ❖ www.ircoc.com

We recommend the City create separate permitting processes for temporary permits and permanent permits and adopt more rigorous standards for the latter.

For permanent permits, we recommend the City implements a prior written notice provision, whereby the City — prior to its consideration of the contemplated permit — ensures all property owners within a certain distance of the use receive written notice of the then-pending City action.

Further, we recommend (i) the City allow any property owner to contest such temporary or permanent permitting by a filing a notice and application with the City and paying a commercially reasonable fee, (ii) upon the City's receipt of same, the City promptly schedule a public hearing regarding such contested permit at the Planning Commission, and (iii) the City allow a City-standard appeal — heard by the City Council — of any Planning Commission approval or disapproval.

In addition, we recommend any temporary or permanent permit reference and include all terms and conditions of (i) the then-existing license issued by the State of California Department of Alcoholic Beverage Control (ABC) to such establishment, and (ii) any revisions or amendments made by the ABC to such license, including, but not limited, upon the renewal thereof.

Finally, we recommend such City-issued temporary or permanent permits cease promptly upon the suspension or revocation by the ABC of the State-issued license.

2. Page 24 of the staff report reads in part as follows:

“Such provisions would require that all legal nonconforming alcohol-serving establishments meet basic operating standards ... The purpose of such provisions ... would be to establish a process where establishments would be notified of their ‘deemed approved’ status and expectation to be operated in compliance with basic standards, describe the procedure associated with establishments that are not operated per a conditional use permit and associated conditions of approval, and establish a procedure for appealing imposition of conditions and/or revocation of the ‘deemed approved’ status.”

We recommend the City's initial issuance of a ‘deemed approved’ status require (i) a prior noticed public hearing at the Planning Commission, and (ii) concurrent issuance by the Commission of a conditional use permit. Without such hearing, the public, we believe, is unable to readily and fully voice concerns, particularly over those businesses with a demonstrated prior record of problems and complaints. Most, if not nearly all, businesses will likely generate no public comment; but, we believe one or more will generate significant comment. We believe a conditional use permit will strengthen the City's ability to take action here, when the establishment violates the provisions of the use permit or fails to comply with one or more operating standard.

In addition, we recommend any permit conditions or operating standards associated with such ‘deemed approved’ status reference and include all terms and conditions of (i) the then-existing license issued by the State of California Department of Alcoholic Beverage Control (ABC) to such establishment,

and (ii) any revisions or amendments made by the ABC to such license, including, but not limited, upon the renewal thereof.

We recommend such City-issued ‘deemed approved’ status cease promptly upon the suspension or revocation by the ABC of the State-issued license.

In addition, we recommend the City allow a City-standard appeal — heard by the City Council — of any Planning Commission approval or disapproval of such ‘deemed approved’ status.

There’s a clear need to tighten up the operation of certain existing, non-conforming on-sale alcohol establishments. We believe the City would be wise to require a public hearing, to allow the public to comment on the proposed ‘deemed approved’ status.

3. Page 25 of the staff report reads in part as follows:

“Deemed approved’ operating standards would be identified in the new provisions, similar to those below regarding operation of an establishment.”

We recommend the City possess the unilateral right to temporarily shut down a business after a shooting, armed assault, or violent battery. Upon such shut down, the City should then commence a review of the conditional use permit — the one contemplated in our recommendations above — followed by a noticed public hearing.

We suggest that, within the operating standards, repetition should not be a key criterion. In other words, one nuisance activity — like those listed in operating standard ‘C’ — should give the City the power to step in, take action and require compliance.

We also suggest that, within the standards, terms should be well-defined. For example, in operating standard ‘C’, ‘excessive loud noises’, ‘late night’ and ‘early morning’ each need definition.

We recommend the standards include full compliance with the current City noise ordinance.

We recommend the standards include an affirmative obligation to operate in accordance with any and all Federal, State, regional, and City laws, regulations, and guidelines, including, but not limited to, State and local fire and life safety regulations.

We strongly recommend the standards include an affirmative obligation to operate in full accordance with the existing ABC license.

We suggest the City review the licensee’s specific operating standards at each and every State renewal of the existing ABC license.

We recommend the City possess, upon significant violation or violations of the standards by any establishment, the right to require substantial bond to secure the future performance of the operating standards.

Mayor Sweeney, Mayor Pro Tempore Peixoto, and Council Members Halliday, Zermeño, Salinas, Jones & Mendall  
December 3, 2012  
Page 4

We further recommend the City possess broad rights to revoke any 'deemed approved' status subject to appeal rights.

We suggest the City compile a repository — publically available via the web — of all existing ABC licenses for such 'deemed approved' businesses.

4. Page 25 of the staff report states in part:

“Such regulations would allow an executive team ... to take action to abate imminent threats to public health, safety, or welfare.”

We recommend the City formalize the process by which the Team takes such action. In particular, we suggest the City set specific dates for each action available to the Team.

Where the violation is the result of a significant crime, including, but not limited to, shooting, armed assault, or violent battery, we recommend the City possess the right to immediately suspend the operating permit for up to sixty (60) calendar days.

We suggest any member of the Team should be empowered to make the determinations noted at the top of page 26 in the staff report.

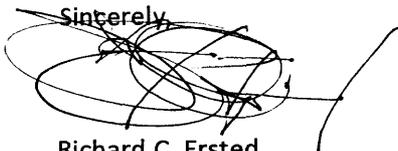
We recommend, to the extent permitted under existing law, the standards for making such determinations be discretionary and subject to the exclusive choice of any member of the Team.

We recommend, to the extent permitted under existing law, the standards for making such determinations be reasonably flexible, allowing the Team to adapt to perhaps unique permit violations and related threats.

We recommend members of the public, upon filing a notice and application with the City and paying a commercially reasonable fee, be allowed to appeal any decision made by the Team.

Thank you very much for your consideration of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Ersted", with a long horizontal line extending to the right.

Richard C. Ersted

Cc: David Rizk, Director, Development Services, City of Hayward via email



**MINUTES OF THE REGULAR MEETING OF THE  
CITY OF HAYWARD PLANNING COMMISSION  
Council Chambers  
Thursday, November 15, 2012, 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 7:04 p.m. by Chair Márquez.

**ROLL CALL**

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

Commissioner Lamnin led in the Pledge of Allegiance

Staff Members Present: Conneely, Nguyen, Patenaude, Philis

General Public Present: 1

**PUBLIC COMMENTS**

None

**PUBLIC HEARINGS**

1. Vesting Tentative Tract Map 8032 Application No. PL-2009-0525 – JMJ Development LLC (Applicants) - Request for Approval of Vesting Tentative Tract Map for Development of 206 Residential Condominium Units. The Project Site is Located at 28850 Dixon Street and 28901-28937 Mission Boulevard; APNs 078C-0441-001-16, -23, -24 and -28

Development Review Engineer John Nguyen gave a synopsis of the report.

Commissioner Lamnin asked if the Eden Housing affordable unit complex had already been approved and Mr. Nguyen said that was correct. She noted that the report indicated that the Homeowners Association was responsible for the maintenance of the public park and she asked if that was realistic and had the matter been discussed with representatives from the Hayward Area Parks and Recreation District (HARD). Mr. Nguyen said the matter had been part of the negotiation process since the beginning of the project resulting in the creation of a landscape and lighting assessment district (LLD Zone 14) as the financial mechanism to pay for the park maintenance. If the HOA cannot do the maintenance, he said, then HARD would step in. Commissioner Lamnin asked if the existing public utilities and police and fire services would be sufficient with the planned improvements for the development and Mr. Nguyen said yes.

Reminding everyone that he was new and hadn't been part of previous discussions, Commissioner Trivedi asked for the square footage range for the 206 market rate condominium units. Planning Manager Patenaude said the applicant could respond to his question, but noted the Planning Commission

**DRAFT**

had approved the precise plan for that development earlier in the year. Mr. Patenaude mentioned that the Planning Director usually approves the precise plan for a planned development district, but this project went to the Commission. Mr. Patenaude also noted that the report map only showed the JMJ portion of development because those units would be available for sale whereas the units constructed by Eden Housing would be affordable apartments available for rent. Commissioner Trivedi said he was interested in who the target market would be for the market rate condominiums.

Commissioner Lavelle asked how long the tentative tract map would be valid once it was approved and Development Review Engineer Nguyen said three years with an available extension for up to six years. Commissioner Lavelle asked if the approval would stay with the project noting the developer had already changed from Wittek-Montana to JMJ Development and Mr. Nguyen said yes.

Chair Márquez opened the Public Hearing at 7:15 p.m.

Tony Bosowski, Project Manager for JMJ Development with business address on Golden Hills Court in Danville, introduced himself. Commissioner Trivedi asked him the size range of the market rate units and Mr. Bosowski said 110 units would be 1-bedroom of approximately 740 square feet and the remaining 96 units would be 2-bedroom units ranging in size from 1025 to 1200 square feet.

Commissioner Lamnin asked if there would be any coordination between JMJ and Eden Housing so the look of the developments was consistent. Mr. Bosowski explained that both developers were utilizing the same architect, but he noted the two developments would look separate but consistent. Commissioner Lamnin asked if individual units would be one floor and Mr. Bosowski said all units were flats.

Commissioner Trivedi asked if the driveway through the complex would connect Dixon Street to Mission Boulevard and what kind of traffic control would be put in place noting cars coming from BART might use the drive as a cut through. Mr. Bosowski confirmed the drive was fully connected between the two streets and that it was not anticipated that the drive would be used by the public. Mr. Bosowski said there were no restrictions in place so theoretically drivers could use the drive to cut through to Mission and he acknowledged they had no methods in mind to eliminate or dissuade that.

Chair Márquez asked Mr. Bosowski to elaborate on the maintenance of the public park. Mr. Bosowski explained that the matter was part of 2009 approvals. He said the HOA would be responsible for the maintenance of the park with the City collecting funds from the landscape and lighting district and then paying those funds back to JMJ. Although it would never happen, he said, if JMJ didn't fulfill its obligation to maintain the park then HARD would step in and the funding would already be in place. Mr. Bosowski reassured the commission that the park would be maintained noting the marketability of units would be impacted if it was not.

Chair Márquez closed the Public Hearing at 7:19 p.m.

Commissioner Lamnin asked for confirmation that the JMJ market rate development was five-story and that the building height was consistent with the Form-based code approved for the area. Planning Manager Patenaude said yes, noting the height was consistent with preliminary plans approved in 2009 and that was taken into consideration when the Form-based code was developed and approved later. Commissioner Lamnin asked about lighting along Dixon Street and Mr. Patenaude indicated that the City was working on a street project separate from the development being discussed. Commissioner Lamnin asked for confirmation that sewer connection fees issues had already been resolved and Mr. Patenaude said yes.



**MINUTES OF THE REGULAR MEETING OF THE  
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Commissioner Lamnin moved the staff recommendation and Commissioner Lavelle seconded the motion.

Commissioner Faria commented that based on previous discussions the project hadn't changed and should be approved.

Commissioner Trivedi said he was comfortable with the contents of the report, but wanted a broader picture of the South Hayward BART project as a whole, and he asked how this development fit in with the other phases of the project. Planning Manager Patenaude explained that due to financing issues, including the loss of the Redevelopment Agency, the phases had changed. Development on the Perry & Key property was now the first phase, he said, and there was no schedule for approval of future phases. Mr. Patenaude noted that any new phases would require a new precise plan and those would need approval from the Commission. Commissioner Trivedi said he hoped the commercial aspect of the development did not become an afterthought and he noted that he would be reluctant to approve more housing with the hope that commercial developments would show up later. He said he would like to see a commercial project move forward in the one of the next phases. He said he would be supporting the motion.

Commissioner Lavelle said she was also supportive of the motion, but pointed out to Commissioner Trivedi that the change in the phasing and the construction of the proposed development would impact the overflow BART parking lot; those parking spots would no longer be available to commuters.

The motion to rely on previously approved environmental documents for the south Hayward BART Mixed-Use Project and find no change in circumstances of the project to require additional environmental review under the California Environmental Quality Act, determine that the Vesting Tentative Tract Map application was in substantial conformance with the South Hayward BART Mixed-Use Project's Precise Plan, and approve the Vesting Tentative Tract Map application subject to the findings and conditions of approval, was approved 6:0:1 (Absent: Commissioner McDermott)

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

## **COMMISSION REPORTS**

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

Planning Manager Patenaude said the item scheduled for November 29<sup>th</sup> had been moved to December, and noted the December 6<sup>th</sup> Planning Commission meeting would be cancelled so Commissioners could enjoy Light Up the Season festivities.

3. Commissioners' Announcements, Referrals

Commissioners Lavelle and Faria indicated they would be out of town on December 13<sup>th</sup>.

**APPROVAL OF MINUTES**

4. October 4, 2012, approved unanimously with Chair Márquez abstaining and Commissioner McDermott absent.

September 20, 2012, approved with one minor correction and Commissioner McDermott absent.

**ADJOURNMENT**

Chair Márquez adjourned the meeting at 7:30 p.m.in memory of Associate Planner Tim Koonze noting the Commissioners had all had the pleasure of working with Tim. She offered her condolences to his wife, son and daughter, and to his coworkers at the City of Hayward who had worked closely with Tim for many years and had been good friends. As a resident of Hayward, Chair Márquez acknowledged Tim's hard work and commitment on behalf of residents.

**APPROVED:**

\_\_\_\_\_  
Sara Lamnin, Secretary  
Planning Commissioner

**ATTEST:**

\_\_\_\_\_  
Suzanne Philis, Senior Secretary  
Office of the City Clerk