



CITY OF
HAYWARD
HEART OF THE BAY

PLANNING COMMISSION

FEBRUARY 28, 2013

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CITY OF HAYWARD
777 B STREET, HAYWARD, CA 94541-5007
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LIVE BROADCAST – LOCAL CABLE CHANNEL 15

AGENDA
HAYWARD PLANNING COMMISSION
THURSDAY, FEBRUARY 28, 2013 , AT 7:00 PM
COUNCIL CHAMBERS

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.

ROLL CALL

SALUTE TO FLAG

ELECTION OF OFFICERS

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

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

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



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.

WORK SESSION:

1. Adopted Hayward Executive Airport Land Use Compatibility Plan and General Plan Consistency Requirements of the California Government Code

[Staff Report](#)

[Attachment I](#)

[Attachment II](#)

COMMISSION REPORTS:

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

APPROVAL OF MINUTES

4. [December 13, 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: February 28, 2013
TO: Planning Commission
FROM: Director of Development Services
SUBJECT: Adopted Hayward Executive Airport Land Use Compatibility Plan and General Plan Consistency Requirements of the California Government Code

RECOMMENDATION

That the Planning Commission reviews this staff report and, after considering public input, provide comments regarding (a) pursuit of an override action regarding at least Section 2.7.5.7 of the ALUCP; and (b) incorporation of compliance with the Government Code relative to remaining ALUCP provisions into the 2040 General Plan Update process presently underway.

SUMMARY

An updated Hayward Executive Airport Land Use Compatibility Plan (ALUCP) was approved by the Alameda County Airport Land Use Commission (ALUC) on July 18, 2012. Government Code §65302.3 requires that the Hayward General Plan now be amended, as necessary, to be consistent with the ALUCP. Alternatively, if the City Council does not concur with the ALUCP, in whole or part, it may overrule relevant provisions after adopting findings required by the California Public Utilities Code §21676. As has been previously relayed to the ALUC, the City Council has expressed concern with Section 2.7.5.7 (Special Conditions) of the ALUCP associated with infill development, nonconforming uses, etc., related to economic development at Southland Mall (see pages 20-24 at http://www.acgov.org/cda/planning/generalplans/documents/HWD_Ch2_County-wide_Policies.pdf).

The updated ALUCP is not consistent with certain provisions of the current Hayward General Plan (i.e., Land Use Element, Land Use Map, Noise Element, Appendix N (Noise Guidelines for the Review of New Development), the Airport Approach Zoning Regulations (Chapter 10, Article 6), and the Zoning Ordinance (Chapter 10, Article 1). However, rather than independently pursuing consistency with these policies and implementing regulations, staff recommends doing so through the 2040 General Plan Update scheduled for completion in Spring/Summer 2014.

BACKGROUND

When reading this staff report, it may be helpful to know the City of Hayward was not subject to the previously adopted ALUCP. On October 25, 1988, the City Council passed Resolution No. 88-251 which approved an override of the entire ALUCP dated September 14, 1983. That action, preceded by supporting recommendations from the Planning Commission and Council Airport Committee,

was taken since the City Council disagreed with the ALUC finding that the General Plan was inconsistent with the previously prepared ALUCP.

During preparation of this ALUCP, Hayward staff provided extensive input to the ALUC and its staff. The following summarizes the chronology of events leading up to the Alameda County ALUC's approval of an updated ALUCP:

- March 2, 2011 – a meeting of the ALUC took place and a status report was provided on the draft ALUCP.
- July 20, 2011 – a meeting of the ALUC took place to review a draft ALUCP.
- November 16, 2011 – a meeting of the ALUC took place to review the final public review draft of the ALUCP. The ALUC also considered a November 15, 2011 letter from Mayor Sweeney (see Attachment I) requesting additional time to review the ALUCP and expressing concern about provisions affecting uses at Southland Mall.
- January 17, 2012 - the City Council adopted Resolution No. 12-008 (see Attachment II), which expresses opposition to the draft ALUCP provisions relating to non-conforming uses, infill development, and parcels divided by two Safety Compatibility Zones, due to the potential for proposed standards to limit redevelopment and economic growth.¹
- January 19, 2012 – a meeting of the ALUC took place to review the final public review draft of the ALUCP. Hayward City Council Resolution No. 12-008 was submitted as public comment.
- January 26, 2012 – the Hayward Planning Commission held a public work session to discuss the ALUCP and concurred with the concerns memorialized in City Council Resolution No. 12-008.²
- February 6, 2012 – the public review period for the ALUCP ends. The Hayward Planning Commission's concerns are relayed to the ALUC in a February 1, 2012 letter from David Rizk, Development Services Director (Attachment II).
- July 18, 2012 – the ALUC adopted an updated ALUCP³ which included revisions (discussed below) partially responsive to concerns of the Hayward City Council and Planning Commission, as detailed later in this report.

ALUCP Overview –ALUCPs are principally concerned with the effect aviation activities may have on nearby land uses within a defined Airport Influence Area (AIA) (see Figure 1 – Airport Influence Area for the ALUCP below). These effects include:

- Exposure of persons on the ground to accident potential;
- Exposure of persons to excessive noise levels;

¹ See agenda item #4 at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2012/CCA12PDF/cca011712full.pdf>.

² See agenda item #2 at: <http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2012/PCA12PDF/pca012612full.pdf>

³ See - www.acgov.org/cda/planning/generalplans/airportlandplans.htm - for a copy.

- Prevention of obstructions to air navigation (e.g., tall trees, buildings, etc.); and
- Prevention of hazards to flight (e.g., wildlife, smoke, flare, lightning, electrical interference and thermal plumes).

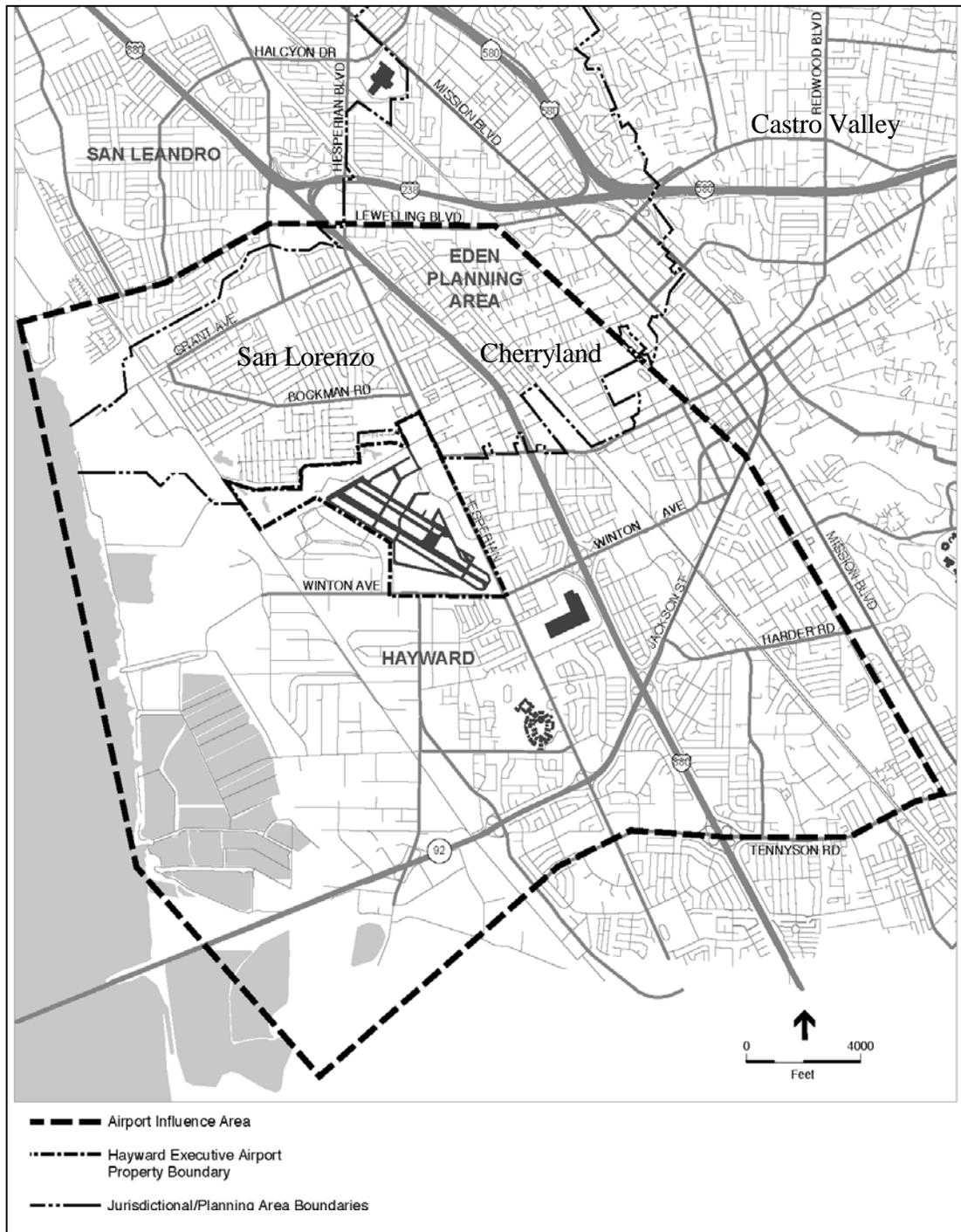


Figure 1 – Airport Influence Area for ALUCP

The State Aeronautics Act (Public Utilities Code – Division 9, Part 1, Chapter 4) requires that the Alameda ALUC address these effects by drafting an ALUCP, which is independent from the adopted General Plans, Specific Plans, and Zoning Regulations of affected jurisdictions (i.e., those within the boundaries of the AIA). The Alameda ALUC did so for the Hayward Airport (HWD) on July 18, 2012. The updated ALUCP is organized into the following chapters:

- Chapter 1 (Introduction) – this chapter explains the purpose of the ALUCP, including a summary of its contents.
- Chapter 2 (Countywide Policies) – this chapter provides definitions, summarizes requirements of the State Aeronautics Act, establishes the ALUC’s review process for actions subject to its review, and prescribes land use compatibility criteria.
- Chapter 3 (Hayward Executive Airport Policies) – this chapter defines noise impact zones, airspace protection zones, overflight zones, and airport safety zones; including corresponding criteria for each.
- Chapter 4 (Hayward Executive Airport and Vicinity Data) - this chapter provides background data only.
- Chapter 5 (References) – this chapter lists references used in preparation of the ALUCP.

When contemplating how to fulfill the statutory requirements of Government Code §65302.3, the City Council (and interested parties) should focus on ALUCP Section 2.7.5.7 (Special Conditions) of Chapter 2 (Countywide Policies) and Chapter 3 (Hayward Executive Airport Policies), since they include criteria relevant to the issue of General Plan consistency. Remaining portions of the ALUCP include background information or requirements not germane to the mandated task of General Plan consistency.

As indicated previously in this report, because of the potential for the current ALUCP to negatively impact future development at Southland Mall (including along the Hesperian Corridor near the Mall), staff is recommending that Council direct staff to bring back an override action with findings to Council as soon as possible related to Section 2.7.5.7 of the ALUCP.

General Plan Consistency - Government Code §65302.3 requires local agencies’ general plans and applicable specific plans to be consistent with the ALUCP. To be consistent with the ALUCP, local agency plans must specifically address compatibility planning issues and must avoid direct conflicts with compatibility planning criteria. Consistency implies that “the concepts, standards, physical characteristics, and resulting consequences of a proposed action must not conflict with the intent of the law of the compatibility plan to which the comparison is being made.”⁴

However, affected local agencies may overrule the ALUCP (i.e., not achieve General/Specific Plan consistency), in whole or part, by a two-thirds vote of the legislative body at a publicly noticed meeting. If local agencies do not modify their plans to achieve consistency or override the ALUCP

⁴ California Airport Land Use Planning Handbook, State of California Department of Transportation, Division of Aeronautics, October 2011.

within one-hundred eighty (180) days, the ALUC can begin requiring all of the local agency's land use actions, regulations, and permits within the AIA be submitted to the ALUC for review. The Alameda County ALUC has determined the one-hundred eighty (180) day timeframe will expire on March 29, 2013.

DISCUSSION

Preliminary Identification of Consistency Issues - The updated ALUCP is inconsistent with provisions of the current Hayward General Plan, the Airport Approach Zoning Regulations (Chapter 10, Article 6⁵), and the Zoning Ordinance (Chapter 10, Article 1). Additionally, the existing Hayward General Plan (and implementing regulations) are silent on certain policy issues (e.g., land use, noise) raised by the ALUCP. The text below will summarize the scope of consistency issues raised by the ALUCP.

General Plan Land Use Map – The ALUCP includes seven (7) Safety Compatibility Zones that spatially allocate risk from aircraft accident within and around the airport. The lower the Safety Compatibility Zone number, the higher the risk. Figure 2 below depicts each Safety Compatibility Zone, and Table 1 identifies which current General Plan Land Use Map designations are located within Safety Compatibility Zones One through Six.⁶ General Plan Land Use Map consistency issues affect the north and south approach/departure areas differently.

To the north of the Hayward Airport, the principal consistency issue (within the City of Hayward) is the General Plan's Parks and Recreation designation for the Skywest Golf Course. According to the ALUCP, golf courses are an incompatible use in Safety Compatibility Zones One through Six. In contrast, to the south of HWD, a wide range of General Plan designations and existing land uses are considered incompatible under the ALUCP. On the General Plan Land Use Map, these are designated Residential Low Density, Mobile Home Park, and Retail and Office (see Safety Compatibility Zone 1 and 2 at the south approach/departure area).

Since land within the AIA is substantially urbanized, matters of General Plan Land Use Map consistency primarily translate to ALUCP criteria pertaining to infill development and non-conforming. Where non-conforming development exists on the ground, the ALUCP provisions under Special Conditions (Sec. 2.7.5.7) includes criteria intended to minimize risk to airport-related hazards. This is primarily accomplished by prohibiting the increase in building occupancy (for commercial uses) or dwelling units (for residential uses).

In previous ALUCP drafts, the City expressed concern that the Special Conditions provisions (Sec. 2.7.5.7) would unreasonably limit redevelopment and economic growth, namely in the vicinity of Southland Mall. On a positive note, the approved ALUCP omits a previous provision that would have resulted in the provisions of a more restrictive Safety Compatibility Zone applying to an entire

⁵ <http://www.hayward-ca.gov/CITY-GOVERNMENT/DEPARTMENTS/CITY-CLERK/MUNICIPAL-CODE/AirportApproachZoningRegs.pdf>

⁶ Safety Compatibility Zone 7 includes all remaining lands (not designated 1 to 6) within the AIA, and is not included in Table 1 since criteria assigned to it is generally limited to non-substantive issues.

parcel that contained two or more Zones. The final ALUCP provisions indicate that the specific areas within a parcel encompassed within a Safety Compatibility Zone are subject to that Zone's provisions. In other words, there would be greater flexibility for development on portions of a parcel that was located within the less restrictive Zone than there would have been had the previous draft provision been unchanged. This issue was particularly relevant to the parcel at Southland Mall that contains the four free-standing restaurants (Elephant Bar, Panera Bread, Applebee's, and the former Marie Callender's) that is bisected by Safety Zones 2 and 6. However, remaining provisions under Special Conditions (Sec. 2.7.5.7) remain unchanged as does the mapping of Safety Compatibility Zones.

It does not appear to staff that the ALUCP includes revisions sufficiently responsive to the concerns raised by the City Council when it adopted Resolution No. 12-008. Staff recommends that the effect of ALUCP Section 2.7.5.7 (Special Conditions), which prescribes new standards affecting existing nonconforming development/uses and infill development, be evaluated in detail through the 2040 General Plan Update. That process may result in action by the City Council to overrule these provisions.

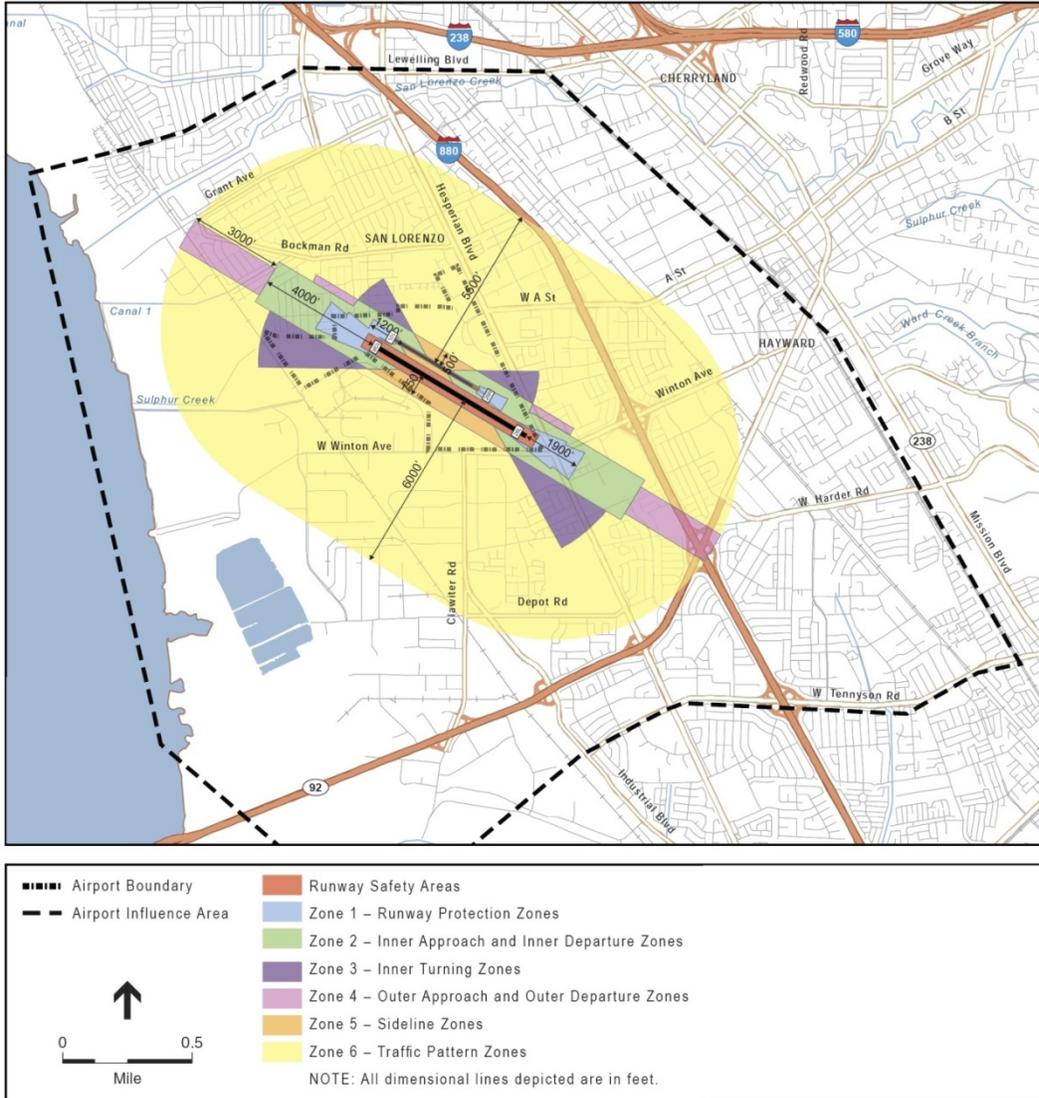


Figure 2 – Safety Compatibility Zones for ALUCP

Table 1: Location of General Plan Land Use Map Designations within Safety Compatibility Zones

General Plan Land Use Map Designation	Safety Compatibility Zones					
	1	2	3	4	5	6
Commercial						
Retail and Office	√	√				√
Commercial/High Density Residential						√
Residential						
Low Density	√	√		√		√
Medium Density						√
High Density						√
Mobile Home Park		√				√
Industrial						
Industrial Corridor		√			√	√
Mixed Industrial						√
Open Space						
Parks and Recreation	√	√	√	√		√
Limited Open Space						√
Baylands						√
Public / Quasi-Public						
Chabot College			√			√
Airport	√		√			√

- √ Incompatible Land Use
- √ Conditional Land Use
- √ Permitted Land Use

General Plan Land Use Element – The existing Land Use Element does not specifically address land use compatibility issues raised by an ALUCP. This is not surprising given the City Council prior action to override the previous ALUCP. However, now that an ALUCP has been approved, the City of Hayward is compelled by Government Code §65302.3 to address it. This could be accomplished through the formulation of new policies through the current General Plan Update process and/or an action to override the ALUCP, in whole or part.

General Plan Noise Element – The Conservation and Environmental Protection Element of the General Plan includes the State-mandated Noise Element, which discusses noise sources in Hayward, including those related to the Hayward Airport, and advances a number of policies addressing the topic of noise. These policies are implemented, in part, through guidelines included as Appendix N to the General Plan. Table 2 below compares the land use compatibility standards of

noise exposure on three land use categories of the Hayward General Plan (Figure 1, Appendix N) and the ALUCP.

In general, the ALUCP suggests noise compatibility criteria more restrictive than that utilized in the current Hayward General Plan. While this is evident upon review of Table 2, the General Plan and ALUCP contain additional, more detailed criteria. In many instances, the criteria of each document are inconsistent with one another (e.g., General Plan’s maximum indoor bedroom CNEL = 55dB; ALUCP’s maximum indoor bedroom CNEL = 45 dB).

As with the land use incompatibility issues discussed above, noise criteria would primarily apply to infill or redevelopment activities. However, the ALUCP does not provide guidance on how or when its more restrictive noise level criteria should be applied. Given that the noise contours depicted at Figure 3-3 of the ALUCP are not going to change, staff recommends that further evaluation of the more restrictive ALUCP provisions is warranted. Again that process may result in alternate Hayward General Plan (or implementing regulation) provisions that adhere to the ALUCP intent or, conversely, may result in an action by the City Council to overrule these provisions.

Table 2: Comparison of General Plan & ALUCP Noise Compatibility Criteria for Residential, Commercial & Industrial Land Uses							
General Plan Land Use Category	Exterior Noise Exposure (dB CNEL)						
	0 - 55	55 - 60	60 - 65	65 - 70	70 - 75	75-80	80+
Residential - Low Density, Single Family, Duplex Mobile Homes	Green		Yellow			Orange	Red
	Grey			Black			
	Green		Yellow			Orange	Red
	Grey			Black			
Residential - Multi. Family	Green		Yellow			Orange	Red
	Grey			Black			
	Green		Yellow			Orange	Red
	Grey			Black			
Office Buildings, Business Commercial & Professional	Green				Yellow		Orange
	Grey			Black			
	Green		Yellow			Orange	Red
	Grey			Black			
Industrial, Manufacturing, Utilities, Agriculture	Green					Yellow	
	Grey			Black			
	Green		Yellow			Orange	Red
	Grey			Black			

Hayward General Plan		Normally Acceptable	HWD ALUCP		Permitted
		Conditionally Acceptable			Conditional
		Normally Unacceptable			Incompatible
		Clearly Unacceptable			

Implementing Provisions – The items referenced below relate to implementation of General Plan policies and the ALUCP provisions. As mentioned previously, once final action is taken by the Hayward City Council pertaining to General Plan consistency with the ALUCP, the implementing provisions identified below may need to be addressed/revised, as appropriate.

Airport Approach Zoning Regulations (Hayward Municipal Code Chapter 10, Article 6) – This article of the Hayward Municipal Code includes standards intended to implement Federal Aviation Regulations (FAR) Part 77 that address navigable airspace. Limitations on structure or tree heights are defined according to airport turning and transition zones. Additional prohibitions on electrical interference, airport light obstruction, harmful glare, and impaired visibility are included as well. The ALUCP also includes provisions pertaining to airspace protection but includes additional standards for determining where to put in place aviation easements⁷ and requirements for overflight notification.

Though the recently adopted ALUCP does present new issues of inconsistency with the Airport Approach Zoning Regulations, the City’s regulations are, in actuality, outdated. The Airport Approach Zoning Regulations apply height restrictions based upon a map within the Airport Master Plan of 1962. Multiple master plans have since been prepared (i.e., 1984, 2002). Consequently, the Airport Approach Zoning Regulations raise issues of consistency with both the newly adopted ALUCP and the 2002 Airport Master Plan, and need to be revised.

Air Terminal Rules and Regulations – Aircraft Noise Restrictions (Municipal Code §2-6.119 to 2-6.127) – These existing regulations pertain to aircraft operators and aircraft-related noise. No ALUCP inconsistency issues are present with these regulations.

Zoning Ordinance (Hayward Municipal Code Chapter 10, Article 1) – Existing provisions within the Zoning Ordinance present inconsistency issues with the ALUCP. These include:

- §10-1.2730 (a) (Special Height Requirements) (Height – Airport) – this section references the Airport Approach Zoning Regulations which, as discussed, are outdated;
- §10-1.2810 (Zoning Compliance) – this section prescribes procedures for ministerial actions to ensure and document Zoning Ordinance conformity. No mention of an ALUCP or locally adopted ALUCP-consistent policies and/or regulations is provided.

⁷ An aviation easement is a conveyance of airspace over another property for use by the airport. The owner of an easement-encumbered property (servient property) has restricted use of his/her property subject to the airport sponsor’s easement (dominant property) for overflight and other applicable restrictions on the use and development of the servient parcel. Easement rights acquired typically include the right-of-flight of aircraft; the right to cause noise, dust, etc.; the right to remove all objects protruding into the airspace together with the right to prohibit future obstructions or interference in the airspace; and the right of ingress/egress on the land to exercise the rights acquired. The aviation easement on the property shall “run with the land” and any future owner’s use of the servient parcel is also restricted as described in the aviation easement. The aviation easement provides the airport an indemnity from any future actions from the property owner from airport impacts and transfers to the new owner if the property is sold.

- §10-1.2900 (Non-Conforming Uses) – this section addresses a range of non-conformity issues but in a manner different from that applied in the ALUCP.
- §10-1.3300 (Variance) – this section does not presently include language addressing how variances to standards related to airport land use compatibility should be handled.
- §10-1.3400 (Amendment) – this section does not presently address the requirement for Zoning Ordinance amendments affecting the AIA to be submitted to the Alameda County ALUC for review.

City Council Options for the Adopted ALUCP – Now that the ALUCP has been adopted by the Alameda County ALUC, Public Resources Code §65302.3 requires the City Council to take action to do one or both (in the case of a partial ALUCP overrule action) of the following:

1. *Amend the General Plan* - The 2011 [California Airport Land Use Planning Handbook](#) by the California Department of Transportation, Division of Aeronautics, describes four common approaches to fulfilling the consistency requirements of Public Resources Code §65302.3:
 - a) *Incorporate ALUCP Policies into Existing General Plan Elements.* This method requires the incorporation of all airport land use compatibility measures into appropriate general plan elements (e.g., Land Use Element, Noise Element).
 - b) *Adopt a General Plan Airport Element.* This format may be appropriate when a City’s General Plan also needs to address on-airport development or operational issues. Modification of other General Plan elements may still be necessary to eliminate conflicts and provide cross-referencing.
 - c) *Adopt the ALUCP as a Stand-Alone Document.* With this approach, policy reference to the separate ALUCP would need to be added to the General Plan, and any direct land use or other conflicts with compatibility planning criteria would have to be removed.
 - d) *Implement Compatibility Policies through Zoning.* Adoption of an airport combining district or overlay zoning ordinance by a local government is a way of codifying airport compatibility criteria described only conceptually in the ALUCP. An analog to this approach is the present Hayward Airport Approach Zoning Regulations.
2. *Overrule the ALUCP* – Public Resources Code §21676(b) provides that the Hayward City Council may, “after a public hearing, overrule the commission [ALUC] by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of [the airport land use commission law] stated in Section 21670.”

At a City Council work session on February 26, 2013, staff recommended that the City Council direct staff to: (a) pursue as soon as possible an override action with findings regarding Section 2.7.5.7 of the ALUCP; and (b) incorporate compliance with Government Code §65302.3 relative to remaining ALUCP provisions into the 2040 General Plan Update process presently underway by June of 2014, for the following reasons:

- *Maintain Focus on 2040 General Plan.* The General Plan will be updated by Spring/Summer 2014. An effort to amend to the current General Plan in response to the updated ALUCP is estimated to take approximately six (6) to eight (8) months to address the policy issues discussed above. Pursuing both tasks simultaneously would draw staff resources away from the 2040 General Plan Update and Mission Boulevard Corridor Specific Plan.
- *Realize Cost Savings.* Incorporating the policy work resulting from the ALUCP into the 2040 General Plan Update would enable the use of in-house staff and already allocated costs for consultants.
- *Negative impacts to economic growth at Southland Mall.* ALUCP Section 2.7.5.7 provisions have the potential to negatively impact economic growth at Hayward's regional mall by lengthening the development review process and also precluding development without a separate override action by the City Council for infill development at the Mall.

In terms of the plan consistency approaches identified by the 2011 California Airport Land Use Planning Handbook, staff recommends pursuit of a combination of:

- *Incorporate Policies into 2040 General Plan.* Broader land use and noise compatibility policy issues would be addressed in relevant general plan elements (e.g., Land Use Element, Noise Element).
- *Overhaul Airport Approach Zoning Regulations.* Substantial revisions to the existing regulations would address both the updated ALUCP and 2002 Hayward Executive Airport Master Plan. Both procedural requirements and development standards would be addressed and, as necessary, tandem revisions to the Zoning Ordinance would be accomplished as well.

If the City does not fulfill the requirements of Government Code §65302.3 by March 29, 2013, the Alameda County ALUC may request that all actions, regulations, and permits involving land within an AIA be referred to the ALUC for review until the statutory requirement is fulfilled.⁸ Should the Alameda County ALUC notify the City of such a request, this would add time and likely additional costs onto development projects with the AIA. However, under staff's recommendation, that would occur for a limited time until an override action is taken this spring by City Council and the 2040 General Plan Update is complete in Spring/Summer 2014.

FISCAL IMPACT

Policy planning work resulting from ALUCP adoption can be incorporated into the 2040 General Plan Update with no change to its work scope, budget and timeline. Doing so would lead to reduced demands on staff resources.

⁸ See California Public Utilities Code 21676.5(a).

NEXT STEPS

Staff recommends returning to Planning Commission and City Council as soon as possible with a resolution containing findings to override Section 2.7.5.7 of the ALUCP, and at future work sessions this summer with an in-depth analysis of each General Plan inconsistency and recommendations for how to achieve consistency with other sections of the ALUCP. Such sessions would occur prior to formal action and a hearing before the City Council on the General Plan update project, anticipated for June of 2014.

Prepared by: Kevin Colin, Senior Planner from Lamphier -Gregory

Recommended by:



Richard Patenaude, AICP
Planning Manager

Approved by:



David Rizk, AICP
Director of Development Services

Attachments:

Attachment I	Letter from Mayor Sweeney dated November 15, 2011
Attachment II	Letter from Development Services Director David Rizk dated February 1, 2012, with City Council Resolution No. 12-008



November 15, 2011

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

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

Dear Commissioners:

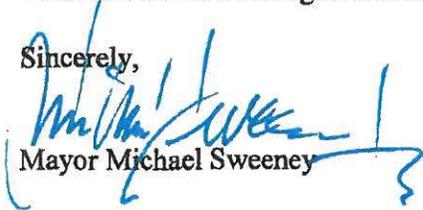
I understand that you are scheduled to approve at your November 16 meeting the final public review draft ALUCP document for the Hayward Airport and the associated Initial Study, to begin a 45-day public review period of those documents. Given that the current version of the draft ALUCP was only released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

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

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

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

Sincerely,



Mayor Michael Sweeney

Office of Mayor Michael Sweeney

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



CITY OF
HAYWARD
HEART OF THE BAY

February 1, 2012

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

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

Dear Commissioners:

On January 26, 2012, the Hayward Planning Commission held a Work Session on the Draft Hayward Airport Land Use Compatibility Plan (ALUCP). At that meeting, the Planning Commission supported Hayward City Council Resolution No. 12-008 (copy attached) opposing portions of Chapter 2, relating to potential restrictions on infill development and expansion of nonconforming uses, particularly related to Southland Mall.

Due to the current state of the economy, it is important that policies in the ALUCP support the redevelopment of Southland Mall. The concerns are that the proposed policies could discourage tenants, which would result in economic stagnation not growth. In addition, the Planning Commission voiced their concern that the required review of any project may prolong the approval process, making the site less attractive to potential retail and restaurant tenants. The Planning Commission urges the Airport Land Use Commission to reasonably and fairly balance the objectives of addressing safety in the ALUCP with the high priority of Hayward to encourage and facilitate economic development.

If you should have any questions, please do not hesitate to contact me at (510) 583-4004. Thank you for your consideration.

Sincerely,

David Rizk, AICP
Development Services Director

Enclosure

cc: Fran David, City Manager

DEVELOPMENT SERVICES DEPARTMENT

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HAYWARD CITY COUNCIL

RESOLUTION NO. 12-008

Introduced by Council Member Halliday

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

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

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

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

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

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

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

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

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

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

IN COUNCIL, HAYWARD, CALIFORNIA January 17, 2012

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zerneffo, Halliday, Peixoto, Salinas, Henson
MAYOR: Sweeney

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Quirk

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM:


City Attorney of the City of Hayward



**MINUTES OF THE SPECIAL MEETING OF THE
CITY OF HAYWARD PLANNING COMMISSION
Council Chambers
Thursday, December 13, 2012, 7:00 p.m.
777 B Street, Hayward, CA94541**

MEETING

A special meeting of the Hayward Planning Commission was called to order at 7:05 p.m. by Chair Márquez.

ROLL CALL

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

Commissioner Trivedi led in the Pledge of Allegiance

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

General Public Present: 13

PUBLIC COMMENTS

None

PUBLIC HEARINGS

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.

Planning Manager Richard Patenaude gave a synopsis of the report noting the Zoning Ordinance was an exclusionary document, which meant if the use was not specifically listed it was prohibited unless the Planning Director or Planning Commission determined the proposed use was similar to, and not more objectionable and intensive than, the uses listed.

Commissioner Loché confirmed with staff that a text amendment application would have to be submitted before City regulations would change regarding electrical fencing. Planning Manager Patenaude explained that the Commission could support the applicant and make the determination that an electrical fence was similar to barbed or razor wire fence, which were allowed uses under the Zoning Ordinance. Mr. Patenaude reiterated that staff was not recommending that but instead wanted the applicant to apply for a text amendment. He noted that for future reference, standards needed to be in place that addressed access by safety personnel and how an electric fence could be applied aesthetically. Commissioner Loché asked if a text amendment would happen if the applicant did not apply for one. Mr. Patenaude said no, without an existing Work Item, staff would only begin the process of changing the Zoning Ordinance if the applicant requested an amendment.

Looking at the matter from an emergency services standpoint, Commissioner Loché asked if an electric fence would have the same impact on police officers' ability to respond as razor or barbed wire. Hayward Police Detective Ryan Cantrell said unlike razor or barbed wire, which were easier to get past, an electrical fence was the ultimate in protection and emergency service personnel would need a way to deactivate it quickly and get past it safely. Commissioner Loché concluded an electric fence would present a unique barrier and Detective Cantrell said yes.

Commissioner McDermott asked if the electric fence would go on top of or behind the existing masonry wall. Planning Manager Patenaude said the fence would be mounted to the back of the existing masonry wall and would stand 12 inches away from the property line and extend four feet above the wall. Commissioner McDermott asked about having a wider gap between the wall and the fence. Mr. Patenaude said without standards in place that proposal could create another set of issues that might put someone in a bad situation, but noted it would depend on how far back the fence was from the wall and that would be determined by standards.

Commissioner Lamnin asked staff what a "Knox device" was, as mentioned in the report. Planning Manager Patenaude explained that it was a device for safety personnel to access a key or other method to unlock or disable an electric fence. Commissioner Lamnin asked if that was how emergencies were handled in other communities that had electric fences. Mr. Patenaude said an analysis would have to be conducted for staff to know how other communities handle the issue, but noted Knox boxes were currently required for electric gates. Detective Cantrell added that only fire personnel had access to Knox boxes, not police, and waiting for fire personnel added minutes to response times.

Commissioner Lamnin asked how emergencies were handled in other cities and Planning Manager Patenaude indicated that staff would conduct research if directed to develop standards for Hayward. Commissioner Lamnin asked if an electric fence was an actual deterrent and Detective Cantrell said yes, but questioned if it was the best deterrent available. He concluded that an electric fence would be acceptable if police had a way to circumvent or disable the fence quickly rather than wait for fire personnel.

Chair Márquez asked staff to explain the process of completing a Zoning Ordinance text amendment and Planning Manager Patenaude said the applicant would need to submit an application and pay a fee (the fee paid for the appeal would not apply). Chair Márquez asked how long the process took and Mr. Patenaude said 8-12 weeks for staff to gather and present information to the Planning Commission and then another 4-6 weeks for Council to give final approval; or a total of roughly 4-5 months.

Commissioner McDermott asked staff if they received any comments or concerns from neighboring residents who were noticed of the Public Hearing and Planning Manager Patenaude said no.

Chair Márquez opened the Public Hearing at 7:24 p.m.

John Patterson, with business address on Industrial Parkway, said he was a neighboring business, was 100 percent in support of the electric fence, and was thinking about installing one around his business.

Commissioner Lamnin asked what issues he would be trying to resolve by having an electric fence. Mr. Patterson explained that he got quite a bit of foot traffic through his yard and noted he already had razor wire in place. He said his and the applicant's properties connected in the back and people came over the fence from the applicant's business to cut through his yard. Commissioner Lamnin asked why and Mr. Patterson said to see what was there. He said materials disappear and he wouldn't realize something was



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missing until he went to sell it. Mr. Patterson also confirmed for Commissioner Lamnin that surveillance cameras had revealed that forklift batteries were also being stolen.

Mike Valderrama, Facilities Manager for Manheim Auto Auction, distributed a letter to Commissioners and explained that his business had a lot of break-ins coming in from Huntwood Avenue at the corner of Industrial where the RV rentals lot was located. He described how thieves would go through the yard, vandalizing and stealing things, and then use one of the cars on the property to back up against the fence and climb back over the wall. Mr. Valderrama noted that had happened three times in the last year and cars were being damaged in the process. He said having electric fencing was safer than exposing guards to harm during the night and was more cost effective than hiring full-time guards. He said the electric fence would definitely deter vandals and would stop them from going into the adjacent business and mobile home park.

Chair Márquez asked if the lot was used for car storage and Mr. Valderrama explained that cars were detailed at that location and only kept there overnight if more work was needed. Chair Márquez asked how many cars were on the property and Mr. Valderrama said it varied between 20 to 200 vehicles. Chair Márquez asked if cars were being stolen or only car parts and Mr. Valderrama said in the two years he had been with the company, only parts had been stolen, but noted they had high-end cars on the lot including Mercedes and BMW and parts were very expensive. He added that vandals also broke into the shop areas and stole tools.

Commissioner Trivedi asked Mr. Valderrama to speak to why alternative methods like security alarms, motion detectors and cameras wouldn't be sufficient. Mr. Valderrama said the presence of the fence would be a deterrent, the level of current it carried wouldn't hurt anyone, it was cheaper than 24-hour security, and would be less unsightly than razor or barbed wire. Commissioner Trivedi asked if trees around the property would need to be removed. Mr. Valderrama said for the mobile home park side of the property the fence would be installed so that the trees could remain and greenery would be trimmed to hide the fence from residential properties. Commissioner Trivedi asked Mr. Valderrama if he thought foot traffic was coming from the mobile homes. Mr. Valderrama said no, vandals usually park on the Huntwood Avenue side of the property for a quick exit and with less visibility than on Industrial Boulevard. Commissioner Trivedi asked if a section of fencing would be feasible versus a complete ring around the property and Mr. Valderrama said something would be better than nothing, but the full perimeter would work better.

Commissioner Loché asked if guards were currently on duty at night and Mr. Valderrama said no; because of the expense, night guards would only be hired for a period of time if a rash of burglaries or vandalism occurred. Commissioner Loché asked if guards have had to deal with vandals and Mr. Valderrama said having a visible guard was a deterrent and he clarified that the guard would not physically stop anyone, the guard would call police. Commissioner Loché confirmed that if an electric fence was installed guards would no longer be needed at night and Mr. Valderrama said that was correct. He added that the fence would only be armed at night, starting around 9 p.m. and ending around 5 a.m.; never when personnel were onsite. Commissioner Loché asked how many people would be able to deactivate the fence and Mr. Valderrama said there was 24-hour security at the main site and any of those guards would be able to deactivate the fence. Commissioner Loché asked how long police would have to wait for someone to arrive and Mr. Valderrama said the main site was two blocks away.

Michael Pate, with Electric Guard Dog, business address in Columbia, South Carolina, said his company provided security for many companies all over the country with open yards. Mr. Pate said the original application for the fence was submitted in April, all conditions set forth by the City had been met, and yet the Planning Director had denied the application. He explained how an electric fence functioned and how emergency personnel would respond. Regarding access, Mr. Pate explained that Fire personnel could hit the Knox box, the power would drop off, and they could walk right in; same with the police. Regarding standards, Mr. Pate said the state of California has had standards for electric fences in place since 1976. He said his company adhered to those standards and that all his devices had been tested and were labeled according to those standards.

Mr. Pate also noted that state standards included the “zone of entrapment” and said that the proposed fence should be tight to the wall to avoid someone being trapped and shocked every 1.3 seconds, and to stop the criminal from having time to manipulate and shut down the fence. Mr. Pate said he toured the site and the people living in the mobile home park behind the yard will like the fence because it would prevent crooks from running through their backyards. He also mentioned that the existing trees would completely screen the fence from residents’ view.

Mr. Pate said the annual cost for a full-time guard was 8 to 10 times higher than the fence and he noted the money saved could be used toward hiring a new employee. He pointed out that an electric fence would stop crime and the police would no longer have to go there because of property crimes.

Commissioner Loché cited a section of the staff report that said that if the environment was wet and a person’s skin was wet, contact with the fence could cause ventricular fibrillation. Mr. Pate said that information was wrong; electricity would flow quicker, but would not be any stronger. Mr. Pate reiterated that the fence was a safe, allowable product otherwise the state would not approve it. A person could touch the wire and not have any damage, he said.

Commissioner McDermott asked Mr. Pate how many electric fences his company had in California. Mr. Pate said he couldn’t give a specific number but he said he had electric fences in San Jose, Oakland, Salinas, Stockton, Sacramento, Sacramento County, and Rancho Cordova. He said he had over 3,000 fences across the country with his largest markets in the South and Northeast. Commissioner McDermott asked if the issue of access had come up in the other cities and Mr. Pate said he usually had no issue at all with other police departments because once the fence was up the police no longer had to go to the site. Access for fire personnel was another issue, he said, but as long as there was a Knox box the fire personnel could disable the fence and gain access.

Commissioner Lamnin said that according to the staff report, California didn’t have its own electrical code but followed a federal standard and she asked for confirmation that Electric Guard Dog was regulated and compliant. Mr. Pate said yes and explained that New Zealand/Australian standards had evolved into an international standard and they were tested to that. Commissioner Lamnin asked about regulation once the fence was installed and Mr. Pate explained that every site was a different shape and size, but the electrical control boxes were always consistent. Commissioner Lamnin asked if fences were inspected and Mr. Pate said no, once the fence was up it couldn’t hurt anyone; it was just a matter of whether it worked or not. Commissioner Lamnin asked if 7000 volts was standard across the country and Mr. Pate said yes, anywhere between 7,000 to 9,000 volts.

Commissioner McDermott asked if the other cities in California had an ordinance already in place. Mr. Pate said it varied: in Rancho Cordova electric fences were prohibited so he was required to amend the



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code; in San Jose, Sacramento, and Sacramento County the code was “silent” so the fence was approved via a Director’s Review and permitted as a fence.

Commissioner Loché asked if electric fences were being used more often. Mr. Pate said his business had grown 40% that year. He said that electric fences were an effective deterrent that “scare the hell out of people” including, he said, City staff. Mr. Pate said standards in California require him to hang signs that have the international symbol for electrical shock and use several languages (Spanish and English in California; more languages in other areas of the country). Mr. Pate said more businesses were using electric fences because it was a safe, effective way to guard a large open lot.

Commissioner Lamnin asked if it would be possible to put the signs closer together and Mr. Pate said absolutely, noting in Stockton he even made the signs bigger. Mr. Pate said standard signs were about the size of a legal pad of paper and were spaced 60 feet apart. One city requested signs 25 feet apart and he said that was fine, it was just another sign. Mr. Pate added that he hangs signs on the fence so the current runs through them and nobody steals them.

Chair Márquez closed the Public Hearing at 7:50 p.m.

Commissioner Trivedi said that while he didn’t completely understand why other methods wouldn’t work as well as an electric fence, he said he was comfortable with the technology. He said he was concerned about the height of the fence; at 8 feet high someone might touch the fence, fall and get hurt. Commissioner Trivedi said he was uncomfortable with creating a de facto zoning change and would rather recommend that the applicant pursue a text amendment so the City could set standards and find a solution that everyone could agree on.

Chair Márquez asked if he was stating an opinion or making a motion and Commissioner Trivedi said stating an opinion.

Commissioner McDermott asked if the Electric Guard Dog could be credited the amount paid for the appeal (\$7,000) to put toward the fee for a text amendment (\$15,000). Planning Manager Patenaude said they may have some unused fee deposit that could be refunded and used toward the text amendment fee.

Development Services Director Rizk noted that in addition to what Mr. Patenaude had said, the work already completed by staff during the appeal of the site plan review would be relevant toward the text amendment and would cut down on time and materials which was the basis for the Zoning Ordinance Text Change application fee.

Commissioner McDermott also pointed out that resources were already available in the cities Mr. Pate had mentioned rather than starting from scratch or duplicating efforts. Mr. Patenaude said staff could also access a Planners List Serve for quick feedback from other cities who also subscribe.

Commissioner Loché asked if the Planning Commission could recommend that the City develop standards and regulations regarding electric fences rather than ask the applicant to shoulder the financial burden of an amendment. He pointed out that more applications would be received in the future and it would be in the City’s best interest to amend the Zoning Ordinance. Planning Manager Patenaude

confirmed the Commission could make that recommendation, but noted the request would have to be programed into staff's work flow and measured against the City Council's other priorities and that process would take more time.

Commissioner Loché asked if a precedent would be set if the Commission passed a motion that allowed the fence to go in and Planning Manager Patenaude said yes. Commissioner Loché asked if this would give future businesses carte blanche to install an electric fence and Mr. Patenaude explained that if approved the Commission would be saying that an electric fence was no more intrusive that a barbed or razor wire fence. With that, Commissioner Loché said he agreed with Commissioner Trivedi that the electric fence was more intrusive that barbed and razor wire and that the City should have standards in place, however, he was still hesitant to put the financial burden of the amendment on the applicant.

Commissioner Lamnin said she was deeply concerned that the City required more deterrents, but noted that was a discussion for another night. She confirmed that if the appeal was approved, staff would need to provide findings for that decision. Commissioner Lamnin then asked if the Commission could use that framework as a model of what would be allowed in the future. Planning Manager Patenaude said yes, staff could come back with appropriate findings and conditions of approval but he noted the conditions would be site specific and might not work toward creating a standard. Commissioner Lamnin said dollars and time have been spent and a true effort had been made by the applicant to be compliant.

Commissioner Lamnin made a motion to ask staff for findings for approval that included a Knox box that all emergency personnel could access and that the findings be used as framework for a future standard. Commissioner McDermott seconded the motion.

Chair Márquez acknowledged that Commissioners were concerned about fees already paid and she asked counsel if this was the best route to go. Assistant City Attorney Conneely agreed that it was the best route because the fees paid would go toward a site specific determination, but she asked for confirmation that the motion was asking staff to conduct California Environmental Quality Action (CEQA) review, develop findings and conditions of approval for this particular application, and explore the possibility of Knox box access for police and fire. Commissioner Lamnin confirmed the motion.

Commissioner Trivedi asked what the timeline would be if the Commission asked for a text amendment. For a full text amendment that would be codified into the Zoning Ordinance, Planning Manager Patenaude said 8-12 weeks to bring it back to the Planning Commission and then an additional 4-6 weeks to bring it before the City Council. Commissioner Trivedi said he was hoping to keep things moving while developing standards.

Chair Márquez said she would not be supporting the motion because the issue was too new and the City needed to conduct thorough research by looking to other cities.

Chair Márquez asked Commissioner Lamnin to restate her motion.

Commissioner Lamnin reiterated her motion, Assistant City Attorney Conneely added "and findings," and Chair Márquez clarified that the motion would include a recommendation to require use of a Knox box.

Commissioner Trivedi asked what the timeframe for the motion would be and Planning Manager Patenaude said considering the holiday and current staffing issues it could potentially take up to 12 weeks for the item to come back to the Commission. Commissioner Trivedi asked if the additional work by staff would come out of the applicant's fee deposits and Mr. Patenaude said yes, and that additional



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deposits might be needed. Commissioner Trivedi pointed out that the timeframe was still 8-12 weeks regardless of the outcome of the vote and the result would be specific to this site.

Commissioner Loché asked if staff's recommendation to decline the application was approved, would the City develop standards on its own or would it have to be in response to an application. Director of Development Services Rizk said based on the Work Program, which was dictated through the City Manager by Council priorities, developing standards for electric fencing could rise in urgency and be added to the Work Program.

The motion to ask staff to conduct California Environmental Quality Action (CEQA) review, develop findings and conditions of approval, and explore the possibility of Knox box access for police and fire, failed 2:3:2.

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

Chair Márquez asked staff for guidance on the next step and Assistant City Attorney Conneely pointed out that the motion had failed and asked the Commission to consider another action.

Commissioner Trivedi made a motion to support the staff recommendation with a recommendation to the applicant to pursue a Zoning Ordinance text amendment. Commissioner Loché seconded.

The motion to find the proposed project Statutorily Exempt from the CEQA Guidelines, Section 15303(e), New Construction or Conversion of Small Structures, uphold the Planning Director's decision and deny the application, with a recommendation to the applicant to pursue a Zoning Ordinance text amendment, failed 3:2:2.

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

Assistant City Attorney Conneely pointed out that since it wasn't a majority decision by the Planning Commission, and therefore was not approved, the application would automatically go to the City Council.

Mr. Pate said he didn't understand what just happened and Assistant City Attorney Conneely explained that because the motion didn't receive a majority of votes the item would automatically appeal to the City Council. Director of Development Services Rizk told Mr. Pate he would get the item on the Council's agenda as soon as possible.

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

Planning Manager Patenaude gave the report.

Commissioner Lamnin asked if any comments had been received from the public and Planning Manager Patenaude said no. She asked if the annual reviews mentioned in the staff report were already happening and Mr. Patenaude said the report contained an annual review and confirmed everything was in order.

Commissioner Trivedi asked if the five-year extension option would still exist and Planning Manager Patenaude said existing extensions had been exhausted but by amending the agreement would allow them an additional five-year extension.

Chair Márquez asked for confirmation that if the amendment was approved no more extensions would be allowed. Assistant City Attorney Conneely explained that the agreement provided for an original term of 10 years plus a five-year extension, that parties could renew the agreement for additional periods of time each of which could not exceed five years, as long as the owner demonstrated compliance with the Development Agreement. Ms. Conneely said there was the potential for the owner to come back in five years and request an additional five years. Chair Márquez asked if another extension would be based on economic trends in five years and Planning Manager Patenaude said yes, but noted economic circumstances hadn't been reviewed for this request.

Chair Márquez opened the Public Hearing at 8:20 p.m.

Steven Brown, Fox Hollow Drive resident, said he was a resident of the Prominence community below Stonebrae and while he wanted that development to be a "roaring success," he had some concerns. He said he understood Stonebrae was required to do some underground utility work along Fairview Avenue, which he said they did part of but then stopped. Residents of Prominence asked them to continue so the look would be consistent. Mr. Brown said there were also traffic issues at the corner of Woodstock and Fairview that were supposed to be resolved by a roundabout. Mr. Brown noted he participated in the Prominence landscaping and lighting district and helped plant over 6,000 plants and 200 trees. He said that while he was helping with the landscaping he saw that people coming down the hill, possibly from Stonebrae or Stonebrae Elementary School, who didn't pay attention to signals and stop signs. Mr. Brown said he had no concern about extending the Agreement because he wanted the development to be successful, but asked what would need to happen to trigger the enhanced lighting, the undergrounding of utilities, the roundabout and a solution to the traffic issues. He said from the golfing license plate frames and the Titleist hats he saw he suspected these drivers were coming from the golf course. Mr. Brown said he wanted assurance that the City was holding Stonebrae to a standard.

Following up on Mr. Brown's comments, Planning Manager Patenaude pointed out that the staff report mentioned the Fairview Avenue improvements and noted a neighborhood working group would be formed to review the scope of the improvements scheduled for 2014, which was the same time Stonebrae would be developing the next village. Mr. Patenaude said the City would have the ability to require that the two happen at the same time.



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Chair Márquez asked how residents would be informed of these upcoming events and Planning Manager Patenaude said staff would work with Stonebrae to develop the most effective method to get the word out to surrounding residents.

Chair Márquez closed the Public Hearing at 8:27 p.m.

Commissioner McDermott moved the staff recommendation adding that she knew firsthand how hard hit the building industry had been and she said this action was the only appropriate step. Commissioner Loché seconded the motion.

Commissioner Lamnin asked staff if, when the neighborhood group convened, the undergrounding of utilities, the roundabout, and other traffic control measures were still needed, they would be part of the next phase of construction, and Planning Manager Patenaude said yes. He added that those topics would be what the working group looked at that year for the 2014 construction. Commissioner Lamnin asked if the Stonebrae PTA could be part of that community group and staff said yes.

The motion to recommend to City Council that it approve the Development Agreement amendment to extend the term for five years, subject to the required findings that such an amendment was consistent with the General Plan, was approved 5:0:2

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

WORK SESSION

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

Development Services Director Rizk gave the report noting letters received were either attached to the staff report or distributed at the start of the meeting. Chair Márquez confirmed Mr. Rizk had received a letter distributed that evening from the Chamber of Commerce and Mr. Rizk was provided with a copy.

Chair Márquez conferred with staff regarding the appropriate time to allow public comments.

Chair Márquez opened public comments at 8:50 p.m.

Doug Ligibel, Mesa Street resident and member of the Hayward Coalition for Healthy Youth and the Downtown Leadership Group and a nationally certified rehabilitation counselor, noted that many downtown restaurants /bars either couldn't afford or couldn't get a Type 48 license from the California Department of Alcohol Beverage Control (ABC), so they operated under a Type 47 license. He noted that the City's ordinance stated that sixty of receipts must be from food for establishments operating under the Type 47 license, but pointed out that the City didn't have the resources to monitor food sales and establishments were morphing into nightclubs. He challenged the Commissioners to go downtown

on a Friday or Saturday between 10-11 p.m. and see if these establishments were operating as restaurant/bars. Mr. Ligibel noted that Club ME was recently cited for having an open bar from 10 p.m. to midnight. He said that was problematic. He added that with a Type 48 license patrons had to be 21 and over only, but with Type 47 licenses, minors were allowed, and he asked how the minors would be removed from these establishments at 10 p.m. when they morphed into a nightclub. Mr. Ligibel asked, as leaders, what did the City wanted to happen in the downtown area: Did the City want nightclubs or were they trying to promote restaurant/bars?

Linda Pratt, Program Director of COMMPRE with business address on Second Street, brought Commissioners' attention to the letter she submitted and said she wanted to focus on the "Deemed Approved" ordinance. Ms. Pratt said the Deemed Approved ordinance was a land use tool that COMMPRE (Community Prevention of Alcohol-Related Problems) had worked with the City for many years to get approved and could be used by the City to take action when an establishment becomes problematic. Ms. Pratt pointed out that her letter listed the five performance standards, which had to do with making sure each business upheld local and state laws and didn't become a nuisance. She said that any person running a responsible business would agree to follow the performance standards and that was why no legal non-conforming use should be exempt from the standards including grocery stores and restaurants. Ms. Pratt recommended that these standards apply to all businesses and that the ordinance be considered before anything else, including the extension of the Happy Hour trial or allowing establishments to add entertainment, which were higher and more intensive uses. Ms. Pratt noted that the City had "chipped away" at its alcohol regulations and that it needed this ordinance to give police extra tools. Ms. Pratt explained that a Type 41 license allowed establishments to sell beer and wine and that the Type 47 license was problematic because restaurants could easily turn into bar or nightclub atmospheres. She said her biggest issue with that was how the youth were being protected. Ms. Pratt asked how the City would protect youth when these establishments were turning into bars and nightclubs and concluded by suggesting adding provisions to an ordinance that would protect youth.

Commissioner Lamnin asked Ms. Pratt how often an establishment with a Type 47 license had acted like a nightclub. Ms. Pratt mentioned Kumbala and noted for all of Council's discussion prior to opening, sales to minors still occurred and other law enforcement issues, which were never satisfactorily resolved. Ms. Pratt pointed out that if the City allowed entertainment in restaurants with a Type 47 license, this matter would be an on-going issue.

Commissioner Loché asked for clarification that Ms. Pratt wanted the Deemed Approved ordinance put in place now and she said yes; as a tool for police, the ordinance needed to be in place to deal with existing problematic establishments and should include a cost recovery structure.

Kim Huggett, President of Hayward Chamber of Commerce with business address on Main Street, said he was representing 30 Chamber establishments and noted this was the fifth time he had spoken on the issue. Mr. Huggett said Chamber members liked the staff report and the full-service restaurants were particularly appreciative of the Happy Hour provisions that allowed them to be competitive with neighboring communities. He said as they approach the end of the six months, the trial had been immensely successful with virtually no negative impacts involving law enforcement or social issues. Mr. Huggett pointed out that because of the Happy Hour trial period, Elephant Bar had added 12 new employees and moved from 23 in the nation to number 2. Mimi's Café had tripled its business on Wednesday nights and he said that was because of the provision that allowed full-service restaurants to have music. He asked the Commission what was so threatening if someone was allowed to play his violin at Buon Appetito. He said a rave wouldn't break out and there would not be any gun play; instead it allowed local businesses to demonstrate that Hayward could have entertainment and cuisine among its amenities.



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Chair Márquez closed public comments at 9:03pm

Commissioner Lamnin asked staff if the time Hayward establishments were allowed to sell alcohol was taken into consideration when analyzing reported cases of public drunkenness. Director of Development Services Rizk asked Commissioner Lamnin if she was asking about restaurants or alcohol establishments in general and she confirmed establishments in general. Mr. Rizk said yes, the hours of operation were considered. In terms of full-service restaurants, Mr. Rizk explained that all were permitted as primary uses with a non-discretionary issuance of a business license. Mr. Rizk suggested Officer Cantrell speak on whether ABC considers hours when approving and issuing a license.

Officer Cantrell said ABC takes everything into consideration when adding conditions to licenses and he commented that there were quite a few establishments in Hayward that could only serve alcohol at certain times. He added that Hayward also had quite a few non-conforming uses that were not held to any conditions or times because they had been around for such a long time.

Commissioner Lamnin said she appreciated the thought and thoroughness of the report, the City's efforts to gather community input, and the Deemed Approved ordinance to address existing problematic establishments. She said she didn't see the danger in dancing and was confused about why a permit for dancing was required. Commissioner Lamnin pointed out that it appeared to come down to food; if the intent was to sit and eat it was a restaurant, if the intent was to drink it was a nightclub. At a nightclub, the sale of food was not required and therefore the environment was different and the impact of the alcohol was different, she said. Director of Development Services Rizk commented that was open to interpretation. He pointed out that an establishment could offer food, but hold an event or activity at which no one orders food. Mr. Rizk reiterated that the main concern was that restaurants would drift into becoming nightclubs where the main activity was drinking and entertainment. Commissioner Lamnin asked how that would happen and Mr. Rizk said either through violation of restrictions or having allowances for activities that were not consistent with a restaurant.

In terms of feedback, Commissioner Lamnin said youth should be protected and if an establishment was operating as a restaurant it should stay a restaurant. She said she agreed with prioritizing the Deemed Approved ordinance and adding in some cost recovery to pay for enforcement. She said that might be what was needed to prevent the establishment's mission from drifting.

Commissioner McDermott said the letters received had some valid concerns and said the biggest problem was addressing COMMPRE's concern. She commented that there seemed to be no way to monitor that sixty percent of sales were from food or there seemed to be no mechanism in place where sales were reviewed. Director of Development Services Rizk said monitoring could be done through ABC and the State Board of Equalization, but agreed it was a matter of resources and staffing. Commissioner McDermott asked for confirmation that businesses were supposed to submit receipts to the State that showed that food sales were at sixty percent. Mr. Rizk explained that the sixty percent threshold was set by Hayward; ABC's threshold was fifty-one percent. Officer Cantrell said any plan moving forward would include how that monitoring would take place. He added that ABC didn't conduct spot checks unless it was part of another investigation or a Hayward staff person had requested one. Office Cantrell said that the State Board of Equalization also monitored alcohol sales and tax revenues.

Commissioner McDermott asked for confirmation that most problem establishments were legal non-conforming and Officer Cantrell said that was correct; typically calls for service and critical incidences occurred at establishments that had no conditions and therefore the City had no “teeth” to shut them down. Commissioner McDermott asked if the proposed steps would address those issues and Director of Development Services said it would help and that was why the Deemed Approved status was included. He explained that the Deemed Approved status would place provisions and basic operating standards on non-conforming uses. Mr. Rizk added that the process would include administrative citations and fines; misdemeanors instead of infractions for repeated offenses; and through the City Attorney’s Office, if necessary, injunctions and court orders. Mr. Rizk concluded by reiterating that the Deemed Approved ordinance would let non-conforming businesses, potentially including restaurants and grocery stores, know that there were expectations for operation and that the City could require them to get a conditional use permit with more comprehensive conditions and restrictions in order to continue operating.

Chair Márquez asked roughly how many problematic non-conforming establishments there were and Officer Cantrell said it depended on the year, but less than a dozen. He noted that because the businesses were non-conforming, they had no ABC restrictions and that created problems for police.

Commissioner Loché said he liked the proposed ideas and thought they would solve a lot of the problems the City had been dealing with. That said, Commissioner Loché said he agreed with Ms. Pratt’s letter that the “certain uses” acceptable under an Administrative Use Permit, in lieu of a conditional use permit (CUP), needed to be specifically defined. He said a public hearing was always beneficial, but also agreed there could be uses that would not require a CUP. Director of Development Services Rizk said if the City could find an acceptable definition, it would be presented in the spring.

Commissioner Loché asked if the Deemed Approved ordinance could be approved separately because it was a significant undertaking on its own. Mr. Rizk said all changes were being brought forward as comprehensive revisions and that Council didn’t mention processing it separately, but he said that could be considered. He mentioned that in terms of cost recovery, staff envisioned the Deemed Approved regulations in place before other ordinances were approved. Mr. Rizk noted that Deemed Approved wouldn’t solve all the problems, there would still be more work to do, and that some businesses may object and appeal the determination to the Planning Commission. Mr. Rizk also commented that the summary suspension provisions might be more important because they would get to the heart of the problematic uses that pose an eminent threat to health and safety. He said that the Deemed Approved provisions could take a while depending on how many businesses objected to the status. Mr. Rizk noted that the Chief of Police strongly supported the summary suspension provisions.

Commissioner Loché asked how many full-service restaurants were problematic and asked for confirmation that restaurants would be exempt from the Deemed Approved. Director of Development Services Rizk said that was the initial recommendation, but staff was considering having full-service restaurants subject to the Deemed Approved status. Officer Cantrell said any ABC establishment could be determined as problematic, and he mentioned Kumbala, but he also pointed out that staff thought ME Restaurant and Lounge could be a big risk and they hadn’t had any problems because of lots of conditions and oversight. Officer Cantrell said any place could be a problem without any conditions in place that allowed the City to take immediate action.

Commissioner Loché said he didn’t want any establishment exempted from the Deemed Approved process. He agreed with Commissioner Lamnin that dancing should be allowed as the City moved forward saying he didn’t see it as an issue. Commissioner Loché said the sale of alcohol in itself was not the main issue; the main issue was whether or not the management was quality or poor. Citing a recent



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complaint by a resident regarding a local dry cleaner, Commissioner Loché said it didn't matter if alcohol was sold or not; a problem business was a problem business. He said the City should give businesses every opportunity to be successful and he said in terms of the staff report, it looked like the City was working toward doing that. Director of Development Services Rizk agreed that proper training and good management of a business made all the difference.

Commissioner Trivedi agreed that the proposed guidelines were thoughtful and a great starting point. He said he was very much in favor of Hayward having nice dining and entertainment options, noting there weren't a lot in the surrounding communities, and that the City could benefit by having attractions that brought people to Hayward and to the downtown area, which was so convenient and accessible by public transportation.

Commissioner Trivedi said he appreciated the feedback from the community, agreed the Deemed Approved status should apply to all ABC establishments, and asked if discussion could continue regarding Type 47 license restaurants morphing into nightclubs. Commissioner Trivedi said he had no problem with restaurants doing this and suggested issuing wristbands to patrons over 21 starting at 10:00 p.m. Regarding the percentage of sales from food versus alcohol, he said the exact percentage didn't matter, but noted the City could use the percentage as a mechanism to trigger review if an establishment became problematic. He asked staff what could trigger a review. Officer Cantrell responded that ABC would confirm a business was in compliance but only in association with another complaint they were investigating. He noted that the City had a good rapport with ABC and didn't think it would be a problem to ask ABC to check compliance, but noted the plan was to have ABC monitor compliance independently. Commissioner Trivedi said the final revisions should have a robust process by which the community and stakeholders had the ability to ask the City to review and revoke permits. Director of Development Services Rizk said that of the two regulatory bodies, the City and ABC, the City had no special permits for full-service restaurants, only business licenses, so any regulation would come from the ABC. He added that if the Council approved the Deemed Approved process, that would provide the City with a process to subject any ABC establishment to review, possible suspension and ultimately the revocation of the ABC license by ABC.

Chair Márquez commended staff and commented that she was glad that the City conducted the Happy Hour trial and that the results were positive based on comments from the Chamber of Commerce representative. She asked staff and police to confirm there were no problems associated with the Happy Hour trial. Officer Cantrell said there was no increase in the number of calls for service from locations known for frequent calls. Chair Márquez asked when the Happy Hour trial extension would end and Director of Development Services Rizk said the trial period was extended to June 26, 2013, and staff hoped to have the new regulations in place by the time the trial period ends.

Chair Márquez said she was in support of the proposed Executive Team, indicating the team could work with ABC and help with monitoring for compliance. She was also in support of on-going education being part of the ordinance and collaborating with the Chamber and any other interest parties. Chair Márquez said she shared the concerns of COMMPRE and wanted to minimize contact with youth in some of the establishments. She was in support of the dance permit because a lot of young people loved dancing and the activity drew a larger crowd; allowing the Chief of Police to decide on what businesses could have a permit would be a safeguard against problematic establishment holding a dance event.

Commissioner Lamnin asked if the square footage of an establishment could be the mitigating factor for dancing and Director of Development Services said the City was looking at that and also the number of people. Regarding full-service restaurants versus nightclubs, Commissioner Lamnin suggested making sure the kitchen remained open during business hours. She said she wasn't sure if an entertainment establishment definition was necessary, but "nightclub" should be clarified and it should be clear what the difference was between a nightclub and a restaurant. Commissioner Lamnin said she appreciated the acknowledgment that there was an over concentration of alcohol outlets in Hayward and that the City was taking steps to address that. She said she also supported the team and suspension approach. She supported including restaurants, and possibly grocery stores, under the Deemed Approved provisions. She noted that the State was tasking non-profits that benefited financially from the tobacco settlement agreement with checking if liquor stores that claimed they also sold groceries actually did so. Lastly, Commissioner Lamnin said that if the Deemed Approved recommendations moved forward, public hearings should be held to gather community input.

Chair Márquez agreed with Commissioner Lamnin's comments and suggested an oversight committee for the Task Force, but noted she understood that businesses had the right to appeal any fines or negative impacts. Director of Development Service Rizk said all provisions would have due process. Chair Márquez said that one of the letters mentioned listing problematic businesses on the City's website and she said would be important to highlight a link the public could use to notify staff of any issues they witness. Mr. Rizk told the audience and those watching that the City welcomed that input already.

COMMISSION REPORTS

4. Oral Report on Planning and Zoning Matters

Planning Manager Patenaude reminded Commissioners that the meeting schedule switched to the 2nd and 4th Thursday in January and that both meetings were currently scheduled. He also reminded Commissioners to respond for the holiday party and wished everyone happy holidays.

Director of Development Services Rizk mentioned that Mr. Patenaude was retiring and that this meeting was his last official meeting. He thanked Richard for his hard work and years of service to his home town and explained that Mr. Patenaude would stick around for several months in 2013 while the City recruited a replacement. Commissioner McDermott also thanked him and congratulated Mr. Patenaude. Chair Márquez said the announcement was a surprise but was very happy for him. She said it had been a pleasure working with him.

Chair Márquez confirmed with staff that the December 20th meeting was cancelled.

5. Commissioners' Announcements, Referrals

Commissioner Trivedi also thanked Planning Manager Patenaude and wished him the best. Commissioner Trivedi wished everyone a happy and joyous holidays and a great New Year.

APPROVAL OF MINUTES

6. Minutes from November 15, 2012, approved with Commissioner McDermott abstaining and Commissioners Faria and Lavelle absent.



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ADJOURNMENT

Chair Márquez adjourned the meeting at 9:37 p.m.

APPROVED:

Sara Lamnin, Secretary
Planning Commissioner

ATTEST:

Suzanne Philis, Senior Secretary
Office of the City Clerk