CITY OF HAYWARD
AGENDA REPORT

Planning Commission

Meeting Date 07/29/04
Agenda Item 4

TO: Planning Commission

FROM: Dyana Anderly, AICP, Planning Manager

SUBJECT: **Revocation of Use Permit 93-50 – El Tapatio Nite Club - Initiated by the Planning Director – Jorge Luis Gonzalez (Licensee) / Peter and Carmen Sanchez (Owner)** – The Property is Located at 22580 Grand Street in the Central -City Commercial District.

RECOMMENDATION:

Staff recommends that the Planning Commission

1. Find that the proposed project is Exempt from the California Environmental Quality Act (CEQA) guidelines, and
2. Revoke the use permit.

BACKGROUND:

In 1993, the Board of Adjustments of the City of Hayward approved a use permit to operate an on-sale general Alcoholic Beverage Control licensed premises (nightclub/bar) with live entertainment and dancing at 22580 Grand Street. At that time the business was known as the "Hot Spot." The business was subsequently acquired by Jorge Gonzales, and the El Tapatio Nite Club began operating in 2001 under the use permit cited above. The Hayward Police Department indicates that since that time the business has operated in a manner that placed a burden on police resources and in a manner which is detrimental to the health, safety and welfare of the patrons of the establishment and the surrounding area.

A use permit may be revoked when the Planning Commission finds that:

(1) The use or the manner in which it is conducted, managed or operated impairs the character and integrity of the zoning district and surrounding area; or

(2) The applicant has not fully complied with or completed all conditions of approval or improvements indicated on the approved development plan and modification of the conditions or plan would not be in the public interest or would be detrimental to the public health, safety, or general welfare.

One of the conditions of approval of the use permit states,

> *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 detrimental to the public health, safety, or general welfare shall be independent grounds for permit revocation.*

The Police Department reports that there have been numerous criminal incidents associated with the operation of El Tapitio Nite Club, and copies of the police reports relating to those incidents are attached. These incidents include, but are not limited to

- Resisting arrest
- Fighting by bar patrons
- An employee served alcoholic beverages to a minor
- Loitering, drunk in public both inside and outside premises
- Causing or being responsible for disturbances
- Assaulting others with deadly weapons
- Patrons being the victims of thefts and other property crimes
- Patrons leaving premises by driving their vehicles recklessly
- Females engaged by establishment to solicit drinks from patrons
- Drug sales
- Patrons under the influence of narcotics
- Use of drugs on the premises

The licensee also admitted that he sold alcohol purchased at El Tapatio at his unlicensed restaurant on B Street in violation of ABC regulations. More specifically, in March, 2003, ABC notified the licensee that he had violated California law by selling alcohol to a minor. In May 2003, ABC notified the licensee that, based on police reports from Hayward Police Department, he was operating El Tapatio in an objectionable manner constituting a criminal nuisance under California law. In addition, ABC determined, based on those same police reports, that the licensee operated El Tapatio in a manner that caused a disturbance to the neighborhood and for purposes injurious to public morals, health, convenience or safety, which is a misdemeanor. ABC also notified the licensee that he violated California law by selling alcohol to an obviously intoxicated person, also a misdemeanor. In October 2003, ABC accepted licensee's payment of a $2,250 fine in lieu of 15 days' suspension of his license.

It is the opinion of the Hayward Police Department that that the business owner, Jorge Gonzales, failed to take reasonable steps to correct objectionable conditions on the premises that constitute a nuisance and that the activities associated with the business are detrimental to the public health, safety and welfare. Based on the evidence provided that substantiates this position, staff is recommending revocation of the use permit.

ENVIRONMENTAL REVIEW:

The proposed project is exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15321, Enforcement Actions by Regulatory Agencies.

PUBLIC NOTICE:

On July 19, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. The owner of the business, Jorge Gonzales, currently resides in Guadalajara, Mexico. Staff notified the owner of the business, Jorge Gonzales, by telephone on June 29, 2004, and on July 12, 2004. No public comment has been received from the public in response to the Notice of Public Hearing.

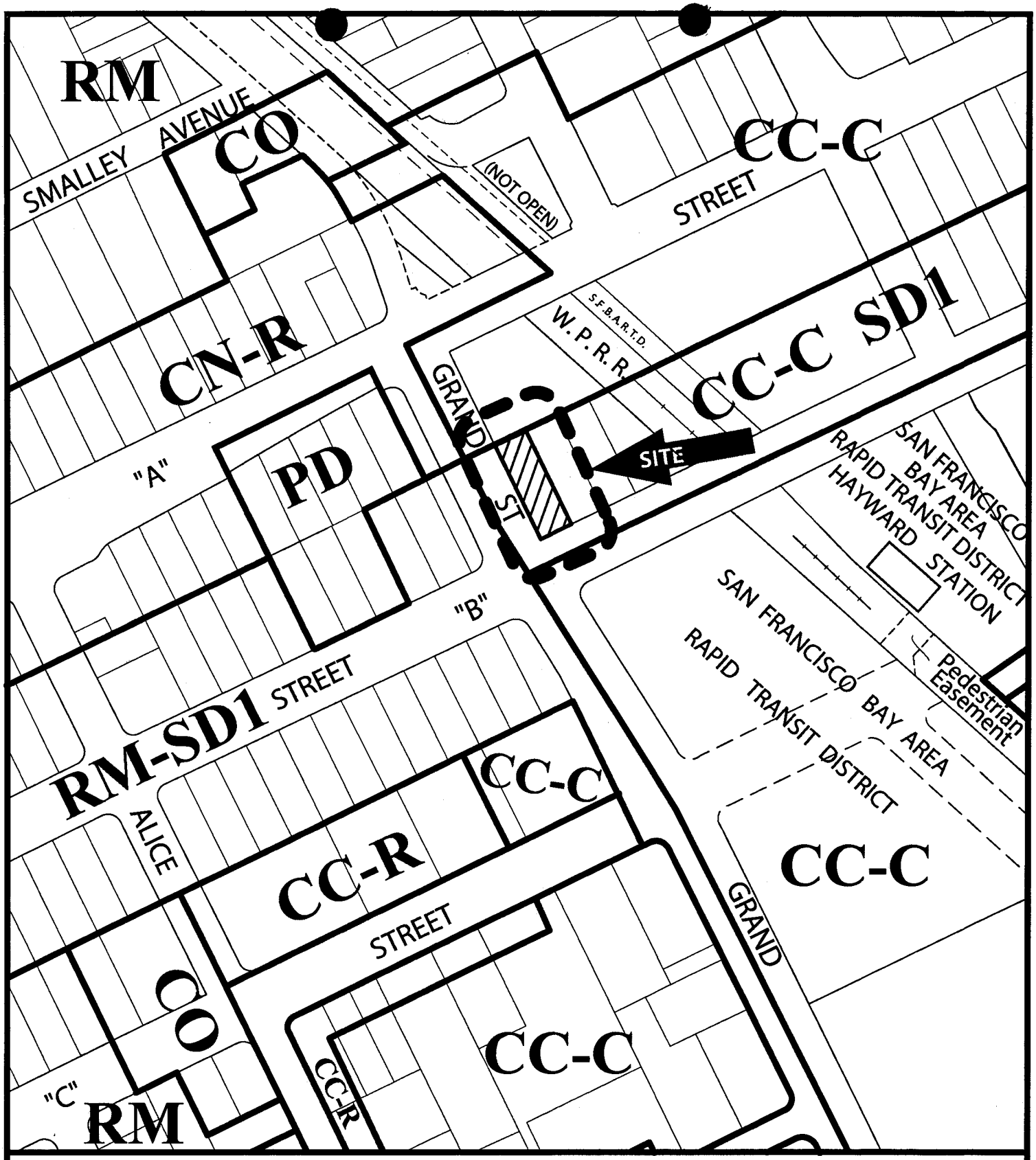
Prepared by:

Dyana Anderly

Dyana Anderly, AICP, Planning Manager
Planning Manager

Attachments:

A. Area Map
B. Findings for Revocation
C. Police Reports and ABC supporting documentation
D. Conditions of Approval



Area & Zoning Map
PL-2004-0269 UP
Address: 22580 Grand Street
Applicant: Planning Director
Owner: Pete & Carmen Sanchez

CC-C-Centrial City-Commercial
CC-R-Centrial City-Residential
CN-R-Neighborhood Commercial-esidential
CO-Commercial Office
PD-Planned Development
RM-Medium Density Residential RMB 3.5, RMB 4
SD-Special Design

North

ATTACHMENT A

USE PERMIT 93-50
Jorge Gonzales, Operator
Peter and Carmen Sanchez, Owners
22580 Grand Street
FINDINGS FOR REVOCATION

A. That the proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15321, Enforcement Actions by Regulatory Agencies.

B. That the nightclub/bar has been operated in a manner that impairs the character and integrity of the Central City – Commercial zoning district and surrounding area in that the property owner has operated the business or caused the business to be operated as a nuisance,

C. That the nightclub/bar has been operated in a manner that impairs the character and integrity of the Central City – Commercial zoning district and surrounding area as it has been a location where numerous crimes associated with the operation have been committed;

D. That the use has not been operated in a manner that is consistent with the purpose of the Central City – Commercial zoning district which is "to establish a mix of business or other activities which will enhance the economic vitality of the downtown area"; and

E. That the owner has not fully complied with all conditions of approval, namely, employees of the permittee committed criminal offenses on the premises, namely, served alcoholic beverage(s) to a minor(s) and solicited drinks

That the owner has not fully complied with all conditions of approval, namely, the criminal offenses that occurred on the premises are found to be detrimental to the public health, safety, or general welfare as evidence in the police reports attached as "Exhibit A." These criminal offenses include, but are not limited to

- Resisting arrest
- Fighting by bar patrons
- An employee served alcoholic beverages to a minor
- Loitering, drunk in public both inside and outside premises
- Causing or being responsible for disturbances
- Assaulting others with deadly weapons
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Police reports and ABC supporting documentation are on file in the Planning Department at City Hall.

CONDITIONS OF APPROVAL
USE PERMIT APPLICATION NO. 93-50

1. 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 detrimental to the public health, safety, or general welfare shall be independent grounds for permit revocation.

2. The permittee shall provide and maintain exterior lighting for the establishment which 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.

3. The permittee shall provide and maintain interior lighting for the establishment which is adequate for the illumination and protection of the premises and which allows the unaided inspection of personal identification by members of the Hayward Police Department while inside the premises.

4. The permittee shall maintain trash and garbage storage areas for the premises that are enclosed by an opaque fence or wall and screened from the view of abutting properties and the public right-of-way.

5. The permittee shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.

6. The permittee shall obtain and maintain a valid Dance Permit pursuant to §6-2.10 et. seq. of the Hayward Municipal Code at all times when dancing is allowed inside the establishment and the permittee shall at all times conduct such dances in accordance with the regulations established in the Hayward Municipal Code.

7. The exterior doors of the establishment shall remain closed at all times when live entertainment, including a disc jockey playing recorded music, is provided.

8. Live entertainment, including a disc jockey playing recorded music, shall not be provided after midnight Sunday through Thursday; or after 1:30 a.m. on Saturday or Sunday.

9. No admission charge, cover charge, minimum drink purchase or similar charge or minimum purchase shall be imposed on or required of customers entering the establishment.