

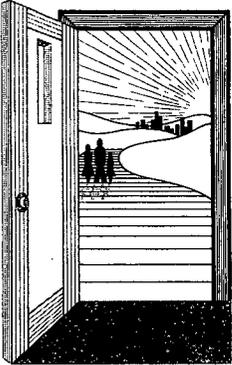
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OCT 29 2009

PLANNING DIVISION

October 26, 2009

COMMPRE



Arlyne Camire, AICP  
City of Hayward, Planning Division  
777 B Street  
Hayward, CA 94541

Re:

- (1) Text Amendment No. PL-2009-0454 – Starzz Management Services, Inc.
- (2) CUP Application No. PL-2009-0201 – Starzz Management Services, Inc.

Dear Ms. Camire:

1558 B Street, Suite 201  
Hayward, CA 94541  
(510) 885-8743  
(510) 885-1848 fax

Text Amendment No. PL-2009-0454

We are opposed to amending Hayward Municipal Code Section 10-1.2700: (7) (b) (ii), which will delete the 100 foot radius requirement pertaining to the park. The primary reason for changing the code is to allow nightclub uses within 100 feet of the downtown park.



A program of  
Horizon Services, Inc.

According to the Core Downtown Plan, *“the consumption of alcohol is a part of community life. As we look to the future of downtown Hayward, preventive planning to avoid alcohol-related problems must be recognized as an essential element in the revitalization process. It is important to manage alcohol availability in our downtown area in a positive way that enhances the economic and social character of this vital area of our city.”*

The conditional use permit process was recently updated by the City to accommodate entertainment in the downtown. The original intention was to protect the park, as a sensitive use, from potential alcohol-related problems. In fact, the code was written as a ‘preventive’ tool that the City could use to prevent problems from occurring in the first place.

Balancing the public health and safety with the presence of alcohol serving nightclubs has historically not been very successful in that much of the burden has been put on the community and city services to monitor and enforce problems that typically occur at certain types of establishments – especially nightclubs.

It is possible to create more balance between public health and safety and alcohol establishments through the use of public policy. Unfortunately, the City of Hayward lacks modern alcohol policies that are used to mitigate and prevent alcohol-related problems often contributed to ‘high risk’ alcohol uses. For example, many cities and counties throughout California have: ‘deemed approved’ ordinances, which provide that *all existing* alcohol establishments abide by performance standards and provides an abatement process if they don’t. Another preventive policy would require every alcohol establishment to pay a fee that recovers the costs for mandatory server

ATTACHMENT H

education, enforcement, including regular decoy operations to prevent sales to underage persons, and abatement if necessary.

Since these policies are not in place in Hayward, there already exists an environment where the sellers and servers are not required to have any education, there are very few decoy operations to prevent underage sales of alcohol and many alcohol establishments do not operate up to minimum performance standards. With a lack of preventive 'tools' in the code, and the current economic reality in which city maintenance services have been cut back, and police resources are already stretched, it is predictable that there will be additional alcohol-related problems in the downtown park if the code is changed to allow nightclub uses to exist next to the park.

Although the proposed plan is not in a high crime district, we urge you to not ignore the adjacent reporting districts, which have higher than average crime rates than the city as a whole. The adjacent district for example, is at 235%. Crime has no boundaries but a strong correlation with alcohol sales. Hayward is oversaturated with alcohol outlets. ABC law requires one alcohol outlet per 2,500 residents; Hayward has one alcohol outlet per 550 residents-nearly 300 outlets in total. It is not coincidental that the 2007 Hospital Council Report shows the city of Hayward as having the highest Alcohol Hospitalization Rates in Alameda County (including the unincorporated areas).

It doesn't make sense that by weakening the CUP ordinance to allow more high-risk alcohol establishments that the health and safety of Hayward residents will be better protected.

CUP Application No. PL-2009-0201 to open Club Me Restaurant & Lounge at 926 B Street in Hayward:

We thank the Planning Department for insuring that the applicant has provided a complete application and proper plans for the proposed business operation. After review of the application, we have concerns about the following:

- 1) The plan does not include a detailed description of the applicants' set of experience, skills, knowledge and track record of running successful nightclubs. It is important to obtain letters of reference and financial statements that would inform as to the ability to successfully manage this type of business.
- 2) The applicant states that the primary use of the establishment is as a full service restaurant and lounge. However, it does not state where the majority of sales are projected to come from, i.e. alcohol, food, nightclub entrance fees, etc.. The City should insure that at least 60% of revenue is derived from food sales.
- 3) The plan to clear the 'restaurant' at night of underage persons in order to operate a nightclub is not adequate. Minimally the applicant should institute a bracelet system to clearly identify what patrons are over 21. A metal bar

separating the restaurant from the bar area is not sufficient for preventing sales to underage persons.

- 4) The business plan does not adequately address the following important details:
- Security: The security plan is brief and does not include details of how security personnel will be hired, trained and certified. There is no discussion about patrolling the adjacent park. It has not been demonstrated how security will prevent patrons from leaving the club and using the park. How will security insure that patrons leaving the club do not go into the park and cause the following alcohol-related problems: public urination, public drinking, vomiting, loitering, fighting, etc....?
  - Responsible Beverage Service: There is not adequate discussion about how and by whom the servers would be trained in responsible beverage service (RBS), and how the club would protect minors (under the age of 21) from accessing alcohol. Security companies are not certified by the ABC to provide RBS training. What will their procedure be to insure that fake I.D. cards are not being used?
  - Parking: The proposed premises will have occupancy for 514 patrons. Where will 200-300 cars park in the downtown area? The closest lot is the Lucky shopping center, which is where most patrons would try to park. How will the applicants' prevent their patrons from using this lot? Public transportation will not be available to accommodate patrons after midnight.

If the City allows this use, minimally the following ABC approved restrictions should be placed on the license:

- The sale of alcoholic beverages for consumption off the premises is strictly prohibited. (If this is not stated, a Lic. 47 automatically allows off-sales of alcohol)
- All servers must have Responsible Beverage Service (RBS) training. Certificates of Completion must be kept on the premises for all servers.
- No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.
- The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to HPD and ABC on demand.
- Between the hours of 9:00pm and 2:00am or at any time the premises are providing entertainment, the petitioner(s) shall provide <# of > licensed uniformed security guard(s) in and around the premises and shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby businesses, residences and adjacent park.
- Petitioner(s) shall police the area <time interval"> in an effort to prevent the loitering of persons around the premises.
- Loitering is prohibited on or around these premises and adjoining park area.
- The possession of alcoholic beverages in open containers and the consumption of alcoholic beverages is prohibited on or around these premises.

In conclusion, we believe that preventive ordinances should ideally be adopted PRIOR to amending the CUP ordinance to allow nightclubs around the park. This proposed amendment is akin to "putting the cart before the horse."

Also, prior to issuing a permit for this application, we think the City should conduct a cost analysis to determine if the revenues received from the business will in fact exceed the police and other city services used on behalf of the business. Perhaps the city could institute a fee for maintenance of the park, since city staff are working fewer hours, and therefore, having to clean the park more frequently would be a burden to the City's finances.

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Linda Pratt". The signature is written in black ink and is positioned above the typed name and title.

Linda A. Pratt, M.A.  
Program Director