



**DATE:** October 7, 2010

**TO:** Planning Commission

**FROM:** Carl T. Emura, ASLA, Associate Planner

**SUBJECT:** Conditional Use Permit Application No. PL-2010-0244 – Lijun Meng, (Applicant) / Kent Hagan (Owner) – Request to operate a massage establishment

The Property is Located at 97 Jackson Street, Westerly of Soto Road, in the General Commercial (CG) Zoning District

**RECOMMENDATION:**

Staff recommends that the Planning Commission:

1. Finds that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15303 Class 3, New Construction or Conversion of Small Structures.
2. Approves the Use Permit application, subject to the attached findings and conditions of approval.

**BACKGROUND:**

Lavendar Spa would be located in a 973-square-foot space, formerly occupied by a men's clothing store, in a building shared with Hagan Chiropractic. The spa would be located in the immediate vicinity of two office buildings in which parking and driveway accesses are shared. There are a total of 56 parking spaces between the 3 properties, 10 of which fronts the spa and the chiropractic office. With use of the parking spaces on the adjacent properties, there will be more than enough spaces to accommodate their parking needs. To the north of these buildings, across Jackson Street, on Barnes Court are a mixture of single family dwellings, offices and the City's Corporation Yard. To the south, across Traynor Street is a warehouse, a public storage facility and an apartment complex. To the east is a car wash and to west is another office building.

The spa would specialize in deep tissue, swedish, chinese tui-na and reflexology foot massage. They would also offer facial and body treatments which exfoliate, cleanse and moisturize the skin. These treatments include sea salt body rubs, cucumber masks and aloe vera cream or organic herbal milk body rinses. The spa would have four treatment rooms, two showers, a unisex restroom, a laundry room and an office. Robes would be provided to their clients. They would have three

massage technicians and would be open from 10 am to 9 pm, seven days a week. The spa would be open to both men and women.

In June 2010, the applicant received a Massage Establishment and Massage Therapy Technician Permit from the Hayward Police Department after passing a background check which included Department of Justice fingerprint checks, massage educational references check and a personal reference check. As conditioned, all the spa's massage therapists would have to obtain a Massage Therapy Technician Permit from the City prior to working at the Spa. Both the Massage Establishment and Massage Therapy Technician Permits have to be renewed every two years. The applicant currently co-owns Tri-Valley Spa in Dublin ([www.tri-valleySpa.com](http://www.tri-valleySpa.com)) which is a larger facility.

## **DISCUSSION:**

Approval of a conditional use permit is required for massage parlor in the General Commercial District (CG). A conditional use permit gives surrounding property owners and residents an opportunity to provide comments regarding the proposed use. The conditional use permit is required to ensure harmony with the surrounding area and compliance with City policies. The applicant has passed all Police Department background checks and the hours of operation would be consistent with a legitimate massage business. The proposed massage establishment would complement the adjacent chiropractic practice and both businesses could be mutually beneficial to each other.

### Conditional Use Permit Findings -

In order for the Conditional Use Permit to be approved, the following findings must be made.

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

The massage establishment would be desirable for the public convenience in that it would provide convenient hours and location for Hayward residents to utilize their therapeutic and rejuvenating services. In addition the massage establishment would complement the adjacent chiropractic business.

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

The massage establishment would not impair the character and integrity of the zoning district in that the applicant would be operating according to City requirements. The applicant passed all background, educational and personal checks and obtained a Massage Establishment and Massage Therapy Technician Permit from the Police Department.

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

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

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

The proposed use would be in harmony with applicable City policies in that the massage establishment would be consistent with the General Plan Economic Development goal of providing development opportunities that result in minimal adverse impacts to the City's environment and attracting new businesses. In addition the applicant has met the Massage Permit Ordinance requirements for a massage establishment and massage therapy technician.

*Environmental Review*

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

**PUBLIC CONTACT**

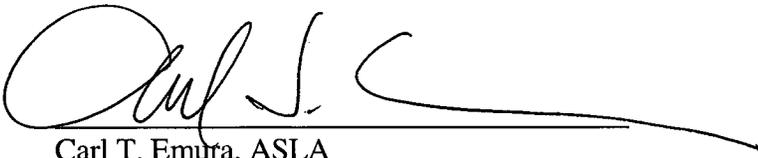
On July 21, 2010, a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Staff received one response opposing the massage establishment citing that it would not improve the "image" or "quality of life" in Hayward.

On September 3, 2010, a Notice of Public Hearing for the Planning Commission meeting was mailed. Staff has not receive additional public comment.

**NEXT STEPS**

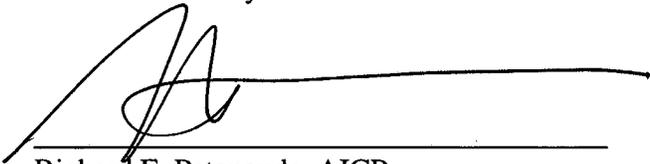
A 10-day appeal period would follow the Planning Commission's decision. If the decision is appealed, the City Council will make the final decision.

Prepared by:



Carl T. Emura, ASLA  
Associate Planner

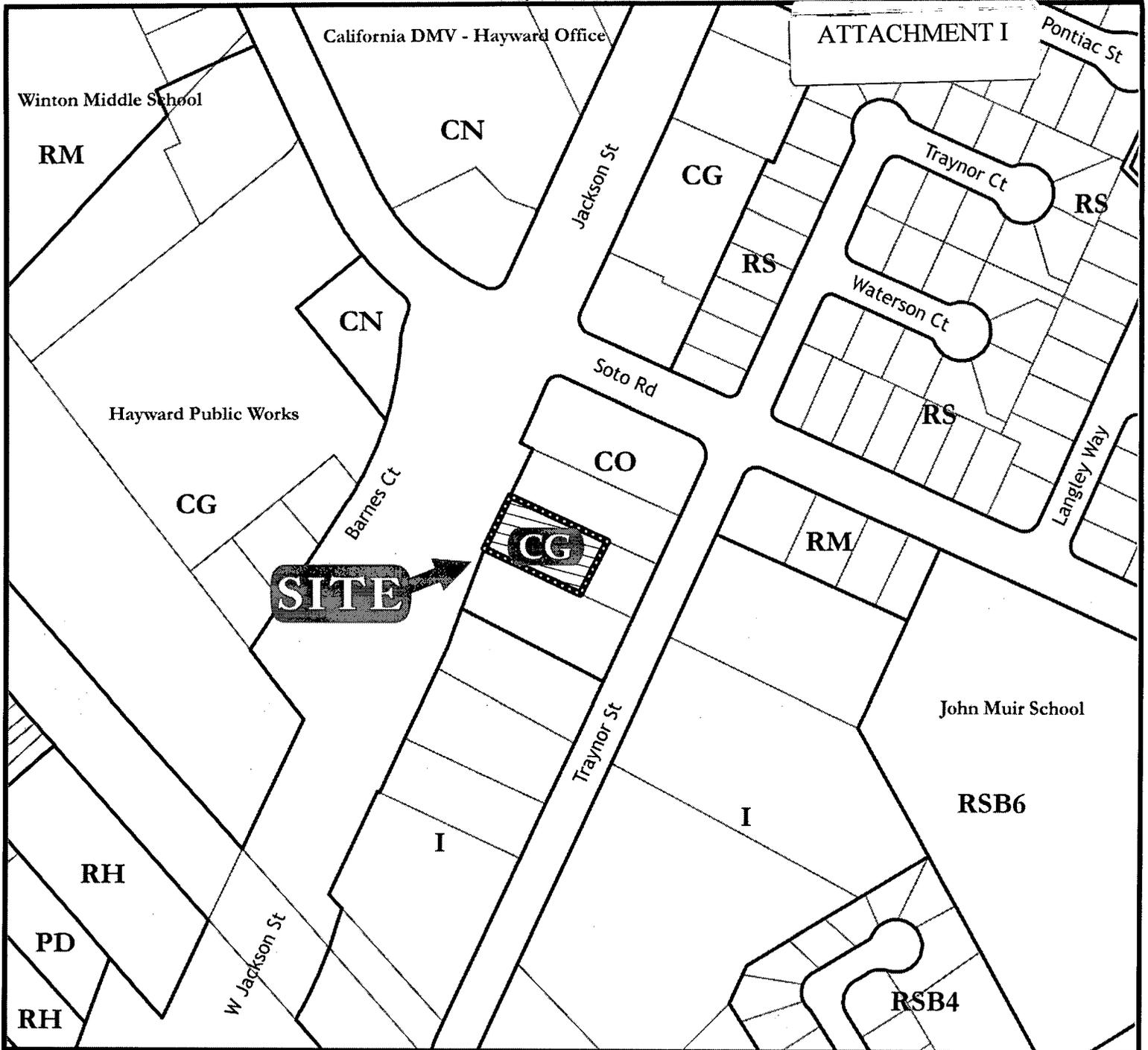
Recommended by:



Richard E. Patenaude, AICP  
Planning Manager

Attachments:

- Attachment I: Area Map
- Attachment II: Findings for Approval
- Attachment III: Conditions of Approval
- Attachment IV: Email from Darryl Reina dated 7/27/10  
Plans



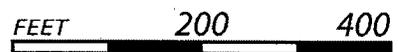
ATTACHMENT I

# Area & Zoning Map

PL-2010-0244 CUP  
 Address: 95 Jackson Street  
 Applicant: Lijun Meng  
 Owner: Kent Hagan

## Zoning Classifications

- RESIDENTIAL**  
 RH High Density Residential, min lot size 1250 sqft  
 RS Single Family Residential, min lot size 5000 sqft  
 RSB6 Single Family Residential, min lot size 6000 sqft
- COMMERCIAL**  
 CG General Commercial  
 CN Neighborhood Commercial  
 CO Commercial Office
- INDUSTRIAL**  
 I Industrial
- OTHER**  
 PD Planned Development



**CITY OF HAYWARD  
CONDITIONS OF APPROVAL  
USE PERMIT APPLICATION NO. PL-2010-0244**

**USE PERMIT APPLICATION NO. PL-2010-00244 - Lijun Meng (Applicant)/ Kent Hagan (Owner) – Request to allow the operation of a massage establishment.**

**The project is located at 97 Jackson Street, westerly of Soto Road (APN: 444-0015-003-01) in the General Commercial (CG) District**

**FINDINGS FOR APPROVAL**

- a. Approval of Use Permit Application No.PL-2010-0244 to allow to use the property for the operation of a massage establishment in the General Commercial District is exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to project is Categorically Exempt from the California Environmental Quality Act (CEQA) Guidelines, Section 15303 Class 3 (c), New Construction or Conversion of Small Structures.
- b. The massage establishment would be desirable for the public convenience in that it would provide convenient hours and location for Hayward residents to utilize their therapeutic and rejuvenating services. In addition it would complement the adjacent Chiropractic business.
- c. The massage establishment would not impair the character and integrity of the zoning district in that the applicant would be operating a legitimate spa. The applicant passed all background, educational and personal checks and obtained a Massage Establishment and Massage Therapy Technician Permit from the Police Department.
- d. The proposed use will not be detrimental to the public health, safety, or general welfare in that each massage therapist and the establishment owner are required to meet all the requirements of the Municipal Code, which regulates massage establishments. Each massage therapist is required to obtain a Massage Therapy Technician Permits issued by the Police Department. The applicant is required to obtain a Massage Establishment Permit issued by the Police Department. The applicant has passed the Police Department background check and has obtained the required Massage Establishment and Massage Therapy Technician Permits.

- e. The proposed use would be in harmony with applicable City policies in that the massage establishment would be consistent with the General Plan Economic Development goal of providing development opportunities that result in minimal adverse impacts to the City's environment and attracting new businesses. In addition the applicant has met the Massage Permit Ordinance requirements for a massage establishment and massage therapy technician.

**CITY OF HAYWARD  
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USE PERMIT APPLICATION NO. PL-2010-0244**

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**The project is located at 97 Jackson Street, westerly of Soto Road (APN: 444-0015-003-01) in the General Commercial (CG) District**

**CONDITIONS OF APPROVAL**

1. This permit becomes void three years after the effective dated of approval, unless prior to that time and a Massage Establishment Permit has been approved and operation of the establishment has commenced. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division at least 15 days prior to October 7, 2013.
2. Any modification to the approved plans or conditions shall require review and approval by the Planning Director.
3. Prior to the commencement of massage services, the following must be completed by the business owner:
  - a. A Massage Establishment Permit shall be obtained and shall be maintained as long as massage services are offered. Operations are not permitted to begin prior to obtaining approval of a Massage Establishment Permit from the Hayward Police Department. The business owner or operator shall display the Massage Establishment Permit issued.
  - b. The Massage Establishment Permit shall be renewed with the Hayward Police Department every two years.
  - c. All massage technicians shall have a Massage Therapy Technician Permit. The permit shall be renewed with the Hayward Police Department every two years.
4. The massage establishment permit and a copy of the permit of each and every massage therapy technician employed in the establishment shall be displayed in an open and conspicuous place on the premises. The business owner or operator shall maintain a register of all persons employed as massage technicians and their permit numbers. Such register shall be available for inspection at all times during regular business hours.
5. The business owner/operator shall permit the City officials the right to enter the premises used by the massage technicians from time to time during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing, or health codes, the California Penal Code and the Hayward Municipal Code.
6. The massage establishment and every massage therapy technician shall comply with standards established by the Alameda County Public Health Department for such businesses and practitioners and the following facilities and operation requirements:
  - a. The massage establishments premises and facilities shall meet and be maintained in a

condition to comply with all applicable code requirements of the city, county, and state, including, but not limited to, those related to the safety of structures, adequacy of the plumbing, lighting, heating, ventilation, waterproofing of rooms in which showers, water or steam baths are used, and the health and leanness of the facility.

- b. The massage establishments and massage therapy technicians shall at all times have an adequate supply of clean sanitary towels, covering, and linens. Towels, non-disposable coverings, and linens shall not be used on more than one client, unless they have first been laundered and disinfected. Disposable towels and disposable coverings shall not be used on more than one client. Soiled linens and paper towels shall be disposed in separate receptacles.
- c. In the massage establishment the restroom and basin shall be thoroughly cleaned and disinfected as needed, and at least once a day when the premises are opened, with a disinfected. All walls, ceilings, floors, and other fiscal facilities for the establishment shall be in good repair, and maintained in a clean and sanitary condition.
- d. All equipment used in the massage therapy operation shall be maintained in a clean and sanitary condition. Instruments utilized in performing massage therapy shall not be used on more than one client unless they have been sterilized, using standard sterilization methods.
- e. Toilet facilities shall be provided in a convenient location within the massage establishment and shall consist of at least one unisex toilet with laboratories or wash basins provided with soap and both hot and cold running water either in the toilet room or vestibule.
- f. A minimum of one wash basin for employees shall be provided at all times. The basin shall be located within or as close as possible to the area devoted to performing of massage therapy services. Soap and sanitary towels shall also be provided at each basin.
- g. Massage therapy shall be provided or given only between the hours of 10:00 am to 9:00 pm. The massage establishment shall not be opened and no client shall be in the establishment between 9:00 pm and 10:00 am.
- h. No alcoholic beverages shall be sold, served, furnished, kept, consumed, or possessed on the premises.
- i. Controlled substances shall not be consumed in the massage establishment unless the person has a prescription for the substance.
- j. No permittee or employee of the massage establishment shall place, publish or distribute or cause to be placed, published or distributed by any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that a service is available that is prohibited under the provisions of the Massage Ordinance, nor shall any massage establishment employ language in any advertising text or business name that would reasonably suggest to a prospective client that any service is available that is prohibited by the provisions of the Massage Ordinance.
- k. The use or possession of adult oriented merchandise in any part of the massage establishment is prohibited.

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

#### Fire Department

11. The building shall be properly addressed with a minimum six-inch high address numbers installed facing the street and on a contrasting background.
12. Portable fire extinguishers shall be installed within the tenant space. Minimum size and type of fire extinguisher shall be 5 lb., dry-chemical, with a rating of 2A:10BC. Fire extinguishers shall be installed in accessible locations as approved by the Fire Department.

13. Use of extension cords in lieu of permanent wiring is not allowed.
14. Use of portable space heaters or any other gas-fueled appliance is not allowed within the treatment areas or any other areas of the tenant space.

#### Utilities

15. The site is currently served by a 5/8" domestic water meter (account # 15-02500.01). If the existing water meter cannot be reused, it must be abandoned by City Water Distribution Personnel at the applicant's/owner's expense.
16. The 5/8" domestic meter is shared between 95 and 97 Jackson Street. If this arrangement is not going to change, the demand for all water fixtures in the building must be taken into account, not just the ones in 97 Jackson Street. All water fixtures must be shown on the plans or the estimated demand in gallons per minute can be listed. Any modifications needed to the water service and/or water meter (upsized, downsized, relocated, etc.) must be performed by City Water Distribution Personnel at the applicant's/owner's expense.
17. The applicant/owner shall install a Reduced Pressure Backflow Prevention Assembly on each domestic and irrigation water meter, per City Standard SD-202.
18. If fire sprinklers are required, a separate water service line to supply the fire sprinkler system shall be installed. All fire services shall have a double check detector assembly installed by City Water Distribution Personnel at the applicant's/owner's expense, per City Standard SD-204. Minimum sizing shall be per Fire Department's requirements.
19. The building currently has an existing commercial sewer service. Additional Sewer System Capacity to accommodate the volume and waste strength of wastewater to be discharged may need to be purchased, at the rates in effect at the time of purchase, prior to discharge. The current rate for a commercial establishment is \$32.65 per gallon of daily discharge.
20. On the tenant improvement plan:
  - a. Provide the estimated water supply demand for all tenant spaces in the building in gallons per minute. As an alternative to providing the domestic demand, show all water fixtures in the building, including those in the all other tenant spaces. If new water services will be installed, then only those fixtures attached to the new water system need to be shown/accounted for.
  - b. On the tenant improvement plan show the location of the existing and/or proposed water meters, service lines and Reduced Pressure Backflow Prevention Assemblies on plans.
  - c. Show the location and size of the existing sanitary sewer laterals on plans.
  - d. Add the note, "**Only City Water Distribution Personnel** shall perform operation of valves on the Hayward Water System."
  - e. Add the note, "Water and Sewer Services are available and subject to standard conditions and fees in effect at the time of application and payment."
  - f. Add the note "**Sewer Capacity Fee is Due and Payable Prior to Final Inspection.**"

ATTACHMENT IV

**From:** Darryl Reina [darryl14r@aol.com]  
**Sent:** Tuesday, July 27, 2010 10:55 PM  
**To:** Carl Emura  
**Subject:** Against Any New Massage Parlor On Property At 95 Jackson Street, Hayward

Re: Property at 95 Jackson St., Hayward, CA

This note is to voice my displeasure that the City of Hayward is considering allowing a massage parlor at this Hayward property. I am against the approval of any such project that does not improve the "image" or "quality of life" in Hayward (Alameda County). This proposed project is not in the best interest of Hayward residents, as well as commercial property owners in the area.

Sincerely,

Darryl Reina  
8073 Wentworth Place  
Newark, CA 94560  
(510)790-0257