

**Planning Commission Meeting
Council Chambers – 7:00 p.m.
Thursday, September 5, 2013**

**Correspondence from the public pertaining to
Item #2**

Proposed Revisions Related to Hayward's Alcohol Beverage Outlet Regulations and Proposed New Regulations for Cabarets and Dances to Replace Hayward's Public Dance Provisions, including Proposed New Fees (Text Amendment Application No. PL-2013-0175); the City has Prepared a Negative Declaration, which Concludes That the Project Will Not Have a Significant Negative Impact on the Environment; Applicant: City of Hayward



August 30, 2013

Hayward Planning Commission
City of Hayward
777 B Street,
Hayward, CA 94541

Re: Proposed Revisions to Hayward's Alcoholic Beverage Outlet Regulations

Dear Planning Commission Members:

Over the past year we have attended several community meetings and been engaged providing input to the Planning Department on the proposed amendments to the above referenced ordinance. We wish to thank the Planning Department staff for their hard work and thoughtfulness in preparing for the upcoming hearings of the Planning Commission and City Council

We strongly support the majority of the new ordinance language, particularly the minimum performance standards for all alcoholic beverage sale establishments and cost recovery fees to provide proactive enforcement and recouping of costs for enforcing violations of the ordinance. There are however, a few recommendations of changes we would like the Commission to consider:

1) Happy Hour/Reduced Drink Prices 4-9pm: While the City seems poised to adopt the policy to allow low-cost drink specials, we don't believe this is in the best interest of the greater community. There is solid research that demonstrates that low cost drink specials encourage higher rates of consumption, which then lead to increased community impacted alcohol-related problems. The proposed hours of 4-9pm encourage higher drinking rates into the night hours – beyond the typical pre-dinner hours. Traditional happy hours are from 4-6pm. If the City is resolute in providing happy hour/reduced drink pricing, we think there should be a compromise of the hours 4-7pm.

2) Wine Shops/Specialty Boutique Shops: The definition of 'wine' needs to be included in Section 10-1.2751 Definitions. It isn't clear what types of wine a 'wine shop/specialty boutique shop' can carry. For example, can a wine shop sell fortified wines or wine coolers? Also, can beer be sold at wine shops? What types of liquor will be allowed at wine shops? There is no unique ABC license for a 'wine shop/specialty boutique shop', therefore a license type 20 would allow for the sale of beer and wine, including fortified wines, malt beverages and wine coolers. How will the City prevent a store from converting to a typical wine and beer sales establishment?

3) Full-Service Restaurants: The draft ordinance states that full-service restaurants (License type 47) may have live or recorded music until midnight without a cabaret license. We are very concerned with restaurants turning into bar environments primarily deriving revenue from alcohol sales. The biggest problem is that minors are allowed in full-service License type 47 restaurants (they wouldn't be allowed in cabarets). The ordinance is silent as to providing safeguards to address and prevent easy access to alcohol by minors in these late night environments where there is primarily alcohol consumption. How will the City adequately enforce that youth will be protected, and unable to access alcohol?

In advance, thank you for your consideration.

Sincerely,


Delsy Bates
Chair

From:

Sent: Wednesday, September 04, 2013 11:48 PM

To: David Rizk

Subject: Hayward Planning Commission Public hearing Sept. 5, 2013

Reference: Negative Declaration and related proposed revisions to Hayward's Alcohol Beverage Outlet Regulations and Establishing New Regulations for Cabarets and Dances (Text Amendment Application No. PL-2013-0175) City of Hayward (Applicant)

Dear Mr. Rizk, AICP

It is with great concern that it seems the City of Hayward discourages businesses that have entertainment, food and spirited drinks. That the City of Hayward Planning Commission has an abolitionist attitude towards businesses that bring much revenue into the city's coffers, if that business has anything to do with alcohol and entertainment. Yet the city does not try to impose strict regulations to retail businesses that provide alcohol for sale for the public and home (i.e. big box stores). It is with this type of sales that puts excessive alcohol consumption and public drunkenness with the highest numbers of police calls.

This new proposed revisions and new regulations are aimed at **small** businesses who do not have large corporate lawyers at their beck and call, and cannot make their voices heard and considered on the same scale as larger corporations. So you target these small businesses to pad your city coffers with new regulations that other big businesses do not have to follow the same standards. How many calls does a big name retail outlet store get before they are charged for the call for assistance from the Police Department?

I am sure that shop lifting is a daily occurrence in most big retail stores and this requires the City's Police Department to respond at least every week. If these stores attract thieves and criminal behavior within the City are they allowed to have unlimited calls to the Police Department without extra charge?

So why is the City of Hayward targeting small businesses such as restaurants, bars and cabarets to punish them with extra charges and fees for the use of public services allotted to other businesses without extra charges?

And who is to regulate the Police Department on how they respond (which past history shows that they usually respond in an OVER display of force when it is not necessary) to how many cars they dispatch to any call. What are the boundaries? If a place of business has the space to have over 100 people capacity for itself and does not necessarily have that many actual people in its establishment when the call is made for assistance from the Police Department, does this business have to pay extra because of this? Retail stores always have the capacity of over 100 people, yet do they get an over response by the Police Department for calls.

All businesses must pay retail taxes, license fees, permit fees and local fees and taxes. Even small businesses help pay for public services such as the Police Department, and yet your city thinks it is OK to charge small businesses that serve alcohol and some have some form of entertainment to pay more than other businesses.

WHERE IS THE FAIRNESS WITH THESE REVISED AND NEW REGULATIONS?

If the City of Hayward is to impose new charges and fees for PUBLIC SERVICES it should include all businesses.

Also where is the fairness that the City of Hayward will give away live entertainment permits to some businesses and refuse these same permits, even with huge fees, to other businesses.

The City of Hayward should look to other cities to see how well they function with many live entertainment permits and **plenty** of alcohol establishments and still have a small town feel with great policies toward new businesses and low crime rates. The City of Lodi (where I live) is know as one of the great wine cities of the world with small fee and free alcohol tasting on every single block of the entire downtown and surrounding areas. This city attracts tourists from all around the world. Yet the entire murder rate for the year is less than a single week in Hayward. They deal with same problems as the City of Hayward (i.e. gangs, homelessness, poor and unemployment, etc.) yet they have money in their coffers to deal with all of these things because they are liberal with permits to small businesses with alcohol and live entertainment. Because they welcome businesses with alcohol and entertainment of all sorts this city thrives. It is a city with high moral stantards and a high rate of church attendance and still they welcome these small businesses (and they have plenty of large corporations also).

You really should look at cities that are very successful (i.e the City of Lodi) and encourage bars, wine tasting rooms and many other small businesses of alcohol consumption and practice **FAIR** and **EQUALITY** for all of its'small business establishments, **before** you decide to punish your small business owners with extra charges for publice services. See what they are doing right and making it work for them before you drive out all small businesses. California is NOT a "dry" state,why are trying to make Hayward a "dry" city?

And if you insist on passing prejudice regulations then at least try to give some leaway to businesses with larger capacities more calls per year than small capacity busniessses.

Sincerely,

Rose Tamez

(An individual who does business in the City of Hayward)

VIA EMAIL

September 5, 2013

Planning Commission Chair Faria and Members Lamnin, Lavelle, Loché, Márquez, McDermott, and Trivedi
City of Hayward
777 B Street
Hayward CA 94541-5007

Re: Alcohol Beverage Outlet Regulations: Recommended Revisions
5 September 2013 Planning Commission Meeting: Public Hearing: Item 2

Subject: Recommended Revisions

Planning Commission Chair & Members:

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

In general, we are very pleased with staff's work here. It's substantive and comprehensive; care and attention to detail are each readily in evidence. We thank the City for its efforts.

We strongly support the proposed revisions to the City's Alcohol Beverage Outlet Regulations, Zoning Ordinance definitions, and Zoning District text; the proposed new Cabaret and Dance Regulations; and the proposed new Fees.

We owners respectfully wish to make the following recommendations:

1. **Alcohol Beverage Outlet Fees**

At present, the draft Alcoholic Beverage Outlet Fees exclude the costs of certain City departments — Finance; Development Services; and the City Attorney's Office — charged, in part, with administering and enforcing the related regulations. The staff report states in part:

"There will undoubtedly be demand from the General Fund primarily related to staff of the Finance and Development Services Departments, as well as the City Attorney's Office, in enforcing the recommended provisions, especially the 'Deemed Approved' provisions that

require noticing and annual collection and oversight of fees. It is difficult to estimate that cost ... Future annual adjustments to fees may be needed in response to such demand and costs."

We **recommend** the City (i) increase the proposed Alcoholic Beverage Outlet Fees — as set forth in Attachment V to the staff report; including both the Level I and Level II fees — to include a reasonable estimate of the costs of City Finance, Development Services and City Attorney staff to administer and enforce such Fees, and (ii) review such estimate in a public hearing after two (2) years, when staff will possess actual cost data over a reasonable period of time. We believe it's prudent for the City to now include staff administration and enforcement costs within such fees.

2. Critical Incident Definition

The proposed Ordinance Amending Chapter 10, Article 1 of the Hayward Municipal Code Relating to Alcoholic Beverage Outlets states in part:

"Critical Incident" shall mean any event that, in the sole discretion of the Chief of Police, results in a crime of violence or large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment."

Would the Alvarez shootings — both inside and outside the Dirty Bird Lounge at 29308 Mission Boulevard — in the early morning hours of September 24, 2012 meet the proposed definition of a critical incident? As we understand, the City dispatched three (3) police officers to such shootings; Alvarez and the officers were later involved in a separate discharge of firearms on Tennyson Road.

If such shootings do not meet the proposed definition, we **recommend** the City revise the definition to include, but not be limited to, the discharge of a firearm — where such discharge is connected directly or indirectly to the operation of an alcoholic beverage sales establishment; and where such discharge is part of an assault or battery — no matter the number of officers dispatched by the City.

3. Critical Incident Response Fee Payment

The draft Section 10-1.2766 states in part:

"In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident and/or the licensee of any alcoholic beverage sales establishment ..."

We **recommend** the City (i) levy and impose such fee solely on the licensee of the Alcoholic Beverage Outlet, and (ii) include — within such fee — the actual cost of any and all City services, including, but not limited to, those provided by Police and Fire Departments and the City Attorney's Office. As drafted, ultimate responsibility for critical incident fee payment is unclear. Under our

Planning Commission Chair Faria and Members Lamnin, Lavelle, Loché, Márquez, McDermott, and
Trivedi

September 5, 2013

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recommendation, the licensee may pursue — under existing applicable tort law — reimbursement of such fee payment from any individual or group of individuals.

Thank you for your attention to the foregoing.

Sincerely,

/s/ Richard C. Ersted

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

From:
Sent: Thursday, September 05, 2013 12:14 PM
To: David Rizk
Subject: Hayward planning commission public hearing September 5th

To the city of Hayward:

I as a citizen of Hayward California, feel that these new ordinances are completely unjust and bias to say the least. I work for a bar and am challenged with the decision to call the hpd every day. I attribute this to all the criminals, pedophiles, bums, junkies, and drug dealers who seem to roam the streets all day long!!! Hpd cares to do nothing with these folks because they are repeat offenders(most of whom reside in the green shutter) and is a waste of time, paper work, and money. Which leads me back to the same problem I deal with these same people on a daily basis and these undesirables are usually the folks I call the police for. Moving on to another issue... I feel this whole issue is unfair and will be seeking a lawyers advice!!! I am thoroughly AGAINST the proposed revisions to Haywards alcohol beverage outlet regulations and establishing New Cabarets and dances regulations!!!!!! I am thoroughly disgusted that the city of Hayward wants to pass on the cost of normal police calls to us!!! This is outrageous and unfair. I pay taxes which pay the police and they should be anywhere I need them free of charge!!!! THE CITY OF HAYWARDS NEW ORDINANCE IS GOING TO MAKE PEOPLE AFRAID TO CALL THE POLICE!!! This is wrong!!!

From: Susan Cain-Birkert
Sent: Thursday, September 05, 2013 1:38 PM
To: David Rizk
Subject: New Regulations for Cabaret & Dances Amendment-questions

Dear sir,

Allow me to voice my concern for the imminent passage of these reprehensible provisions on small business owners that the city of Hayward plans to impose. Have you no shame? why on earth did you take the trouble to revitalize - and I use the term 'revitalize' loosely - downtown Hayward? There has been a plethora of empty store fronts from Day 1. See, maybe, JUST MAYBE - someone should have put an agreement of some sort in place with existing landlords preventing them from raising the rents. Result? Space for a thriving downtown - and no takers.

I guess you were going for the tax writeoffs, huh? So much for 'revitalization.'

Now you intend to present a series of amendments that punish bars, saloons - call them what you will:

Restaurants get free music permits - bars do not. How is that fair? When was the last time one was heard to say, 'Hey, let's go to the Olive Garden! They've got a great band'?

OH. Perhaps you're protecting a certain restaurant conveniently located near city hall?

Or perhaps you're prejudice against those with alternate life styles that have great bands and great patios?

Or perhaps the city counsel is hell-bent to close every drinking establishment in Hayward?

That's it, isn't it? NEWS FLASH: Alcohol is legal. Swear to God.

Compounding the issue, you intend to - this can't even be right, it makes no sense:

charge ONLY SMALL BUSINESSES, i.e., bars & saloons, EVERY time law enforcement is called to their establishment.

WHAT? Here's a novel suggestion: how about the Hayward PD - JUST DOES IT'S JOB.

THAT'S ALL: Instead of having 20 to 30 officers in front of one establishment at 1:30 - 2:00 a.m. - which is, you know, OVERTIME, harrassing bartenders

that don't even drink & threatening to arrest people waiting for cabs - how about working them for a straight 8 hours & sending them home? Really, some of us have been here since the 1960's. We have KIND OF had our fill of Hayward PD harrassment.

Similarly, one could write a book on the corrupt history of Hayward politics & how it seems to continue- or at least file a lawsuit.

Why don't you just put up a sign next to your shiny new loop signs saying something like 'Welcome to Hayward! Puritans Only Allowed! No Drinking allowed! Downtown shuts down at 10 PM. Violators will be prosecuted - then charged. Please take your money & your business else.'

I've worked for the Federal Gov't. for 37 years & continue to do so. Additionally, I live in Hayward - at least until I decide to retire. Good Lord, I hate to see how this city treats/charges the elderly!

Sincerely,

Susan Cain-Birkert
94542

September 5, 2013

David Rizk, AICP
Development Services Director
City of Hayward
Hayward, CA

Dear Mr. Rizk:

I am submitting the following comments regarding the proposed revisions to Hayward's Alcohol Beverage Outlet Regulations and request that changes be incorporated into the proposed revisions.

Critical incident response fees should be paid by **responsible party** – this should not be “and/or licensee”. If the licensee is the responsible party, than this should be the basis for payment, not merely being the licensee. Proper diligence should be used to determine the responsible party and assess fees accordingly. The convenience of assessing fees solely due to the location or proximity of an incident is neither appropriate nor reasonable.

In earlier workshops related to these regulations, there was discussion by the police department that 5 or more calls within a year would result in fees to licensee. Is this still included in the regulations? Calls for police service should be dependent on need rather than number and based the incident. If calls for police services are discouraged, incidents could potentially escalate. Similarly, calls for police service should not be used solely to determine “nuisance activities” as this would be potential self-incrimination, whereas the basis of the service call would be to abate illegal or nuisance activities.

Performance standards include “nuisance activities within the premises or in close proximity of the premises”. While an establishment may reasonably control activities within the premises, the control of activities in the public street or sidewalk, adjacent private property, and areas not part of the establishment cannot be assigned to the establishment. In fact, activities within the public street or sidewalk should be policed and protected by the Police Department and are the cities' responsibility. Also proximity appears to be used to determine responsibility whether or not violations are associated with an establishment. An example of this type misassignment of responsibility would be the activities of attendees of the downtown street party that are adjacent to business establishments.

Thank you for your consideration of this matter.

Joeann Pepperell

From: Christy Paulson
Sent: Thursday, September 05, 2013 3:27 PM
To: David Rizk
Subject: City Council Meeting this evening

It is not right to tax or make small business owners to pay for services that are already part of our constitutional rights. Police, Firemen and other public agencies are there to serve and protect all citizens.