



## CITY OF HAYWARD AGENDA REPORT

Meeting Date 9/11/03  
Agenda Item 4

**TO:** PLANNING COMMISSION

**FROM:** Richard E. Patenaude, Principal Planner

**SUBJECT:** **Modification of Use Permit Application No. 00-160-15, Initiated by the Planning Director, to Prohibit Use of an Outdoor Area for a Nightclub – Daniel Burris for *The Turf Club* (Operator) / John Brenkwitz (Property Owner)**

The Project Is Located at 22519 Main Street, between A & B Streets in the Central City – Plaza/Commercial (CC-P/C) Subdistricts

### RECOMMENDATION:

Staff recommends that the Planning Commission:

1. find the project categorically exempt from CEQA review; and
2. modify Use Permit No. 00-160-15 to prohibit use of an outdoor area for the nightclub subject to the attached findings and revised conditions of approval.

### DISCUSSION:

*The Turf Club* operated a nightclub at 22517 Mission Boulevard for approximately 35 years. It closed when the site became part of the downtown Albertson's shopping center. The applicant requested relocation of *The Turf Club* to 22519 Main Street and garnered approval of a Conditional Use Permit by the Planning Commission on September 28, 2000. *The Turf Club* shares a two-story building with a bakery (*Patisserie Française*).

The applicant renovated its Main Street building façade as proposed under the use permit approval. The applicant also proposed to use an adjacent 4,000-square-foot open lot, which fronts "A" Street (see Attachment A), as a patio area for the nightclub. However, the conditions of approval prohibit the use of the outdoor patio until the chain-link fence surrounding the open lot is replaced by a masonry wall and perimeter landscaping. The design of the masonry wall is subject to approval by the Planning Director to ensure compliance with City guidelines and regulations.

Although the masonry wall has not yet been constructed, staff observed, in October 2002, that customers of the nightclub were using the outdoor patio area. Fabric netting was attached to the chain-link fence to obstruct views into the area and patio furniture was installed. Trees and other plants, in their containers, are scattered around the area's

deteriorated asphalt surface. A white tent, visible over the fence, was installed on a deck that serves as part of the emergency exiting plan.

Besides disregarding the conditions of approval, the applicant has installed improvements that detract from, rather than enhance, the appearance of the Downtown. The installation of the fabric netting is an obnoxious visual element along "A" Street and within the municipal parking lot. The material is consistent with neither the historic character of the nightclub building nor the surrounding structures. Staff has received reports that the fabric impedes visibility where the exit driveway from Municipal Lot #1 crosses the sidewalk along "A" Street and that there have been near-accidents between vehicles and pedestrians and bicyclists. In response, the applicant attempted to pull the netting away from the chain-link fence to improve the sight distance, but the extent of the correction may not be sufficient and the fence remains, creating a visually confusing situation. The required masonry wall could be designed with a corner cut-off to provide visibility. The landscaping appears to be placed haphazardly; it should be used to define the outdoor patio and form an attractive streetscape.

On November 21, 2002, the property owner, John Brenkwitz, was issued a notice of violation citing noncompliance with the conditions of approval. On March 28, 2003, a correction notice was issued that required compliance by April 14. On May 6, 2003, an inspection was performed and it was determined that the business remained in noncompliance; a failed inspection fee of \$226 was assessed. On June 20, 2003, Dave Barker, of *The Turf Club*, was issued a court citation for the violation. On July 14, 2003, the City requested that the Municipal Court require proof of correction. There has been no subsequent action by the applicants to comply with the conditions of approval.

In February 2003, Larry Gray of *The Turf Club*, indicated that he would apply for a modification to the use permit to allow for use of the outdoor patio prior to installation of the masonry wall. An application was delivered on June 6, 2003, but it was returned because it was incomplete due to lack of signature of the property owner. The property owner indicated to staff that the business should comply with the conditions of approval.

The Planning Commission may modify the Conditional Use Permit to insure that the use is consistent with the required findings of approval. The Commission determined that the findings for approval of the nightclub, including use of the outdoor patio, could be made in conjunction with the adopted conditions of approval. Without compliance with the conditions, staff believes that the manner in which the outdoor patio is conducted impairs the character and integrity of the zoning district and surrounding area; and that continuance of such operation would not be in the public interest or would be detrimental to the public health, safety or general welfare. Since the applicant has chosen to ignore the conditions of approval and numerous citations to operate the outdoor area in a manner inconsistent with City goals, policies and regulations, staff recommends that the Planning Commission modify the Use Permit by prohibiting the use of the outdoor area. The applicant could apply for modification of the Use Permit for use of the outdoor patio at such time he is able and willing to install improvements consistent with policies for development in the Downtown.

Modification of the Conditional Use Permit, as recommended, would require *The Turf Club* to immediately cease operation of its outdoor patio and remove all unapproved materials, including the netting, plants, the tent and furniture. The applicant would also have to construct a trash enclosure and remove the chain-link fence. Should use of the outdoor patio continue in violation of the Use Permit, the City could pursue action for revocation.

**ENVIRONMENTAL REVIEW:**

The proposed action qualifies for a Categorical Exemption under Section 15321 (Enforcement Actions by Regulatory Agencies) of the California Environmental Quality Act (CEQA) Guidelines.

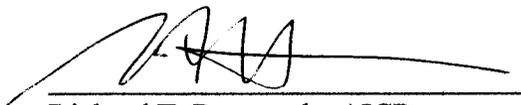
**PUBLIC NOTICE:**

On August 28, 2003, a Notice of Public Hearing was mailed to every property within 300 feet of the property.

**CONCLUSION:**

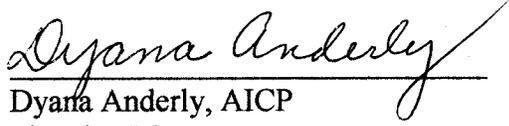
Staff supported the approval of the conditional use permit for the nightclub. *The Turf Club* had a long tenure in its previous location and its move was precipitated by the downtown Albertson's redevelopment project. However, it was expected that the business would comply with the approved conditions of approval; they are typical for this type of business and ensure that the nightclub will be properly regulated and controlled such that it will not be detrimental to the surrounding neighborhood or businesses. The business owners agreed with the conditions at the time of approval. The operator has been given two options to avoid this action: 1) comply with the approved conditions of approval, or 2) follow through with a request to amend the conditions. Neither option has been taken and, with the patio being the most outwardly visible portion of the business, failure to comply with the conditions sets the business at odds with City policy to improve the Downtown. The modified conditions require immediate cessation of the use of the outdoor area, and removal of improvements within 14 days; construction of a trash enclosure and removal of the chain-link fence would have to be removed within 60 days. Continued failure to comply with the Conditional Use Permit could lead to revocation.

Prepared by:



Richard E. Patenaude, AICP  
Principal Planner

Recommended by:

  
Dyana Anderly, AICP  
Planning Manager

**ATTACHMENTS:**

- A. Area Map
- B. Conditions of Approval – 9/28/00 – with Recommended Modifications
- C. Findings for Modification of Use Permit

AM-428

A Street

DEPTH OF  
FROM P/L

PARKING LOT NO. 2  
CITY OF HAYWARD

STREET

Outdoor  
Patio

TURF  
CLUB

Main Street

PARKING  
LOT NO. 1

CITY  
OF  
HAYWARD  
PARKING LOT NO. 1

PARKING  
LOT NO. 1

79.19°

BOULEVARD  
Mission Blvd.

B Street

CCCP

PARKING  
LOT NO. 3

CITY OF  
HAYWARD

SMITH

MISSION

PARKING  
LOT  
NO. 8

ATTACHMENT A

"C"

**MODIFIED CONDITIONS OF APPROVAL (9/11/03)**  
**USE PERMIT 00-160-15**  
**DANIEL BURRIS FOR *TURF CLUB* (APPLICANT) / JOHN BRENKWITZ (OWNER)**  
**REQUEST FOR NIGHTCLUB (RELOCATED FROM 22517 MISSION BOULEVARD)**  
**22519 MAIN STREET**

1. The Use Permit Application No. 00-160-15, to allow a nightclub at 22519 Main Street shall be allowed according to these conditions and the plans approved by the Planning Commission on September 28, 2000, labeled Exhibit "A" **except that the outdoor patio is not approved**. This approval is void one year after the effective date of approval unless the business is operating at that time in accordance with the approved plans and conditions. Any modification to the approved plans or conditions shall require review and approval by the Planning Director.
2. Prior to opening the business to the public, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the City. ~~The activities housed within the structure may open prior to improvements to the outdoor patio are completed; however, the outdoor patio may not be used until its improvements are approved and completed. The outdoor patio shall be surrounded by a solid masonry wall prior to its use.~~
3. Modifications to the exterior of the building, ~~and the design of the outdoor patio area and its perimeter wall,~~ shall be subject to the approval of the Planning Director in accordance to the Hayward Design Guidelines, the Commercial Design Manual, the Downtown Hayward Design Plan, the Design Requirements & Guidelines for Downtown Hayward, and the Core Area Plan. Such modifications are subject to review and comment by the Citizens Advisory Board, which shall provide its recommendations to the Planning Director.
4. Prior to occupancy, the permittee shall submit a floor plan, including an exiting plan, to the Building Official for review and determination of compliance with applicable code requirements for the subject use. The permittee shall provide calculations supporting the adequacy of the floor structure as required by the Building Official. Prior to commencement of any construction, a building permit must be obtained and all improvements completed in accordance with the Uniform Building Code (UBC) and Uniform Fire Code (UFC) as adopted by the City of Hayward.
5. The facility shall operate in compliance with the requirements set forth in the Hayward Zoning Ordinance Section 10-1.2735b. Commission by the alcohol license 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.
6. Any violation by the permittee or any employee of the premises of any rule or regulation issued by the Department of Alcoholic Beverage Control or any law concerning the sale and distribution of alcohol shall be grounds for permit revocation.
7. The permittee shall ensure that the establishment complies with California Labor Code Section 6404.5, "Smoking in Places of Employment."

8. The permittee shall provide and maintain exterior lighting for the establishment that 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.
9. 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.
10. The permittee shall obtain and maintain a valid Dance permit pursuant to Section 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. The Dance Rules & Regulations pursuant to Section 6-2.15 of the Hayward Municipal Code shall be observed and posted in a conspicuous place within the premises.
11. Any time the nightclub wishes to use exotic dancers or adult entertainment, the conduct of such dancers or entertainers shall be regulated pursuant to Hayward Municipal Code Sections 4-2.50 thru 4-2.70 and Sections 10-1.2735a. and 10-1.5071 of the Zoning Ordinance. The names and addresses of such dancers, entertainers and contractors shall be provided to the Hayward Police Department Vice Bureau not less than three (3) days prior to the scheduled performance.
12. 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. **The plans for the trash enclosure are subject to review and approval by the Planning Director, and subject to issuance of appropriate building permits, and shall be constructed and in use no later than November 11, 2003.**
13. The permittee shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
14. No person under 21 years of age shall be admitted to the permittee's facility at any time.
15. The permittee shall not sell any alcoholic beverages for consumption off the permittee's premises. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under control of the owner of the liquor establishment.
16. 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.
17. At no time shall the maximum occupancy level of the establishment be exceeded.
18. The permittee shall prominently post signs inside permittee's premises and adjacent to each entrance/exit door stating that consumption of alcoholic beverages in public is prohibited by law pursuant to Section 4-2.10 of the Hayward Municipal Code.
19. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within six months of approval of this permit. Any

employee hired after this permit is approved shall attend Responsible Beverage Service training within six months of his/her date of hire.

20. The permittee shall be responsible for the maintenance of the peace to ensure order on the permittee's property. The permittee shall take all necessary steps to ensure that permittee's patrons and visitors refrain from incidents of violence and/or intoxication that adversely impact the safety of the community and therefore, become an increased burden on the limited resources of the Police Department. Should the permittee fail to control incidents of intoxication and violence, the permittee may be required by the Chief of Police to provide one or more private security guards at the permittee's expense. The number of security guards and the days and hours they are to be provided shall be determined by the Chief of Police.
21. The exterior doors and windows of the establishment shall remain closed at all times when live entertainment, including a disc jockey playing recorded music, is provided indoors. Amplified and live music in the outdoor patio area shall be monitored to ensure that the sound levels measured at the property line shall not exceed the level of background noise normally found in the area or 65 dB, whichever is greater. Live entertainment, including a disc jockey playing recorded music, shall not be provided after midnight Sunday thru Thursday, or after 1:30 a.m. Friday and Saturday.
22. If a public telephone is installed, it shall be installed within the interior of the building.
23. The project owner(s) shall maintain in good repair all building exteriors, fences, walls, lighting, trash enclosures, drainage facilities, driveways, parking areas, and any other project features. The premises shall be kept clean. Any graffiti painted on the property shall be painted out or removed within seven days of occurrence.
24. Street address number, site lighting, and security locks shall comply with the requirements of the City's Security Ordinance, Chapter 41 of the Hayward Building Code.
25. The use of the second floor shall be limited to administrative and storage functions.
26. If it comes to the attention of the Planning Director that there are problems occurring as a result of the nightclub, the Director may bring this use permit application back to the Planning Commission for consideration of imposing additional conditions or restrictions. Violation of conditions is cause for revocation of permit after a public hearing before the duly authorized review body.
27. **All unapproved materials, including, but not limited to, screen netting, plants, tents, and furniture shall be removed from the exterior of the building no later than September 25, 2003. The chain-link fence shall be removed no later than November 11, 2003.**
28. **Signs shall be posted immediately at the interior of the rear exit door stating that the use of the door is for emergency exiting only and that customers may not otherwise access the outdoor area. The door shall be alarmed by October 11, 2003, to prevent unapproved access.**

**FINDINGS FOR MODIFICATION**  
**USE PERMIT 00-160-15**  
**DANIEL BURRIS FOR *TURF CLUB* (APPLICANT) / JOHN BRENKWITZ (OWNER)**  
**22519 MAIN STREET**

1. The action is categorically exempt under Section 15321 – *Enforcement Actions by Regulatory Agencies*, of the California Environmental Quality Act (CEQA) guidelines.
2. The nightclub, as conditioned under its use permit, would be properly regulated and controlled to ensure that the facility will not be detrimental to the surrounding neighborhood or businesses and to ensure that the public health and safety are provided with respect to sale and use of alcoholic beverages at this facility. The nightclub is allowing use of its outdoor patio area in violation of the conditions of approval, which require the area to be surrounded by a solid masonry wall prior to use.
3. Physical improvements to the property are subject to the City’s design guidelines and are to be consistent with the historic character of the building and the surrounding area. The nightclub is permitting use of the outdoor patio in violation of its conditions of approval, and, in doing so, has installed physical improvements that impair the character and integrity of the Central City – Plaza/Commercial Subdistricts and the surrounding area.