



CITY OF HAYWARD  
AGENDA REPORT

AGENDADATE 11114100  
AGENDA ITEM 9  
WORK SESSION ITEM \_\_\_\_\_

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Use Permit 00-160-21 - Jack-In-The-Box [Mahesh Gogri - Franchise Operator] (Applicant) - Toro Development Co. (Owner) - Request to Amend Use Permit 84-164 to Expand Hours of Drive-Through to 24 Hours/Daily - Property is Located at 31005 Mission Boulevard, Southwest Corner of Mission Boulevard and Rousseau Street, Within a CN (Neighborhood Commercial) District

RECOMMENDATION:

It is recommended that the City Council find the project categorically exempt from CEQA and deny the application for a 24-hour operation.

DISCUSSION:

The Jack-In-The-Box restaurant, located in the Fairway Park Shopping Center, is approximately 95 feet from the nearest residence. It was approved by the City Council in 1984 on appeal from the Board of Adjustments. At the time, the appellant objected to the drive-in based on anticipated increase in noise, foot traffic, litter, crime, and late hours of operation, The Council denied the appeal, limited the hours of operation, and required City Council action on changes to the hours. Specifically, Condition #10 states that ***“Hours of operation shall be from 6 a.m. to 10 p.m. Sunday through Thursday and 6 a.m. to midnight on Friday and Saturday. Any change in hours of operation shall be approved in advance by the City Council.”***

The applicant/current operator of the drive-in indicates he purchased the restaurant approximately five years ago and was unaware of the condition limiting hours. He stated that not only has he operated the business on a 24-hour basis, but that it had been operated in that manner for 5 years by the previous operator.

City staff received a complaint that the drive-in was operating on a 24-hour basis which resulted in excessive noise in the area, particularly from customers who played their car radios too loud while awaiting service at the drive-up window. When the drive-in operator was made aware of the violation, he filed an application to amend the condition that limits hours of operation in order to allow a 24-hour operation. Although the dining area does not operate on a 24-hour basis, the applicant requests that the drive-up window remain open 24 hours. The applicant indicates that he relies heavily upon late-night business and that his restaurant provides a service

to the public. The applicant has submitted a petition to keep the restaurant open 24-hours (see attached Exhibit B). The petition is signed by 112 individuals, many of whom live in the neighborhood. Three of those signing the petition live within 100 to 250 feet from the restaurant on the north side of Rousseau Street. Recently, a neighborhood resident claimed that circulators of the petition claimed that if persons did not sign the petition, the City would close it.

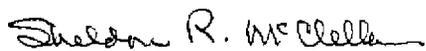
A petition (signed by 100 neighbors) was submitted with issues relating to Fairway Park Shopping Center and the surrounding neighborhood. One of the points of that petition was that noise associated with late-night truck deliveries to the Jack-In-The-Box restaurant is objectionable.

Subsequent to the initial granting of the use permit in 1984, Performance Standards for drive-in restaurants were added to the Zoning Ordinance which provides standard operating hours. The Performance Standards for Drive-In Uses in the Zoning Ordinance [see Section 10-1. 1045 j(3)] states that "Drive-in uses **shall be operated in a manner which does not interfere with the normal use of adjoining properties.**" Included in these standards are

(a) Noise levels measured at the property line shall not exceed the level of background noise normally found in the area or 65 decibels, whichever is greater; (c) Hours of operation, including deliveries to the site, shall be compatible with the needs and character of the surrounding neighborhood. For purposes of this section, the usual operating hours shall be considered to be between 6:30 a.m. and 11:00 p.m. on weekdays and 7:00 a.m. to 1:00 a.m. on weekends.

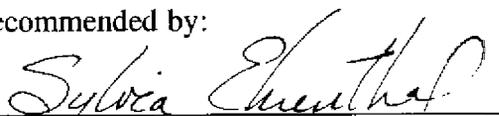
The applicant's attorney suggests granting a trial period to allow a 24-hour operation for three to four months with the operator posting noise control signs on the premises. Staff is concerned that even if the trial period proves successful, noise could continue to be a problem afterward; and although the petition submitted by the applicant would appear to reflect some neighborhood support for the 24-hour operation, staff is concerned that a 24-hour operation would continue to be an irritation for some of the neighbors. Therefore, if the Council is inclined to expand the hours of operation, staff recommends that the "usual operating hours" cited above be approved.

Prepared by:



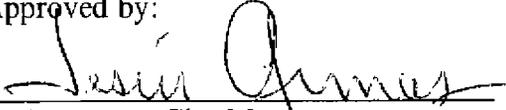
Sheldon R. McClellan  
Senior Planner

Recommended by:



Sylvia Ehrenthal  
Director of Community and Economic Development

Approved by:

  
\_\_\_\_\_  
Jesús Armas, City Manager

Attachments:

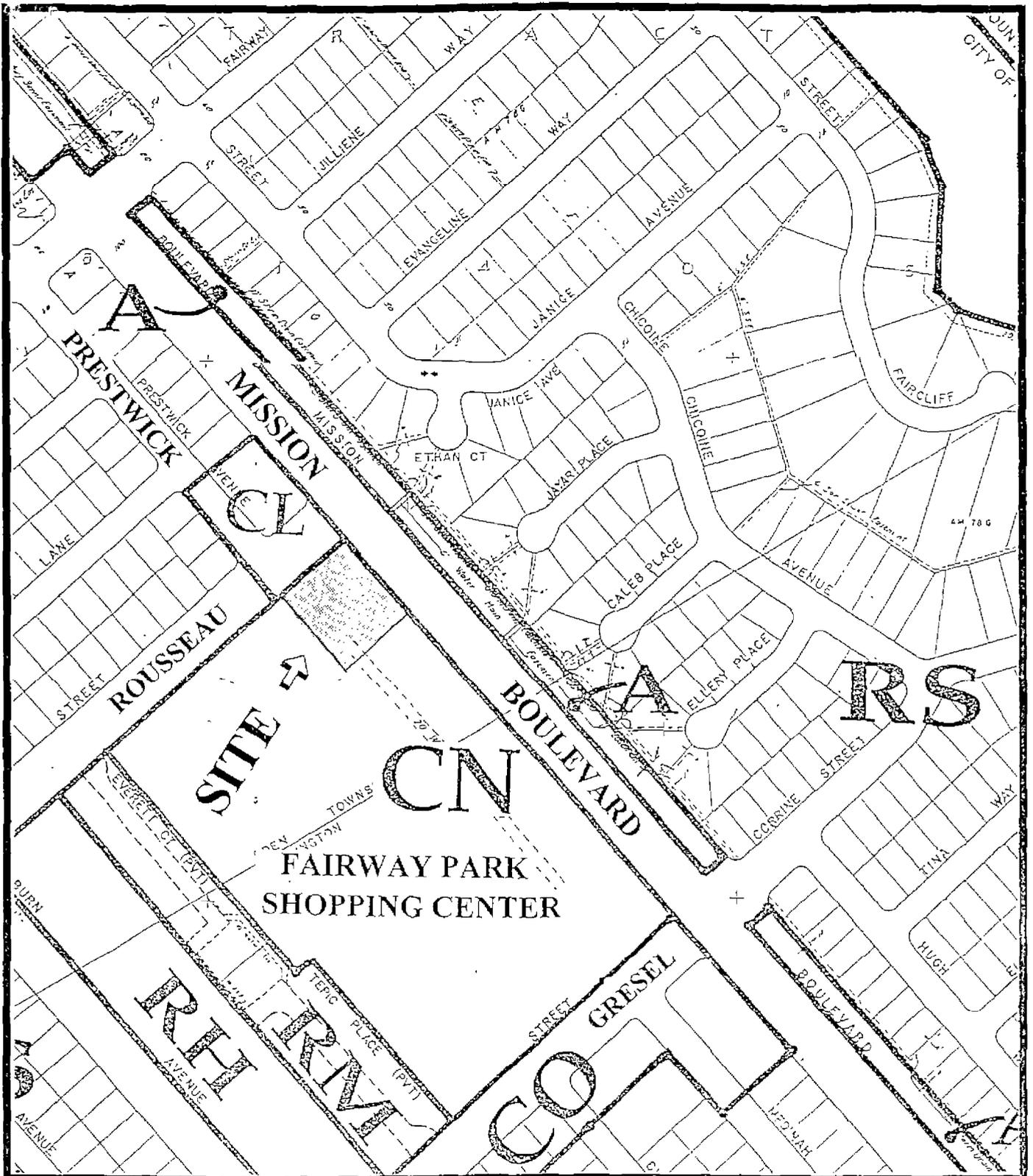
Exhibit A - Area/Zoning Map

Exhibit B - Petition - To keep Jack-In-The-Box Open 24 Hours

Exhibit C - Findings for Denial

Draft Resolution

011.9.00



**AREA/ZONING MAP**

Use Permit 00-160-2 1

Jack-in-the-Box / Mahesh Gogri (Applicant)

31005 Mission Boulevard

JACK IN THE BOX  
OPEN 24 HOURS

EXHIBIT B

| NAME             | ADDRESS               | SIGNATURE        | PHONE #        |
|------------------|-----------------------|------------------|----------------|
| J. J. Antozzo    | 757 ROUSSEAU          | J. J. Antozzo    | 510-471-1729   |
| John Baptist     | 428 Rousseau          | John Baptist     | 510-471-1829   |
| Bill Martin      | 416 Rousseau          | Bill Martin      | (510) 324 2235 |
| Raymond Castro   | 404 Rousseau          | Raymond Castro   | 510 324 2133   |
| Reynolds Castro  | 392 Rousseau          | Reynolds Castro  | 471-7212       |
| John Scully      | Barwood Apts          | John Scully      | 510 471 8703   |
| Ramona Brown     | 380 ROUSSEAU ST. R.C. | Ramona Brown     | 510-489-3389   |
| Johnathan        | 368 Rousseau St       | Johnathan        | 510-475-0633   |
| Tina N           | 356 Rousseau St       | Tina N           | 510-477-7766   |
| E. CONTRERAS     | 344 ROUSSEAU ST.      | E. Contreras     | 510-488-6576   |
| TROY WALKER      | 332 Rousseau St       | Troy Walker      | 510-471-1729   |
| Maureen Scully   | 330 Rousseau St       | Maureen Scully   | 510 487 3750   |
| Ann Dearborn     | 31035 Braeburn        | Ann Dearborn     | 510-441-0355   |
| Alda Santos      | 2558 Parkside Dr.     | Alda Santos      | 475-765        |
| Deborah Kelly    | 453 DUTCHESS LANE     | Deborah Kelly    | 437-4868       |
| Tom DERTN        | 442 Dutchess Ln       | Tom Dertn        | 693-1309       |
| Janie Nelson     | 440 ROUSSEAU          | Janie Nelson     | 471-3301       |
| Janie Nelson     | 32015 Kennet St       | Janie Nelson     | 471-9759       |
| Pete Suarez      | 30702 Vanderbilt St   | Pete Suarez      | 429-2948       |
| JOE ELLERY       | 543 ELLERY PL.        | JOE ELLERY       | 429-6448       |
| Nelson Pino      | 555 ELLERY PL         | Nelson Pino      | 429-0831       |
| Robert Finch     | 555 ELLERY PL.        | Robert Finch     | 429-0831       |
| Urbano Amoreira  | 567 Ellery Pl.        | Urbano Amoreira  | 471-7565       |
| Nikolas Amoreira | 567 Ellery Pl.        | Nikolas Amoreira | 471-7565       |
| Fl. Yeh          | 556 Ellery Pl         | Fl. Yeh          | 471-7565       |
| Georgia Batista  | 505 Caleb Pl.         | Georgia Batista  | 471-7565       |
| Aria Campes      | 517 Caleb pl. Hayward | Aria Campes      | 4877337        |
| Steve Pinyan     | 529 Caleb Pl Hayward  | Steve Pinyan     | 4896001        |
| David Paul       | 578 Caleb Place       | David Paul       | 477-0912       |
| Derrick Baldwin  | 503 Sayre Place       | Derrick Baldwin  | 503 3463       |
| Dolant Card      | 510 Ethan St          | Dolant Card      | 489-3059       |
| Man Hernandez    | 325 c st. U.C.        | Man Hernandez    | 489 3059       |
| Theresa Garcia   | 325 C St.             | Theresa Garcia   | (510) 581037   |
| Jeff. Konow      | 26871 FRUITLAND DR    | Jeff. Konow      | (510) 589 8940 |
|                  | 3075 VANDERBILT ST    |                  |                |

**JACK IN THE BOX  
OPEN 24 HOURS**

| NAME                  | ADDRESS                             | SIGNATURE          | PHONE #  |
|-----------------------|-------------------------------------|--------------------|----------|
| Elisa Puat            | 661 Koyan Ln. #301                  | <i>[Signature]</i> | 885-9142 |
| Racing Park           | 982 Westwood St. Hayward            | <i>[Signature]</i> | 786-3611 |
| Yvonne Vera           | 77 E. Lewelling Blvd. San Lorenzo   | <i>[Signature]</i> | 278-7086 |
| Monica Alvarez        | 35206 8 <sup>th</sup> Union City CA | <i>[Signature]</i> | 427-4065 |
| Wagner                | 3122 Sargent Fremont                | <i>[Signature]</i> | 793-4727 |
| David Brown           | 2940 Kelly St. Hayward              | <i>[Signature]</i> | 607-0534 |
| <del>James</del>      | 314 Winton Ave Hayward              | <i>[Signature]</i> | 538-5287 |
| ANTONIO               | EMVES                               | <i>[Signature]</i> | 294-0315 |
| Enrique               | 31294 AVE BRAEBURN                  | <i>[Signature]</i> | 757-5176 |
| JUAN                  | CARLOS #8                           | <i>[Signature]</i> | 487-0810 |
| Antonio               | 31294 Brae burn                     | <i>[Signature]</i> | 487-6274 |
| Joel                  | Escobedo Ruiz                       | <i>[Signature]</i> | 909-2423 |
| Jeff Enfield          | 31294 AVE BRAEBURN                  | <i>[Signature]</i> | 487-1811 |
| Upton Lopez           | 31294 BREE BURN 6                   | <i>[Signature]</i> | 495-6343 |
| <del>Antonio</del>    | 31294 BREE BURN 3                   | <i>[Signature]</i> | 487-6789 |
| <del>Antonio</del>    | 31294 BREE BURN 7                   | <i>[Signature]</i> | 334-954  |
| Z. F. White           | 31250 BREE BURN AVE #1              | <i>[Signature]</i> | 487-2032 |
| SM Gonzalez           | 31256 BREE BURN AVE 5               | <i>[Signature]</i> | 477-0506 |
| Walter Kelly          | 31092 BREE BURN AVE #8              | <i>[Signature]</i> | 424-7526 |
| Elizabeth Padilla     | 31212 Braeburn Ave #1               | <i>[Signature]</i> | 429-907  |
| JUAN Hernandez        | 31212 Bree burn ave #1              | <i>[Signature]</i> | 411-2267 |
| Jahmal Amers          | 31212 BREE BURN Ave                 | <i>[Signature]</i> | 477-0157 |
| Mr. Amosino L. Castro | 31212 Bree burn Ave                 | <i>[Signature]</i> | 487-1962 |
| Justin Winkler        | 676 Tina Way                        | <i>[Signature]</i> | 471-0249 |
| Jesus Estrada         | 33636 4 <sup>th</sup> UC            | <i>[Signature]</i> | 497-2593 |
| Kenny Dauth           | 2125 Canby Ct. #4                   | <i>[Signature]</i> | 471-3637 |
| J. Duer               | 31156 BREE BURN 6-3                 | <i>[Signature]</i> | 324-0795 |
| Yolanda Ochoa         | 31010 Bree Burn #A-9                | <i>[Signature]</i> | 329-2675 |
| Isaiah M              | 31184 Braeburn Ave #115             | <i>[Signature]</i> | 441-8938 |
| Viggo Dark            | 31184 Braeburn Ave #116             | <i>[Signature]</i> | 324-3487 |
| Brenda Barona         | 31108 Braeburn Ave #21              | <i>[Signature]</i> | 411-1817 |
| Brenda Garcia         | " " " #21                           | <i>[Signature]</i> | 41-1817  |
| JESSIE CARRASCO       | " " " #20                           | <i>[Signature]</i> | 445-8953 |
| YOLANDA DelosAnjos    | 31108 Brae #8                       | <i>[Signature]</i> | 487-6148 |
| Richard Esquivel      | " " "                               | <i>[Signature]</i> | 471-9613 |
| Dolores H. Pinchi     | " " " #15                           | <i>[Signature]</i> | 324-3285 |
| NICE SIMON            | " " " #4                            | <i>[Signature]</i> | 324-0180 |

PETITION TO KEEP  
JACK IN THE BOX  
OPEN 24 HOURS

| NAME             | ADDRESS                                | SIGNATURE        | PHONE #       |
|------------------|--|------------------|---------------|
| Lidia Velazquez  | 21573 Haviland Ave                     | Lidia Velazquez  | 581-8723      |
| DANIEL JASINSKI  | 39973 SAND SIMPSON CT. FLD.            | Daniel Jasinski  | 156-4476      |
| Larry Costello   | 147 Ponce Place                        | Larry Costello   | 487-1076      |
| JOHN DRISCOLL    | 1514 MACATEKA ST.                      | John Driscoll    | 785-2578      |
| Jana Hernandez   | 26813 Huntwood Ave #8                  | Jana Hernandez   | 735-9473      |
| DAVE BYRON       | 32290 Bernier way                      | Dave Byron       | 489-5799      |
| Amy Gudino       | 32783 Amac St. Reno                    | Amy Gudino       | 489-1611      |
| Norm Kleve       | 29357 Sandburg Way <sup>City</sup> Hay | Norm Kleve       | 783-4380      |
| Cesey Rodriguez  | 30550 Oakmont way Hayward              | Cesey Rodriguez  | 471-5884      |
| Ruby Altamirano  | 376 Beale Dr. Hayward CA               | Ruby Altamirano  | 881-2160      |
| DAVID DREW       | 27979 DICKENS AVE HAY                  | David Drew       | 752-2783      |
| SERVO USIDOT     | 572 JILLIENE W-Y                       | Servo Usidot     | 475-7335      |
| STANLEY WILSON   | 24633 THOMAS WAY Hayward CA 94544      | Stanley Wilson   | 150-886-6600  |
| Catalina Parra   | 31317 Carroll Ave Hay 94544            | Catalina Parra   | 510-324-0077  |
| Bob Chaplin      | 672 Janis Ave <sup>Hay</sup> 94544     | Bob Chaplin      | 510-471-3118  |
| George Lawhorn   | 8 Harmony Ct Pittsburg CA 94565        | George Lawhorn   | 925-366-83    |
| Viridiana Lopez  | 425 Evelyn Ln 94544                    | Viridiana Lopez  | 510-5-37-2951 |
| MARK CHRISTENSEN | 29869 CLEARBROOK CIR #137              | Mark Christensen | 50-538-7923   |
| Chris Wright     | 103 Lombard Y mod CA                   | Chris Wright     | 209-342-0700  |
| ITC ABAY         | 30576 Flossmoor Way Hay                | ITC Abay         | 409-3687      |
| Helena Chen      | 30076 Flossmoor Way                    | Helena Chen      | 489-2685      |
| Kevin Dulin      | 1812 10th Ave Oakland CA               | Kevin Dulin      | 360-7420      |
| PAUL GALINPO     | 28134 ORMOND AVE HWP                   | Paul Galinpo     | 329-3769      |
| C. M. MURPHY     | 111 SAINT ANTHONY'S                    | C. M. Murphy     | 417-8678      |
| Sue Bonin        | 31569 HUGH WAY Hay                     | Sue Bonin        | 471-8389      |
| Ann Jones        | 31569 Hugh way Hay                     | Ann Jones        | 471-1975      |
| David Hulet      | 26601 Colista St Hayward CA            | David Hulet      |               |
| THOMAS FLIN      | 285 KENNEDY ST Hay                     | Thomas Flin      | 439-2131      |
| K. Meehan        | 31087 CARROLL WAY                      | K. Meehan        | 523-9130      |
| Carla Conora     | 31645 TAYLOR AVE                       | Carla Conora     | 471-4579      |
| John Creamer     | 31436 MEADOW BROOK                     | John Creamer     |               |
| Marifa Petar     | 31470 MEDIAN ST                        | Marifa Petar     |               |
| TERESA LITTLE    | 31470 MEDIAN ST                        | Teresa Little    |               |
| Albaida King     | 22935 LAKI ERIC ST                     | Albaida King     | 471-7100      |
| TED CREWS        | 30691 CARRILL AVE HAYWARD              | Ted Crews        | 471-2522      |
| Veronica Crews   | 30691 Carroll Ave Hayward              | Veronica Crews   | 471-2533      |
| Richard Mullen   | 1816 Brook Road Hayward                | Richard Mullen   | 441-8083      |



**Findings for Denial****Use Permit Application. 00-160-21****Jack-in-the-Box Restaurant**

Mahesh Gogri - Franchise Operator (Applicant)

Toro Development Co. (Owner) :

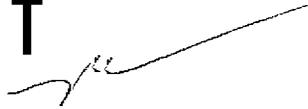
3 1005 Mission Boulevard

Request to amend Use Permit 84-164 to expand hours of drive-through lane to 24 hours/daily

- a. That the City Council find that the Categorical Exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the City Council based on the fact that the project conforms to Section 15301, {Existing Facilities} of the CEQA Guidelines.
- b. The proposed use is not desirable for the public convenience or welfare in that the use of the drive-through window during the late night and early morning hours attracts motorists who often play their car radios too loudly which disturbs the adjacent residents. The operator has until the latter part of October been conducting business at the drive-through on a 24-hour basis in violation of the Conditions of Approval. Approximately 100 neighbors have signed a petition complaining about the noise from car radios and early morning and late evening deliveries to the property;
- c. The proposed extension of operating hours of the drive-through window will impair the character and integrity of the zoning district and surrounding area by not providing a means to enforce noise abatement of idling vehicles in the drive-through lane;
- d. The allowance to extend the hours of the drive-through lane beyond 10:00 p.m. will be detrimental to the general welfare of the neighborhood in that the operator of the business has not provided a means to insure that past problems of idling cars within the drive-through lane playing loud music will not continue the practice. The Zoning Ordinance provides performance standards for drive-in uses and states that such uses *shall be operated in a manner which does not interfere with the normal use of adjoining properties.* Included in these standards are maximum noise levels and hours of operation, that include deliveries Co the site. The restaurant has not operated in compliance to these performance standards in the past and that continuation of same would remain to be a problem to the neighbors;

- e. The proposed hours of operation of the drive-through lane is not in harmony with applicable City policies and the intent and purposes of the zoning district involved since the intent of requiring a use permit for drive-in restaurants is to assure compatibility of the use with the surrounding area and this assurance has not been provided. The area surrounding the restaurant is predominantly residential. The neighbors have complained about noise generated by car radios and late night and early morning deliveries. There is evidence that the posting of signs requesting patrons to lower the volume at the neighboring car wash are ineffective. The applicant has not provided any evidence that the on-going noise problem associated with car stereos be played too loudly will be alleviated or addressed to the maximum level possible to be compatible and in harmony with the adjacent residential area.

# DRAFT



HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member \_\_\_\_\_

RESOLUTION DENYING USE PERMIT APPLICATION NO. 00-160-21, A REQUEST TO AMEND THE CONDITIONS OF APPROVAL FOR USE PERMIT NO. 84-164, JACK-IN-THE-BOX RESTAURANT [MAHESH GOGRI - FRANCHISE OPERATOR] (APPLICANT), AND TORO DEVELOPMENT CO. (OWNER), TO ALLOW FOR 24-HOUR OPERATION OF DRIVE-THROUGH WINDOW

WHEREAS, Use Permit Application No. 84-164 was approved by the City Council on December 18, 1984, for a Jack-in-the-Box fast-food facility with a drive-through window located at 31005 Mission Boulevard in a Neighborhood Commercial District (CN), subject to certain conditions of approval; and

WHEREAS, one of the conditions of approval of the issuance of Use Permit No. 84-164 was Condition No. 10 which provides as follows: "Hours of operation shall be from 6 a.m. to 10 p.m. Sunday through Thursday and 6 a.m. to midnight on Friday and Saturday. Any change in hours of operation shall be approved in advance by the City Council"; and

WHEREAS, Use Permit Application No. 00-160-21 concerns a request to amend the Conditions of Approval of Use Permit No. 84-164 to allow 24-hour operation of the drive-through window; and

WHEREAS, the City Council hereby finds and determines that:

1. The categorical exemption is complete and final in accordance with the California Environmental Quality Act Guidelines and reflects the independent judgment of the City Council based on the fact that the project conforms to Section 15301 (Existing Facilities) of the CEQA Guidelines.
2. The proposed use is not desirable for the public convenience and welfare in that the use of the drive-through window during the late night and early morning hours attracts motorists who often play their car radios too loudly, which disturbs the adjacent residents. The operator has, until the latter part of October, been conducting business at the drive-through window on a 24-hour basis in violation of the Conditions of Approval. Approximately 100 neighbors have signed a petition complaining about the noise from car radios and early morning and late evening deliveries to the property.

3. The proposed extension of the operating hours of the drive-through window will impair the character and integrity of the zoning district and surrounding area by not providing a means to enforce noise abatement of idling vehicles in the drive-through lane.
4. The allowance to extend the hours of the drive-through lane beyond 10:00 p.m. will be detrimental to the general welfare of the neighborhood in that the operator of the business has not provided a means to insure that past problems of idling cars within the drive-through lane playing loud music will not continue. The Zoning Ordinance provides performance standards for drive-in uses and states that such uses shall be operated in a manner which does not interfere with the normal use of the adjoining properties. Included in these standards are maximum noise levels and hours of operation, including deliveries to the site. The restaurant has not operated in compliance to these performance standards in the past and continuation of the same would remain a problem to the neighbors.
5. The proposed hours of operation of the drive-through lane is not in harmony with applicable City policies and the intent and purposes of the zoning district involved since the intent of requiring a use permit for drive-in restaurants is to assure compatibility of the use with the surrounding area and this assurance has not been provided. The area surrounding the restaurant is predominately residential. The neighbors have complained about noise generated by car radios and late night and early morning deliveries. There is evidence that the posting of signs requesting patrons to lower the volume at the neighboring car wash are ineffective. The applicant has not provided any evidence that the ongoing noise problem associated with car stereos played too loudly will be alleviated or addressed to the maximum level possible and in harmony with the adjacent residential area. Accordingly, Use Permit Application No. 00-160-21 is denied.

NOW THEREFORE BE IT RESOLVED, upon the basis of the aforementioned findings, the City Council hereby denies Use Permit Application No. 00-160-21, based on the above findings.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward