



SUBJECT

Proposal to Amend Chapter 10, Article 1 (Zoning Ordinance) Section 10-1.2750 of the Hayward Municipal Code for Updates to the Alcoholic Beverage Outlets Ordinance and Related Regulations, Requiring Approval of a Zoning Text Amendment.

RECOMMENDATION

That the Planning Commission recommend to the City Council approval of the proposed Zoning Text Amendments (Attachment III) to Chapter 10, Article 1 (Zoning Ordinance) of the Hayward Municipal Code (HMC) to make various modifications to the definition of “Full-Service Restaurant” aimed at supporting existing full-service Hayward restaurants and encouraging more new full-service restaurants with ancillary alcohol sales to locate in the City, and to update regulations requiring the provision of information to patrons on safe alternatives for getting home as a performance standard for new and deemed-approved alcoholic beverage sales establishments where on-site alcohol consumption is permitted.

SUMMARY

The City’s Strategic Roadmap¹ contains various priorities identified by the City Council, one of which is to “Grow the Economy” by investing in programs that support Hayward businesses and workers. One of the projects listed in the Strategic Roadmap calls for implementing revisions to the City’s Alcoholic Beverage Outlets (ABO) Ordinance (HMC Section 10-1.2750)² to better support existing full-service restaurants and encourage more new full-service restaurants to locate in the city.

Currently, the ABO Ordinance requires all full-service restaurants to maintain a minimum of 60 percent of gross revenues from food sales with a maximum of 40 percent allowed to be derived from alcohol sales. The ABO Ordinance also does not currently allow for arrangements wherein different entities own the food service and alcohol service components of an establishment, and it currently limits the time when restaurants can offer “happy hour” discount pricing on alcoholic beverages from 4:00 to 9:00 PM.

The proposed Amendments would modify the ABO Ordinance to include the following revisions:

¹ City of Hayward Strategic Roadmap FY2021 to FY2023:

<https://www.hayward-ca.gov/sites/default/files/Update%20Strategic%20Roadmap%204.26.22.pdf>

² Hayward Municipal Code Section 10-1.2750 (Alcoholic Beverage Outlets):

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.2750ALBEOU

- Change the required ratio of food-to-alcohol sales at full-service restaurants from 60:40 to 50:50 to enable such restaurants to earn higher revenues overall from the resulting increase in allowable revenues from alcohol sales;
- Update the definition of a “full-service restaurant” to include various types of arrangements wherein separate entities own the food service and alcohol beverage service components of the establishment;
- Allow kitchens to be built within freestanding structures on an establishment’s premises to provide operators with even more flexibility when considering establishment layouts/arrangements;
- Modify the hours when alcohol serving establishments can offer “happy hour” discount pricing; and
- Require establishments that sell alcohol for on-site consumption to provide patrons with information on safe alternatives for getting home in the event they are too intoxicated to drive themselves.

Staff believes the proposed Amendments will help to improve business at the City’s full-service restaurants by allowing them to increase total revenues from alcohol sales and provide additional flexibility for new and existing restaurants wanting to establish in Hayward while creating an updated regulatory framework that will ensure a significant amount of revenue is still derived from food sales. It will also enhance public safety and welfare by requiring all alcohol-serving establishments to provide information for patrons on ways to get home safely in the event they are too intoxicated to drive.

BACKGROUND

The current ABO Ordinance was adopted on November 19, 2013, to address the proliferation of alcohol-selling establishments that existed in the city at that time, including the problems often associated with those establishments such as public intoxication, drunk driving, littering, and loitering. The Ordinance contains numerous stringent regulations that restrict the location and quantity of alcohol-selling establishment and requires Conditional Use Permits for most types of establishments. The Ordinance also establishes rigorous performance standards which they must adhere to and provides exceptions for full-service restaurants, but it strictly defines such restaurants and requires that at least 60% of their gross revenues be derived from food sales.

On January 28, 2020, the City Council adopted its FY 2021-23 Strategic Roadmap which was subsequently updated in April 2022. The Roadmap identified six strategic priorities for staff to work on over its three-year lifespan, one of which was to “Grow the Economy.” Included as one of the five projects under this priority was to invest in programs that support Hayward’s businesses and workers. One of the projects listed in the Council’s Strategic Roadmap calls for “revising the alcohol use regulations to support existing and encourage more full-service restaurants”. This project was identified as a priority in response to concerns from local restaurants and bar owners who felt that the requirements to meet the definition of a full-service restaurant were too strict.

In early 2022, Planning Division staff began working with the Hayward Police Department and Economic Development Division to identify possible changes to the ABO Ordinance to support

Council's vision. Concurrently, staff began conducting outreach to key stakeholders during Spring of 2022 to solicit feedback on the topic prior to drafting updates to the Ordinance, which are included as Attachment III.

Public Outreach. Over a four-month period between April-July 2022, Planning Division staff reached out to restaurant owners and several other stakeholders via multiple channels in an effort to solicit input on potential amendments to the current ABO Ordinance that could help to achieve the goal as listed in the Council's Strategic Roadmap. The outreach included collaborating with the Chamber of Commerce to circulate a flyer to all 1,200 of its membership inviting anyone interested to offer opinions on the subject, and sending a separate email to a list of nearly 110 local restaurant owners maintained by the Economic Development Division inviting them to a meeting with the Council Economic Development Committee (CEDC) to discuss potential amendments. The results of these outreach efforts, which included interviews of several key stakeholders, yielded a number of potential amendments which staff ultimately presented to the CEDC in September. Those amendments were as follows:

- Relax the current requirement that full-service restaurants must maintain at least 60 percent of their gross revenues from the sale of food with only 40 percent allowed to be derived from the sale of alcohol;
- Allow alcohol-serving establishments that contain a full kitchen and lease/sublease it to a food service provider through a business partnership to be considered as full-service restaurants;
- Allow a restaurant's kitchen to either be constructed within the actual establishment or as a freestanding on-site structure that is constructed in compliance with the applicable development standards of the establishment's underlying zoning, permanently anchored to the ground, and connected to all necessary utilities such as water and sewer; and
- Allow restaurants to offer "happy hours" with earlier start times.

Many of the stakeholders who were interviewed felt that the City should revise the ABO Ordinance to relax the current requirement that full service restaurants must maintain at least 60 percent of their gross revenues from the sale of food with only 40 percent allowed to be derived from the sale of alcohol. They suggested that a ratio of 50:50 for revenues from food sales to alcohol sales was more reasonable, and more in line with other agencies' requirements, such as the State Department of Alcoholic Beverage Control (ABC). Historically, the ABC considered establishments that met the 50:50 ratio to be "bona fide eating places" and allowed families with children and minors to patronize them since they functioned as restaurants rather than bars by offering full food service in addition to alcohol service.

Some of the stakeholders also suggested revising the ABO Ordinance to allow alcohol-serving establishments that contain a full kitchen and lease/sublease it to a food service provider through a business partnership to be considered as full-service restaurants. Under such an arrangement, one individual could own the bar and kitchen but lease/sublease the kitchen to a chef who would run the food service component using a separate point of sale, thus enabling the establishment to operate like a full-service restaurant even though it would technically house two separate businesses. This practice is currently allowed by ABC, as long as the kitchen remains open up until 30 minutes prior to the bar's closing time. It was further suggested that

the kitchens of such establishments be allowed to be constructed separately from, but on the same premises as the alcohol-serving operation, such as in a freestanding structure – an arrangement that is also allowed by ABC. In addition, staff received feedback from one restaurant owner who believed that allowing restaurants to offer “happy hours” with earlier start times could further help increase business and cover operating expenses.

Another member of the public contacted staff and expressed opposition to any amendments based on concern about the potential for them to result in an increase in alcohol consumption and associated problems, such as drunk driving.

Council Economic Development Committee. On September 22, 2022³, staff presented the list of proposed amendments to the Council Economic Development Committee for review and feedback. The CEDC generally expressed support for the proposed amendments and directed staff to proceed with presenting them to the Planning Commission and City Council for consideration. One CEDC member asked staff to look into the recent history of alcohol-related crimes such as drunk driving and public intoxication being committed by persons who may have overconsumed in one of the City’s full-service restaurants, and to compare the regulations of neighboring municipalities to the City’s to determine if they are more or less permissive. Another CEDC member asked staff to explore ways to require all establishments where alcohol can be sold for on-site consumption to offer information for patrons on ways to get home safely (for instance, via taxicab or ridesharing services such as Uber and Lyft). In response to these requests, staff surveyed the regulations of several neighboring municipalities to compare them with Hayward’s and analyzed alcohol-related crime data in order to identify clear evidence that a significant amount of these crimes resulted from overconsumption of alcohol. The results of these efforts are discussed in greater detail in the Staff Analysis section below.

PROJECT DESCRIPTION

The proposed amendments include a number of revisions to HMC Section 10.1-2750, as summarized below. Specifically, staff is recommending amendments to relax the required food sales to alcohol sales ratio, allow different owners/operators to operate on the same premises, extend happy hour times and pricing, and require alcohol service establishments provide alternatives for customers to get home safely when intoxicated. A summary of the proposed changes is included below with a full text of the proposed Amendments contained in Attachment III.

Relaxing the Required 60:40 Ratio of Food Sales to Alcohol Sales: Per HMC Section 10-1.2751(i), the current definition of “full-service restaurant” affords full-service restaurant operators many benefits by allowing them to offer a full bar on the premises, “happy hour” discount pricing, and live or recorded music until midnight without requiring discretionary approvals such as a use permit from City staff, the Planning Commission, or the City Council. However, the existing definition also requires that such restaurants maintain a minimum of 60 percent of gross receipts from food sales. As indicated in this report, staff proposes to amend and reduce the required ratio of food-to-alcohol sales from 60:40 to 50:50 in order to be consistent with how the California Department of Alcohol Beverage Control (ABC) has

³ September 22, 2022 Council Economic Development Committee Meeting video recording:
http://hayward.granicus.com/MediaPlayer.php?view_id=1&clip_id=1441

historically defined bona-fide eating places apart from bars and other drinking establishments. The proposed modification would also maintain that a significant amount of business activity continues to be derived from and support food sales.

Allow Different Bar/Restaurant Owner/Operators on Same Premises: This proposed Amendment to the definition of a “full-service restaurant” would allow the owner of an establishment that sells alcohol and has a full-service kitchen to lease the kitchen to a food service operator through a business partnership, and still allow this type of venture to be considered a full-service restaurant. To provide additional flexibility for prospective hybrid business owner/operators, a further modification is proposed which would allow the restaurant’s kitchen to either be constructed within the actual establishment or as a freestanding on-site structure that is constructed in compliance with the applicable development standards of the establishment’s underlying zoning, permanently anchored to the ground, and connected to all necessary utilities such as water and sewer.

The proposed amendments include a provision to allow a hybrid business to operate under one of three ABC liquor license types (Type 41, Type 47, or Type 75) to ensure that an establishment with separate ownership maintains food service at all times while alcohol is being served. All three license types require the establishment to operate as a restaurant (or bona fide eating place) with meal service provided up until 30 minutes prior to closing time. A Type 41 license only allows for the sale of beer and wine with meals; a Type 47 license allows for the sale of beer, wine, and spirits with meals; and a Type 75 license allows for the sale of beer, wine, and spirits with meals as well as a limited amount of onsite beer brewing. If a holder of any of these license types is found to not be operating as a bona fide eating place, then ABC may take enforcement action to resolve the issue, including suspension or revocation.

Extend Happy Hour Discount Pricing Times: This proposed Amendment would change the hours when a full-service restaurant is allowed to offer discount (“happy hour”) pricing for alcoholic beverages. Currently, full-service restaurants are permitted to offer happy hour pricing from 4:00 PM to 9:00 PM. The proposed Amendment would change the permissible hours to 2:00 PM to 7:00 PM. The current requirement in the definition that discounted appetizers and non-alcoholic beverages be offered at the same time as discounted alcoholic beverages would not change.

Require Alcohol-Serving Establishments to Provide Information on Safe Alternatives for Getting Home: The other proposed Amendments were added in response to feedback received at the CEDC to require alcohol-serving establishments offer information to patrons on alternative ways to get home safely in the event of intoxication. To achieve this, Planning staff worked in collaboration with the Hayward Police Department to propose amendments that assign updated performance standards for both new alcoholic beverage sales establishments and deemed approved establishments (i.e., those that were already operating legally prior to the adoption of the ordinance and now have legal nonconforming status). Specifically, the amendments would require that establishments provide information to patrons on safe alternatives for getting home through a means to be determined by, and maintained to the satisfaction of, the Chief of Police.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan. Staff believes the proposed Zoning Text Amendments are consistent with the goals and policies set forth in the *Hayward 2040 General Plan*⁴ in that they are designed to help increase business for the City's many existing full-service restaurants and entice new restaurants to locate in the City. The General Plan contains numerous goals and policies aimed at providing a robust economy that offers a wide variety of goods and services, establishing a lively downtown district that features an array of shopping, restaurant, and entertainment options, and attracting and retaining local businesses of all sizes and types. Specifically, the proposed amendments are consistent with the following goals and policies set forth in the *Hayward 2040 General Plan*:

- *Land Use Policy LU-2.1 – Downtown Arts and Entertainment:* The City shall encourage private-sector investment in Downtown to transform it into a safe, vibrant, and prosperous arts and entertainment district that offers enhanced shopping, dining, recreational, and cultural experiences and events for residents, families, college students, and visitors.
- *Land Use Policy LU-2.16 – Uses to Attract the Creative Class:* The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward, including restaurants and cafes; art studios and galleries; and entertainment and cultural venues.
- *Land Use Policy LU-5.1 – Mix of Uses and Activities:* The City shall encourage a mix of retail, service, dining, recreation, entertainment, and cultural uses and activities in regional and community centers to meet a range of neighborhood and citywide needs.
- *Economic Development Goal ED-1:* Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for local residents.
- *Economic Development Policy ED-1.14 – Hospitality and Entertainment Business Clusters:* The City shall encourage the development of a hospitality and entertainment business cluster within Downtown Hayward and other appropriate locations to improve opportunities for shopping, dining, arts and entertainment, lodging, business conventions, and cultural events.
- *Economic Development Goal ED-3:* Grow the local economy and employment base by supporting efforts to expand and retain local businesses.
- *Economic Development Goal ED-5:* Encourage economic investment by enhancing the image and reputation of Hayward.

Additionally, the proposed Amendments are consistent with Council's Strategic Roadmap and the recently adopted *Downtown Specific Plan (DSP)*⁵, which contains a goal to establish the

⁴ Hayward 2040 General Plan: <https://www.hayward2040generalplan.com/>

⁵ Hayward Downtown Specific Plan: <https://www.hayward-ca.gov/sites/default/files/Hayward-Downtown-Specific-Plan.pdf>

downtown area as the heart of the City and create a lively, safe and attractive regional destination for people of all ages that features a mix of land uses, including ground-floor retail shops, restaurants, cafes, business offices and bars/nightclubs, and residential uses on upper floors of mixed-use buildings.

Zoning Ordinance. Pursuant to HMC Section 10-1.3425(a)⁶, the Planning Commission shall hold a public hearing on all proposed text amendments to the Zoning Ordinance. The Planning Commission may deny a text amendment or recommend approval of the amendment to the City Council. Pursuant to HMC Section 10-1.3425(b), all recommendations for approval shall be based upon the following findings:

- Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;
- The proposed change is in conformance with all applicable, officially adopted policies and plans;
- Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and
- All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

Staff believes the Planning Commission can make the required findings to support the proposed text amendments and has included more detailed analysis in Attachment II.

STAFF ANALYSIS

The proposed amendments are consistent with numerous goals and policies of the *Hayward 2040 General Plan* and *Downtown Specific Plan* as enumerated above. In addition, the proposed Amendments would achieve one of the Council's Strategic Roadmap goals of revising the Alcoholic Beverage Outlet Ordinance to support existing full-service restaurants and encourage more full-service restaurants to locate in the City. Furthermore, the proposed Amendments incorporate several modifications that provide additional flexibility to alcohol serving establishments by allowing them to increase the amount of revenues from alcohol sales in relation to food sales, since the current requirement of 60 percent of gross receipts from food sales was very difficult to comply with, particularly for establishments with full bars that offer premium cocktails and wine. The Amendments would also allow restaurants to offer earlier happy hour discount pricing which could enable restaurants the ability to capture more business from people who work earlier shifts and finish work in the early afternoon.

The proposed Amendments are also designed to provide additional flexibility and accommodate a greater variety of business models wherein different entities own the food service and alcohol service components of an establishment. These models are becoming increasingly popular, particularly with microbreweries and other similar operations where the primary business owner specializes in alcohol production, service and sales and is less familiar

⁶ Hayward Municipal Code Section 10-1.3425 (Planning Commission Procedures):
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3400AM_S10-1.3425PLCOPR

with operating a full kitchen with food service. This change could attract some alcohol-oriented businesses, such as microbreweries, to the City by giving their owners who may not have experience running a full-service restaurant the ability to find a food service provider to run the kitchen and handle the food service component. The Amendments would also provide greater flexibility to some operators by allowing the kitchens in such arrangements to be built in a freestanding structure on the premises, separate from the alcohol-serving facility. Finally, they would also help reduce the likelihood of drunk driving by requiring all alcohol-serving establishments to provide information to patrons on safe alternatives for getting home in the event they are too intoxicated to drive.

Alcohol-Related Crimes Attributable to Restaurants. In response to the request of CEDC, the Hayward Police Department pulled data from the previous four years and was unable to identify any clear evidence that a significant amount of crimes resulted from overconsumption of alcohol at local restaurants. During the past four years, there were an average of 397 alcohol-related arrests (for either being drunk in public or driving drunk) throughout the entire City. The downtown area consistently sees the highest volume of such arrests, but it is difficult to determine how many are attributable to restaurants because the information regarding where the perpetrator originated from is not always readily available on police reports. Generally, the Hayward Police Department supports, and assisted in the crafting of, the proposed amendments and does not believe that they will result in a significant increase in alcohol-related crimes by persons dining out at full-service restaurants.

Other Municipalities' Alcohol Regulations. In response to a request from one of the CEDC members, staff examined the alcohol regulations of the Cities of San Leandro, Alameda, Fremont and Union City in an effort to determine if the existing regulations of neighboring cities are more restrictive, more permissive, or similar to Hayward's. None of the cities surveyed require a minimum ratio of food-to-alcohol sales or specify times when "happy hour" discount pricing may be allowed. In addition, none of the jurisdictions specifically allow partnerships wherein separate entities own the food service and alcohol service components. A summary of the staff's research is noted below:

- San Leandro's regulations were the most permissive from a land use perspective, with the city generally allowing restaurants with full bars and brewpubs that offer food service and have tasting rooms for beer that they produce on-site in nearly all of its 16 commercial zoning districts by right.
- The City of Alameda's regulations were more restrictive, only allowing restaurants with full bars in the central business district by right. This is presumably because much of Alameda consists of older, mixed-use neighborhoods wherein residential uses abut commercial and/or industrial uses, so zoning regulations must be geared more toward protecting the health, welfare, and property values of those residents.
- Union City's and Fremont's regulations are similar to Hayward's in that they allow for restaurants with full bars to be open until midnight in all commercial zoning districts. However, while Union City allows non-amplified live music until midnight, it does require a Zoning Administrator Permit for any establishments offering amplified live music. Fremont is more restrictive in that it requires a restaurant that wishes to offer any form of live music (either amplified or not) to obtain a Zoning Administrator Permit.

Generally, Hayward's current regulations are consistent with, if not slightly more permissive than, those of its neighboring jurisdictions. The proposed Amendments would make them even more favorable for prospective restaurateurs who are considering locating in the City.

ENVIRONMENTAL REVIEW

The proposed text amendments to HMC Section 10-1.2750 are exempt from the California Environmental Quality Act (CEQA) under the "common sense" exception set forth in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment. The proposed Text Amendments to the Zoning Ordinance will relax the required ratio of food-to-alcohol sales at full-service restaurants from 60:40 to 50:50; change the definition of "full-service restaurant" to include arrangements wherein separate entities own the food service and alcohol beverage service components of the establishment and allow kitchens to be built in freestanding structures that comply with all applicable development standards of the underlying zoning, modify the hours when such restaurants can offer "happy hour" discount pricing, and require all establishments that are permitted to sell alcohol for on-site consumption to provide information to patrons on safe alternatives for getting home in the event they become too intoxicated to drive themselves.

NEXT STEPS

Following Planning Commission feedback and recommendation, staff will forward the proposed Zoning Text Amendments to the City Council for a public hearing and first reading tentatively scheduled for February 14, 2023. If approved, the proposed amendments would become effective immediately upon the second reading and adoption of the Ordinance amending the HMC by the Council.

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