



**PLANNING COMMISSION MEETING  
COUNCIL CHAMBERS AND VIRTUAL (ZOOM)  
PARTICIPATION  
Thursday, February 9, 2023, 7:00 p.m.**

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**PUBLIC HEARING**

**Agenda items continued from the January 12, 2023 Planning Commission meeting.**

**For agenda item No. 1 the Planning Commission may make a recommendation to the City Council.**

1. 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 in the City of Hayward, Requiring Approval of a Zoning Text Amendment. **(PH 23-001)**

Associate Planner Kowalski provided a synopsis of the staff report and PowerPoint presentation.

Commissioner Patterson asked what the patron safety information would look like and whether this would be consistent across all alcohol-serving establishments. Associate Planner Kowalski shared that Hayward Police Department's (HPD) Detective Wright from the Vice Unit was on the call and explained the police department would advise what the medium might be for this, noting that there may be a QR Code located at the bar that patrons could scan for an UBER, Lyft or local taxi service. Detective Wright responded that this was still being determined, and that each restaurant or bar that sells alcohol for onsite consumption would have to provide alternatives to patrons for getting home safely as opposed to getting a DUI. Mr. Kowalski confirmed that this requirement would apply to all establishments through amendments to the ordinance.

Commissioner Patterson referenced Attachment I and requested further clarification on staff's comparison to neighboring city's ordinances as Hayward appeared to be more permissive than neighboring jurisdictions.

Associate Planner Kowalski responded that Hayward's ordinance was permissive in a way allowing restaurants to have a jazz band or mariachi band until midnight; most cities do not allow live music late at night. He underscored that most other jurisdictions fall back on the historic definition of the Department of Alcoholic Beverage Control's (ABC) regulations with a minimum of 50% proceeds from food sales and 50% from alcohol, and Hayward was stricter in that regard, and this could have been due to previous Council's viewing alcohol consumption as a community problem. This is now being revisited to make things more favorable for Hayward restaurants.

Commissioner Stevens referenced Page 8 of the staff report, under alcohol-related crime attributed to restaurants, and asked if the statistic of 397 alcohol-related arrests was per



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year. Associate Planner Kowalski answered it was per year. Detective Wright clarified the 2019 data was pre-pandemic and that the yearly figures had reduced since then, underscoring that current data showed it had reduced significantly. She shared that there were over 300 reporting districts in the City and there were approximately 190 total on-sale and off-sale alcohol establishments, and the figures could be stemming from a liquor store or residents drinking alcoholic beverages from home and stepping out drunk-in-public, or from a restaurant or bar establishment.

Commissioner Stevens mentioned the arrest number seemed statistically low given the size of the City. Detective Wright did not have comparisons for other cities and did not have data available on hand; however, she noted that drunk driving had decreased overall, especially from the higher reporting districts which included the downtown and Tennyson areas.

Commissioner Bonilla Jr. asked how often the 50/50 requirements were expected to be achieved. Associate Planner Kowalski predicted it would be monthly, noting that the police department did not have the resources to review the books of all existing alcoholic beverage restaurants.

Commissioner Bonilla Jr. inquired about auditing and enforcement mechanisms and Associate Planner Kowalski answered it would be complaint-based indicating that if there were challenges with alcohol-related crimes at a particular establishment, then HPD may open an investigation. Detective Wright stated that if a restaurant with a Type 47 license was operating like a bar then this would be evaluated, HPD would have a discussion with the alcohol licensee and inform them of the City's ordinance in order to gain compliance. If the licensee continued to be out of compliance, then HPD would work with ABC and the establishment owner to come to a resolution.

Commissioner Bonilla Jr. asked why staff was suggesting restricting happy hour times when neighboring jurisdictions did not have such a requirement. Associate Planner Kowalski recalled the previous Council was concerned about alcohol-related crimes and suggested restricting happy hour timing, and pointed out that none of the stakeholders Mr. Kowalski interviewed suggested removing the happy hour restriction. Only one establishment had suggested making happy hour earlier to attract patrons who get off from work earlier and that staff did not consider eliminating it altogether.

Commissioner Garg clarified the statement that "Hayward's regulations were more permissive than surrounding cities" was incorrect. She believed the proposed regulations would make Hayward's Alcoholic Beverage Outlets Ordinance more restrictive than neighboring cities as there would be restrictions on happy hour timeframes.



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Planner Kowalski stated it was very progressive to have a business arrangement where there was an owner of the bar who then leased the kitchen out to a different entity. The other cities he explored did not consider this concept yet as it was still a relatively new idea. This option would make Hayward more permissive in this regard, but other than this, he concurred with Commissioner Garg that the City was not more permissive. He noted for Commissioner Garg that as this was a new concept, other cities do not necessarily preclude this option, it just takes cities a while to update an ordinance as Council support is required.

Commissioner Garg asked if staff discussed not having a food to beverage ratio. Associate Planner Kowalski confirmed the current regulation was that at least 60 percent of the sales at full service restaurants must come from food and only 40 percent could come from alcoholic beverage sales. The proposal was to change that to a 50/50 ratio. He predicted the police department would not support removing the ratio altogether because some restaurants would then likely become more like bars and patrons might become intoxicated more quickly due to not having food in their system.

Commissioner Garg wanted to know if it was easier for the Hayward Police Department to enforce a ratio if it were in an ordinance as opposed to just the State regulations. Senior Planner Blanton answered the City's Code Enforcement division can only enforce City ordinances and so having it in the Municipal Code provided them with an enforcement mechanism. She noted the police department and ABC would be the entities to enforce the ratio whether it was in a City ordinance or not.

Commissioner Goodbody asked how the licensing worked if a secondary business was within an existing establishment. Associate Planner Kowalski explained the holder of the ABC license would be selling the alcohol. Detective Wright added that both entities would have to be on the ABC license, and that ABC would have to know about the partnership as well as the police department. Staff confirmed for Commissioner Goodbody that both operators would be subject to County Public Health Food Inspector training.

Commissioner Goodbody found 2:00 p.m. to be rather earlier for a happy hour and a 7:00 p.m. end time seemed too early for people who commute. She recommended a happy hour timespan from 3:00 p.m. to 8:00 p.m. Planner Kowalski concurred the Planning Commission could recommend that. He noted the proposed happy hour times were not staff's suggestion but rather came from a local restaurateur who owns several establishments in the City.

Commissioner Goodbody wanted an incremental approach and suggested that a pilot program take place first allowing two entities to work out of one restaurant before permitting freestanding kitchens. Associate Planner Kowalski shared there was one concept that the City Council had already endorsed and approved financial assistance for



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which was located at a vacant lot on B Street that would have a freestanding kitchen, this was an Oakland-based company called Arthur Mac's Tap and Shack. The project was going to have two shipping containers, retrofitted to have one be a bar and one a kitchen, and the establishment would include picnic tables for dining and families would be welcome. Senior Planner Blanton commented that the City's Economic Development Division was trying to invite new uses to the city and "pop up" style locations were more attractive and a more feasible entry-point for smaller start-up businesses.

Acting Chair Lowe asked if there were any statistics regarding intoxication arrests during happy hour. Detective Wright said she did not have this specific data available, noting the data in the staff report ranged from 2019 to 2022. This data indicated that alcohol arrests and DUIs were previously higher and had declined currently. She expressed that in order to find detailed level of data as was being inquired, would require the review of every police report.

Acting Chair Lowe expressed concern as she wanted to ensure that bars would not pretend to operate as restaurants. She asked if the proposed changes bypass any rules, regulations, licenses, that are required to be obtained. Associate Planner Kowalski explained there were three different liquor licenses available from ABC and that the amendments would require any establishment utilizing a partnership format be subject to this. Any establishment having one of the three liquor licenses is required to have full meal service up to 30 minutes before closing. Mr. Kowalski explained there are built-in checks and balances to ensure businesses are following the rules and regulations.

Acting Chair Lowe asked what type of food was considered to be "enough food". Associate Planner Kowalski answered it could not just be bar snacks and finger foods and that customers must be able to order an entrée, appetizer, or a side dish. Senior Planner Blanton added that the costs of items could also be evaluated, exemplifying that at a bar the alcoholic beverage could easily cost more than the food item, thus resulting in the 50/50 ratio not being met, whereas at a sit-down restaurant the cost of the food items and beverages would be more on par with each other. Ms. Blanton added that there were no regulations on the types of food that must be served, theoretically all of the food items could be finger foods, but the distinction was that the restaurant must serve enough food to meet the total sales ratio.

Acting Chair Lowe inquired if there were statistics that showed having an equal food-to-beverage sales ratio would promote restaurant growth. Associate Planner Kowalski remarked there were no such statistics that he was aware of, but the changes would relax the rules and provide more flexibility to restaurants.



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Acting Chair Lowe wanted to know what happened if a microbrewery or bar opened but it was unable to form a partnership for food service. Associate Planner Kowalski responded that the establishment would in this case have violated its liquor license and there would be repercussions for continued noncompliance. Detective Wright added that ABC had a protocol in place to address situations where one partner falls off, noting that in this case the operator may have to change their license type.

Acting Chair Lowe asked what alcohol trends the police department was experiencing over the last six months. Detective Wright could not recall there being any trends at the current time but would have to evaluate the data, she emphasized that officers were good at notifying their units on behaviors they were seeing such as cases of drunk-in-public or alcohol contributing to crime in an area.

Acting Chair Lowe inquired if the police department was immediately supportive of the proposal or did they feel it was a compromise. Detective Wright stated the proposed amendments were aligned with the State's laws, they would not increase overconsumption, and codifying the ratio would help the police department maintain establishments that wanted to be restaurants. She commented changing the happy hours reflected a true happy hour and the regulations required establishments to offer specials on nonalcoholic beverages as well. Ms. Wright mentioned ABC already allowed freestanding kitchens and adopting the change would bring the ordinance into alignment with current state regulations.

Acting Chair Lowe asked if changing the happy hour hours would affect staffing in the police department. Detective Wright did not foresee this occurring, adding that if there was an increase in alcohol consumption due to happy hours at a specific establishment, HPD would work to resolve the challenges with that establishment.

With regards to freestanding kitchens and the allowance for different providers for food and alcohol, Commissioner Garg asked for clarification on the permitting process and whether there would be immediate approval or if there would be a review of the application for a successful partnership. Senior Planner Blanton explained that with the adoption of the proposed amendments, the City would review applications similar to the application of a restaurant which was a permitted use in many zoning areas, adding that freestanding kitchens would be required to have all the documents and licenses showing they will need a beverage and food operation component.

Acting Chair Lowe expressed concern about a restaurant application not receiving the same scrutiny that a bar application would. Senior Planner Blanton commented that what Acting Chair Lowe described could happen now, and in the future, even with the change to the



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definition of restaurant as there was no planning staff review. She emphasized there are many checks and balances to ensure compliance with ABC's and the City's regulations.

Commissioner Patterson mentioned the staff report said that happy hour would be extended but the proposal was to have an earlier start time. Associate Planner Kowalski restated a local restaurant owner was interested in an earlier start time and indicated that the proposed ordinance only included a timeframe and did not state it was an extension. Staff and the owner reached a compromise and that was what was being presented to the Commission.

Commissioner Patterson commented the staff report did use the word "extend" and suggested that be revised to "modify" instead in order to indicate the true intent of the amendment.

Acting Chair Lowe opened the public hearing at 8:11 p.m.

Mr. Eric Yeverino, a restaurant owner, explained the earlier happy hour was proposed to include teachers and other professionals that ended their workday at an earlier hour. He noted serving individuals drinks to the point of intoxication was an establishment issue, not a happy hour issue. Due to the COVID-19 Pandemic, many establishments were moving to a partnership business model. Many bars that operated under a Type 48 liquor license were struggling and sales projections were not being met if food was not being provided. He supported the proposed amendments and found them to be a great step forward for the City.

Ms. Peggy Guernsey, Zoom participant, stated that based on her conversations with staff, the 60/40 ratio would still allow new restaurants to establish in the city. Concerning happy hour, she mentioned there are five schools located around the downtown area that were still in session at 2:00 p.m. This early happy hour start time was a safety concern for those students leaving school. Ms. Guernsey was concerned that intoxicated customers would not be capable of reading a small safety card about how to get home safely. She strongly encouraged the Commission to keep Hayward at a higher standard and to reevaluate the proposed amendments in a year.

Acting Chair Lowe closed the public hearing at 8:18 p.m.

Commissioner Stevens made a motion to approve the item per staff recommendation, seconded by Commissioner Bonilla Jr.

Commissioner Goodbody proposed an amendment that Chapter 10, Article 1, Section I (4) be modified to "a full-service restaurant may offer reduced priced alcoholic beverages



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served on the premises between the hours of 3:00 p.m. to 8:00 p.m.” Commissioner Stevens accepted the amendment.

Commissioner Bonilla Jr. requested more information on the rationale for the amendment from Commissioner Goodbody, as he believed that staff had done their due diligence on what was being proposed.

Commissioner Goodbody explained it was to accommodate and represent the residents in Hayward who worked outside of the city. Commissioner Bonilla Jr. accepted the amendment.

Acting Chair Lowe appreciated the comment by the public speaker that the decrease in the crime trend may have been caused by the COVID-19 Pandemic. She supported the recommendation to wait a year on adopting the proposed amendments to ensure that the trend was really decreasing but could support the motion to move the proposed amendments forward. Ms. Lowe recalled there being a lot of problems coming from bars in the downtown area years ago and was unclear if that was still the trend now, and she appreciated hearing Detective Wright’s perspective on the matter.

A motion was made by Commissioner Stevens, seconded by Commissioner Bonilla Jr., per staff recommendation and with a friendly amendment to modify the proposed earlier happy hour time to from 3:00 p.m. to 8:00 p.m.

The motion passed with the following roll call votes:

AYES:	Commissioners Bonilla Jr., Garg, Goodbody, Patterson, Stevens Acting Chair Lowe
NOES:	None
ABSENT:	Chair Ali-Sullivan
ABSTAIN:	None