



DATE: September 18, 2018

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: City Council Call-Up of the Planning Commission’s Approval for the Proposed Establishment of a Cocktail Bar and Lounge with Cabaret Entertainment Located at 990 “B” Street, Assessor Parcel No. 428-0056-057-00. VGJB, Inc. (Applicant); Corinne and Timoleon Zaracotas (Property Owners), Requiring Approval of Conditional Use Permit Application No. 201802339.

RECOMMENDATION

That the City Council upholds the Planning Commission’s approval of the Conditional Use Permit application for the proposed 990 Cocktail Bar and Lounge, based on the analysis set forth in this report and the required Findings subject to the Conditions of Approval in the Resolution (Attachment II).

SUMMARY

VGJB, Inc. is requesting approval of a Conditional Use Permit (CUP) application to occupy an existing, vacant 2,363 square-foot tenant space located at 990 “B” Street in Downtown Hayward for a new cocktail bar and lounge. The proposed cocktail bar and lounge will include a full-service bar with cabaret entertainment (live and amplified music, dancing, etc.). The project will also include significant exterior and interior tenant improvements including updating the façade, retrofitting the interior for compliance with the Americans with Disabilities Act (ADA), and complying with current California Building Code requirements for energy efficiency.

BACKGROUND

The project site is located in Downtown Hayward at the northwestern intersection of B Street and Main Street. The building was originally constructed in the early 20th century and since that time, the building has been remodeled numerous times by various tenants and has lost much of its historical and architectural character. Most recently, the previous tenant included a doughnut shop (Gary’s Donuts) which was opened in 1989 and closed in 2011. Since that time, the tenant space has remained vacant.

Planning Commission Hearing. On July 26, 2018, the Planning Commission¹ held a public hearing and voted 4:0 (two Commissioners absent) to approve the Conditional Use Permit (Action Minutes²). Although a few members of the public were present at the meeting, no individual spoke either in opposition or support of the proposed project. The applicant and their security company consultant were present at the meeting and addressed questions from the Planning Commission regarding their proposed business operations, financial structure, and security plan.

Detective Wright of the Hayward Police Department – Vice Unit was also present at the meeting and mentioned that the project site is located within a high reporting district for police calls for service. However, Detective Wright stated that it is imperative for alcohol-and/or cabaret-related establishments to have a committed security plan to assist the Police Department and in the long-term operation of the business as a safe and successful establishment.

DISCUSSION

Existing Conditions. The proposed site is located within the Central-City Commercial (CC-C) and Central City Plaza (CC-P) zoning district and is designated Central-City Retail and Office Commercial (CC-ROC) in the *Hayward 2040 General Plan*. The entire project site (Assessor Parcel No. 428-0059-057-00) is approximately 0.17 acres and contains two (2) two-story buildings for a total building area of 13,803 square-feet. Currently, all but one of the tenant spaces within the buildings are vacant. Megan’s Nail Salon operates on the first floor located at 982 B Street.

The project site is easily accessible by walking, public transit, and automobile. Public transportation options include the Hayward BART Station that is less than 0.5 mile away, numerous AC Transit bus stops are located along B Street, Mission Boulevard, and on Main Street in front of the project site. Public parking is available on street as well as in Municipal Parking Lots #1, #2, #3, and the City Hall parking garage, which are all within walking distance from the site. The University Shuttle for California State University, East Bay (CSUEB) also stops along B and C Streets.

Surrounding land uses include a variety of commercial businesses including retail storefronts, personal services (hair salons, tailoring, etc.), professional offices, full-service restaurants, quick-service eateries, and other full-service bars. Nearby residential land uses include the Prospect Hill neighborhood, which is less than a half-mile away, the future Maple and Main multi-family development with 240 apartment units, and the renovated Green Shutter Hotel with 41 apartment units, which is located at the opposite corner of the project site. The project location is also within proximity of several public and quasi-public land uses, including Hayward City Hall, Fire Station #1, the new 21st Century Library, and US Postal Office.

¹ Planning Commission Hearing July 26, 2018 - http://hayward.granicus.com/MediaPlayer.php?view_id=1&clip_id=518

² Planning Commission July 26, 2018 Action Minutes - <https://hayward.legistar.com/View.ashx?M=M&ID=608540&GUID=70CF11C4-5980-4247-8945-E36E7345F8C1>

Proposed Project. The project plans and business narrative (Attachment III) provide details on the proposed operations and logistics, hours of operation, security plan, as well as existing and proposed floor plans and exterior elevations. The project involves the occupation of an existing, vacant 2,363 square-foot tenant space at the corner of B Street and Main Street to operate a cocktail bar and lounge with cabaret entertainment (live and amplified music, dancing, etc.). The establishment proposes to include a full-bar that would serve cocktails, draft beers on tap, bottled beer, wine and distilled spirits that would require a Type 48 alcohol license from the California Department of Alcoholic Beverage Control (ABC)³ following issuance of a Conditional Use Permit. ABC defines the Type 48 alcohol license and associated privileges as the following:

“On-Sale General – Public Premises - (Bar, Night Club) Authorizes the sale of beer, wine and distilled spirits for consumption on the premises where sold. Authorizes the sale of beer and wine for consumption off the premises where sold. Minors are not allowed to enter and remain (see Section 25663.5 for exception, musicians). Food service is not required.”

Based on the submitted business plan, the applicant is proposing the hours of operation to be seven days a week, from noon to 1:30 a.m. Staffing for the bar and lounge will include a general manager, security manager, bartenders, bar backs, security guards, waiters, and a contracted disk jockey (DJ) or musician. Number of actual staff present at the establishment will vary based on the day and time and will correlate with the volume of customers. Seating would be limited to the indoors only and could accommodate between 50-75 people, depending on the final interior configuration, while the total occupancy of the tenant space will be limited to 89 persons. Only individuals 21 years of age and over will be permitted to enter.

The applicant also proposes to incorporate a cabaret entertainment component into the cocktail bar and lounge, which requires a separate license issued by the Police Department. The cabaret license would allow the establishment to include live entertainment as part of normal operations, such as dancing, and amplified and live music with certain limitations. The cabaret component of the establishment is proposed to commence no earlier than 9 p.m. until the closure of the business and would be limited to Friday, Saturday and Sunday nights. The applicant envisions amplified music played by a DJ allowing patrons the ability to dance within the designated dance floor. Increased security would be present during cabaret entertainment hours for crowd management and age verification, which is discussed in greater detail in the section below. To mitigate potential nuisances, the applicant will be required to install acoustic treatments (i.e. soundproofing) to the building to minimize noise disturbances to adjacent businesses, residents, and to comply with the City’s Noise Ordinance.

³ Common Alcoholic Beverage Control Licenses - <https://www.abc.ca.gov/forms/abc616.pdf>

Security Plan. The applicant submitted a detailed security plan, prepared in collaboration with The Kingdom Group⁴, for City staff review. The security plan comprises procedures and precautions that will be part of the operations of the business, including on-site security, verifying legal age to enter the premises and consume alcohol, being prepared in the event of an incident, and maintaining a safe environment for the patrons. The plan states that the applicant will maintain security guard(s) on- and off-site during business hours who will check IDs, monitor patron activities, and patrol the parking lots and the perimeter of the building to prevent loitering and illicit activity. Security infrastructure will also be installed such as proper locks, cameras and video surveillance, motion sensors, window and door monitoring devices, and expanded exterior lighting. Windows will be maintained as transparent to allow visibility into the building interior. Exterior lighting will architecturally be designed and placed to enhance and activate the building, while also deterring illegal activities, especially along the rear alley of the establishment. Additional security measures will be further evaluated by the Police Department prior to any issuance of a cabaret license. The draft conditions of approval further stipulate the additional security requirements that will be enforced and monitored by the Hayward Police Department and Code Enforcement Division.

Interior and Exterior Remodel. The applicant and business owners are proposing significant interior improvements to the existing tenant space and building exterior to revitalize a prominent downtown corner, improve the building façade, upgrade for ADA compliance, and improve overall lighting and security. The floor plan for the bar and lounge area will consist of two new restroom facilities, indoor seating, a dance floor, and the bar. A mezzanine area will also be constructed that will include a DJ station, mechanical room, and storage loft. No patrons will have access to the mezzanine area.

Exterior improvements include the renovation of the entire building facade for the subject tenant as well as the adjacent nail salon. The proposed renovation will require the removal of the existing blue awnings, decorative tile base, and the yellow paint color from the existing building. The new elevations incorporate a contemporary design approach with a dry stacked stone wainscot base, ipe shiplap wood siding at street level, window replacements with black trim, and a darker paint color on the top-half of the building. The applicant has also agreed to integrate an artistic component or art installation along the top-half of the building. The art component may include a mural, decorative metal, or other artistic feature to further enhance the prominence and architecture of the corner. A condition of approval on the artistic component has been added to the project, which will require final approval from the Planning Division prior to the issuance of a building permit for the commercial remodel.

Zoning Ordinance and Hayward 2040 General Plan. The project site is located within the City's [Central-City Commercial \(CC-C\)](#) and [Central-City Plaza \(CC-P\)](#) zoning districts, and is designated [Central-City Retail and Office Commercial \(CC-ROC\)](#) in the *Hayward 2040 General Plan*. The CC-C and CC-P zoning districts conditionally permit the establishment of a cocktail bar, lounge and cabaret land uses with the approval of a [Conditional Use Permit](#). The CC-ROC land use designation is focused on the core of the Downtown Hayward and envisions building

⁴ The Kingdom Group Website - <https://www.thekingdomgroup.co/>

improvements including the rehabilitation and redevelopment of underutilized properties that will assist in transforming the downtown core area into a vibrant, transit-oriented, and mixed-use city center. Allowed uses based on the land use designation include retail, dining, and service uses as well as entertainment and recreational uses.

Further, the project site is located within one of the City's designated Priority Development Areas (PDAs) that further encourages the private-sector investment into the Downtown City Center to create a compact, mixed-use, and walkable neighborhood with venues for entertainment experiences as well as recreational and cultural activities. The [Economic Development Strategic Plan \(EDSP\)](#) states that the downtown area is a key retail area, and Goal SR2 (Service and Retail Industry) calls to secure new businesses in priority locations that are a good fit for the City of Hayward.

Overall, the proposed cocktail bar and lounge with cabaret entertainment will support the following *Hayward 2040 General Plan* goals and policies:

- *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-2.2 – Downtown Activities and Functions.* The City shall maintain the Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions.
- *Land Use Policy LU-2.4 – Downtown Retail Frontages.* The City shall require retail frontages and storefront entrances on new and renovated buildings within the “retail core” of Downtown Hayward.
- *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's, 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 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.
- *Community Safety CS-1.12 – On-Site Security.* The City shall require conditions of approval related to the provision of on-site security and safety measures for bars, nightclubs, live entertainment businesses, and related uses. Conditions of approval shall promote a healthy balance of public safety and nightlife vibrancy, and may include surveillance cameras, crowd management practices, and on-site security staff.

Alcoholic Beverage Outlet Ordinance. In 2013, new [Alcoholic Beverage Outlet regulations](#) were adopted into the City's Zoning Ordinance with the purpose of providing for the orderly integration of alcohol related uses in a manner that will protect public safety and encourage business growth. The Ordinance recognized that the "proliferation of establishments selling alcoholic beverages within the City of Hayward presents problems that affect residents, businesses, property owners, visitors, and workers in Hayward." However, the ordinance also understood that regulations that promote responsible alcohol consumption can contribute to economic vitality, particularly in the downtown area.

The Conditional Use Permit process is used as the means to review the impacts of alcoholic beverage outlets on neighboring properties and land uses on a case-by-case basis to prevent overconcentration and the undesirable impacts on the community. To prevent an overconcentration, the Hayward Municipal Code mandates that within the Downtown Entertainment Area – no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face between two immediate cross streets. Therefore, the proposed bar and lounge would not exceed the maximum limit on their block face between Mission Boulevard and Main Street. If approved, the establishment would be required to comply with the performance standards listed within the ordinance that include, but are not limited to, providing adequate exterior lighting, discouraging loitering, verifying legal age of patrons, and maintaining their liquor license in good standing with ABC, in addition to the other recommended Conditions of Approval (Attachment II).

Cabaret License. In 2013, the [Cabaret and Dance regulations](#) were concurrently updated and established the requirements for a cabaret license, including the application procedures, criteria for the suspension and revocation of licenses, operating standards, and mandatory security conditions. The business owners of the proposed cocktail bar and lounge will be required to obtain a cabaret license prior to offering any entertainment component such as dancing, live and/or amplified music, DJ sets, karaoke, etc. from the Hayward Police Department. Additionally, the Police Department and Development Services Department reserve the right to modify, suspend, or revoke the cabaret license for any dancing, amplified or live music, etc. if it has been determined that the use is disturbing the peace of persons within the vicinity or it is deleterious to the public peace, morals, health, safety, and general welfare.

Downtown Hayward Design Plan and Core Area Plan. The [Downtown Hayward Design Plan and Core Area Plan](#) were adopted in 1992 and set forth strategies, policies, and actions to revitalize the economic vitality and livelihood of the downtown core area. Analyses within the document discuss opportunities for better business practices, cultural activities, façade improvements, and public/private partnerships for a dynamic and diverse core neighborhood. Like the Alcoholic Beverage Outlet Ordinance, the Core Area Plan acknowledges that the management of alcohol related establishments in a positive and responsible manner enhances the economic and social character of the downtown stating that "[t]he successful revitalization of downtown will likely include new restaurants and entertainment facilities, many of which will sell alcoholic beverages and will hopefully become

an asset to downtown.” The proposed cocktail bar and lounge with cabaret entertainment would be consistent with the goals of the adopted plan to introduce entertainment uses into underutilized and vacant buildings that will promote economic activity and pedestrian traffic.

Staff Analysis. Staff has reviewed the project application and believes that the City Council can make the required Findings to approve the Conditional Use Permit application to allow for the establishment of a cocktail bar and lounge with cabaret entertainment (dancing, music, etc.) at the subject property. The proposed redevelopment of the building with an entertainment land use, coupled with the proposed interior and exterior remodel, will further assist in enhancing the downtown area with a high-end, upscale entertainment venue to catalyze further investment in the area and increase pedestrian presence, which supports the existing restaurants and retail businesses downtown. As mentioned previously, the proposed establishment is located within the Hayward Downtown Core Area, which calls for a diverse mix of entertainment, dining, retail land uses to support cultural, social, and recreational experiences consistent with the goals and policies of the City’s General Plan.

Although the downtown area census tract currently contains other Type 48 (full bars) establishments including The Stein Lounge, The Funky Monkey, and The World-Famous Turf Club, the proposed establishment will provide an additional entertainment option for consumers and visitors. As previously noted, the HMC allows for a maximum of two on-sale establishments per block face, which would not be exceeded if this application were approved. In addition, the proximity to public transit stops combined with current ride-sharing technology (i.e. Lyft, Uber) would provide patrons of this establishment with safe transportation alternatives to driving that minimize potential drinking and driving.

In addition, the Hayward Police Department – Vice Unit has reviewed the project proposal with Planning Division staff to collaboratively develop appropriate Conditions of Approval to ensure that patrons will be provided a safe experience and provide assurances that the proposed cocktail bar and lounge will not place an additional burden on Police Department resources. Conditions of approval have been included that require that responsible business practices are incorporated into land use to ensure compliance with the Hayward Municipal Code. Noncompliance with any of the Conditions of Approval may lead to penalties, fines, and possible revocation of this CUP.

Environmental Review. The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 for existing facilities in that the project involves the leasing 2,363 square-feet of existing tenant space that will create a negligible impact on the environment. Therefore, no environmental review is necessary.

STRATEGIC INITIATIVES

This project supports the Complete Communities Strategic Initiative. The purpose of the strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all consistent with the objectives of the *Hayward 2040 General Plan*. Further, the item supports the following goals and objectives:

- Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.
- Objective 2: Foster a sense of place and support neighborhood pride.
- Objective 3: Increase collaboration with businesses, non-profits and neighborhood groups on placemaking projects.

ECONOMIC IMPACT

The establishment of a new, upscale cocktail bar and lounge within the core of the City will assist in further stimulating the economic and pedestrian vitality of Downtown Hayward by transforming an existing vacant, underutilized tenant space into a vibrant social and entertainment destination. Based on the scope of work, the valuation (fair market value of materials and labor) of the commercial remodel is estimated at \$375,000, which will be invested into the interior and exterior of the building. The proposed improvements will visually enhance a prominent corner of Downtown Hayward.

Cocktail bars and lounges provide a unique social destination of nightlife and activity that can promote the attraction of existing residents and businesses, but also new residents, employees, young professionals, a competitive workforce, students, etc. Nightlife entertainment such as restaurants, bars, and nightclubs provide an opportunity for more employment, economic activity, and tax revenue.

FISCAL IMPACT

Based on a Sales Tax Capture & Gap Analysis Report provided by the City's tax specialist consultant, MuniServices, Inc., the City of Hayward is currently losing potential sales tax revenues to neighboring communities and jurisdictions in the category of "Club Food/Bar Sales". The Sales Tax Leakage Report indicates that the City is only generating 23% of the potential sales tax that Hayward could support based on our jurisdiction's population and median income. As such, the establishment of a new cocktail bar and lounge with cabaret entertainment in a designated key retail and service area as well as a PDA will assist in increasing the potential sales tax revenues to the City. Given the regional access provided by the Hayward BART station to the Downtown core area, the new cocktail bar and lounge provides the opportunity to attract individuals from other communities such as San Francisco, Oakland, Berkeley, Fremont, etc. to spend locally within the City of Hayward.

SUSTAINABILITY FEATURES

The interior and exterior tenant improvement associated with the proposed cocktail bar and lounge would be reviewed by the Building Division for conformance with State and local requirements related to sustainability (i.e. California Building Code) which require a minimal level of energy efficiency, resource conservation, material recycling, etc.

PUBLIC OUTREACH

Following receipt of the application, staff conducted the following public outreach:

- On May 9, 2018, an initial Notice of Application Receipt for the project application was sent to 217 addresses including property owners, residents, and businesses within a 300-foot radius of the project site. Public comments were received by owners of businesses and properties in the Downtown. Comments suggest a potential postponement of a decision on the application until completion of the Downtown Specific Plan, concerns on the proposed land use and the project impact on the Downtown. A list of the public comments received to date has been included as Attachment IV.
- On June 1, 2018, the applicant and Planning Division staff attended a Government Relations Council (GRC) meeting of the Hayward Chamber of Commerce. At the meeting, the applicant provided a presentation to the GRC on their application and addressed questions and comments on their proposed land use from the members of the Chamber. City staff was present for technical questions on the process of the application.
- On July 13, 2018, a Notice of this Public Hearing for the Planning Commission meeting was sent to property owners, residents, and businesses within 300-feet of the project site as well as published in The Daily Review newspaper.
- On July 26, 2018, the Planning Commission held a public hearing and voted 4:0 (two Commissioners absent) to approve the Conditional Use Permit application.
- On September 7, 2018, a Notice of Public Hearing for the City Council call-up was published in the Daily Review newspaper and sent to all property owners, business owners and interested stakeholders within 300 feet of the subject property.

NEXT STEPS

If the City Council approves the project, the decision will be deemed final and effective immediately. The applicant may then proceed with obtaining the necessary permits through the Building Division, Police Department, and associated outside agencies. Alternatively, if City Council denies the application, staff would return to City Council with a resolution for findings in support of the denial or the Council could modify the conditions of approval for the project. The Council could also remand the matter back to the Planning Commission for further discussion.

Prepared by: Marcus Martinez, Assistant Planner

Recommended by: Laura Simpson, AICP, Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager