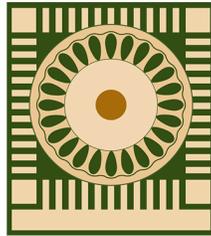


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HEART OF THE BAY

## **Agenda**

**Thursday, September 22, 2022**

**5:00 PM**

**Remote Meeting**

**Council Economic Development Committee**

COVID-19 Notice: Consistent with Assembly Bill 361, the Council Economic Development Committee meeting includes teleconference participation by all Committee members and the public.

Please note that we are now using the Zoom Webinar platform to conduct meetings and receive live public comment.

*How to submit written Public Comment:*

*Send an email to [suzanne.philis@hayward-ca.gov](mailto:suzanne.philis@hayward-ca.gov) by 2:00 p.m. the day of the meeting. Please identify the Agenda Item Number in the subject line of your email. Emails will be compiled into one file, distributed to the Council Economic Development Committee and staff, and published on the City's Meeting & Agenda Center under Documents Received After Published Agenda. Written comments received after 2:00 p.m. that address an item on the agenda will still be included as part of the record.*

*How to provide live Public Comment during the meeting:*

*Please click the link below to join the webinar:*

*<https://hayward.zoom.us/j/81120121939?pwd=MStZcm8yV3hyRXpvekZFS3dHb0E5UT09>*

*Webinar ID: 811 2012 1939*

*Password: CEDC\_0922!*

*or*

*Dial: +1 669 900 6833*

*Webinar ID: 811 2012 1939*

*Password: 4007339800*

*A Guide to attend virtual meetings is provided at this link: <https://bit.ly/3jmaUxa>*

## **CALL TO ORDER**

## **ROLL CALL**

## **PUBLIC COMMENTS:**

(The Public Comment section provides an opportunity to address the City Council Committee on items not listed on the agenda as well as items on the agenda. The Committee welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Committee is prohibited by State law from discussing items not listed on the agenda, any comments on items not on the agenda will be taken under consideration without Committee discussion and may be referred to staff.)

**APPROVAL OF MINUTES**

1. [MIN 22-096](#) Approval of June 23, 2022 Regular Meeting Minutes

**Attachments:** [Attachment I Draft Minutes from June 23, 2022 Regular Meeting](#)

**REPORTS/ACTION ITEMS**

2. [ACT 22-076](#) Approval of FY23 CEDC Regular Meeting Schedule

**Attachments:** [Attachment I FY23 CEDC Regular Meeting Schedule](#)

3. [RPT 22-076](#) Strategic Roadmap Priority: Update to the Alcoholic Beverage Ordinance

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II HMC Section 10-1.2750 - Alcoholic Beverage Outlets](#)

**FUTURE AGENDA ITEMS**

4. [RPT 22-079](#) Future Meeting Topics as of September 22, 2022

**Attachments:** [Attachment I Future Meeting Topics as of September 22, 2022](#)

**COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

**ADJOURNMENT**



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**File #:** MIN 22-096

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**DATE:** September 22, 2022

**TO:** Council Economic Development Committee

**FROM:** Acting Assistant City Manager

**SUBJECT**

Approval of June 23, 2022 Regular Meeting Minutes

**RECOMMENDATION**

That Committee Members review and approve the attached draft minutes from the June 23, 2022 Regular Meeting.

**ATTACHMENTS**

Attachment I Draft Minutes from June 23, 2022 Regular Meeting



## COUNCIL ECONOMIC DEVELOPMENT COMMITTEE

### MEETING MINUTES – June 23, 2022

**CALL TO ORDER:** The Regular meeting was called to order at 5:00 p.m.

### ATTENDANCE (September 2021-July 2022):

Committee Member	Present 6/23/2022	All Meetings Year to Date		Meetings Mandated By Resolution	
		Present	Absent	Present	Absent
Council Member Salinas	✓	7	0	7	0
Council Member Wahab	✓	7	0	7	0
Council Member Andrews	✓	7	0	7	0

### OTHERS IN ATTENDANCE:

Kelly McAdoo, City Manager; Regina Youngblood, Assistant City Manager; Paul Nguyen, Economic Development Manager; Catherine Ralston, Economic Development Specialist; Suzanne Philis, Senior Secretary; Monique Richardson

### PUBLIC COMMENTS

There were none.

#### 1. APPROVAL OF MINUTES OF REGULAR MEETING MAY 26, 2022

A motion to approve minutes from the May 26, 2022 Regular meeting was made by Council Member Andrews and seconded by Council Member Wahab. The minutes were unanimously approved.

#### 2. INFORMATIONAL REPORT ON PUBLICLY AVAILABLE ART IN THE CITY OF HAYWARD

Assistant City Manager Regina Youngblood gave the presentation.

Council Member Andrews said public art was a passion of hers since she moved to Hayward and she was excited about the discussion. She asked where an arts commission would live within the City organization. Assistant City Manager Youngblood explained that there wasn't enough staff support capacity to take on another commission and while there had been discussions of which City division would serve as liaison, no formal decision had been made.

Council Member Andrews said she didn't want to burden development projects with a public art fee but noted a coordinated approach was needed to create public art that was memorable. She asked if a menu of desired artwork could be provided to developers that would make the project more favorable to Council and if Economic Development could work with the Hayward Arts Council or other jurisdictions with an existing art commission or expertise to help make it happen.

Economic Development Manager Nguyen said it was possible that some design guidelines could be developed that included desired public art options and he gave several examples of how guidelines had been created for other projects and programs. In terms of what those guidelines would be, he said he would defer to Planning to comment on guideline development and their staffing capacity to complete such a project. Council Member Andrews asked staff to work with Planning to develop guidelines in terms of placemaking and Hayward Police for hot spot areas and safety issues.

Council Member Andrews asked what districts were identified for gateway markers beside the industrial sector. Manager Nguyen explained that the gateway marker staff report from 2016 had been in response to a request to brand the industrial corridor and recognize the innovation happening there. Staff did not look at commercial corridors like Tennyson or Mission, he said.

Council Member Andrews asked if any coordination had been made with the Downtown Hayward Improvement Association (DHIA), the Latino Business Roundtable, or the Hayward Chamber of Commerce about partnering for public art. Manager Nguyen said to his knowledge there had been no discussion with the Chamber or business roundtables, but noted over the last two years the DHIA had had conversations about ways to enhance the district. He noted it was staff's intent to invite the DHIA to the CEDC to present upcoming initiatives.

Council Member Andrews asked if local schools had been outreached. She noted there was a lot of interest from Chabot College about public facing art. Manager Nguyen said that was an excellent idea, but staff had not engaged any of the schools, HUSD, Chabot or CSUEB, about public art. He explained that right now, it was outside of the Division's wheelhouse.

Council Member Andrews said she remembered receiving a survey for an art masterplan and she asked what happened with it. City Manager McAdoo explained that the City had been applying for a grant from the National Endowment for the Arts to produce a masterplan, but the City did not receive the grant and the effort ended. Council Member Andrews asked if the survey information could still be useful and was told possibly, if the application could be located.

Council Member Wahab asked if the staff recommendation was for Council to create an Arts Commission. Assistant City Manager Youngblood said that was not the current recommendation. Related to staff capacity, she mentioned that a Management Fellow was starting with the City in August and had already expressed an interest in public art.

Council Member Wahab said she was not a fan of creating another commission and suggested pursuing other avenues first. She said she didn't want new businesses to pay a fee because art was something that should be lively, free and community-driven. She suggested that, if an arts program was developed, that Library staff should run it with a call for art every one or two years and then chose the top five or 10 art pieces for the next building or business. Council Member Wahab

encouraged staff to require a new business or development to allow public art, but not to pay for it.

Council Member Wahab emphasized that she didn't want to hire more staffing to oversee the program because she wanted to maintain the intent of the artist rather than be programmatic but said Council and members of the community could serve as judges to make the selections.

Council Member Wahab also said she wanted public art to be throughout the City not just downtown and not limited to just businesses but all kinds of development projects including housing. She reiterated that she wanted staff to be creative rather than burden businesses and that the call for art should go through the Library. She asked if staff had any feedback to her comments.

City Manager McAdoo said it was staff's preference not to have a commission but instead continue the conversation and have the Council explore a more formal public art policy first and build out from there.

Council Member Wahab said she really wanted to draw a line between mom & pop businesses and large retailers if a percentage fee was placed on businesses. She also expressed a desire for different kinds of art, not just paintings.

Council Member Salinas asked if public art was currently handled through Development Services and was told the City's Mural Arts Program was housed in the City Manager's Office. Council Member Salinas commented that per the discussion, public art seemed like an economic issue and applications should be received and reviewed by the CEDC so staff could analyze what would be aesthetically pleasing and attract the most people to a particular area. He pointed out that if downtown Hayward had a giant statue like the one by the San Leandro BART station, people would might eat at nearby restaurants when they came to see it.

Assistant City Manager Youngblood agreed that public art was housed with economic development at other cities, but staff did not want to burden the Economic Development Division with the task while they were so short staffed.

When new developments came to the CEDC for a concept review, Council Member Salinas said staff could take the opportunity to ask developers to include public art, not necessarily as a condition of approval but articulated as desirable.

Council Member Andrews asked if tourism groups were spearheaded by other cities or their Chamber of Commerce. Economic Development Manager Nguyen said tourism groups were usually separate from city government and were often funded by self-assessed fees by hotels.

Council Member Andrews understood the staffing issues related to the Economic Development Division but said she would prefer if public art came to the CEDC. She asked staff to look at how other cities without a commission were handling public art.

Council Member Salinas asked if Hayward could designate the Sun Gallery as the City's adjunct advisory board but then wondered if the Gallery's esthetic would be the same as the City's.

Council Member Salinas said he hoped that the one thing to come out of the discussion was that

Economic Development staff tell new businesses and developments that public art was highly desired.

### **3. UPDATE ON COVID-19 ECONOMIC RECOVERY RESTAURANT RELAUNCH AND RESTORE AND REOPEN GRANT PROGRAMS**

This agenda item was discussed at the May 26, 2022 Regular CEDC meeting. Please see minutes from the discussion here:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=5701040&GUID=EFCC19B9-DDC0-4210-BC78-322D63F68893&Options=&Search=>

### **4. FUTURE MEETING TOPICS AS OF JUNE 23, 2022**

Council Member Andrews asked that security be added to the list of initiatives to be discussed by the DHIA and if they were partnering with Hayward Police and when they would start. She said she would also like to hear from Southland Mall representatives about increased security measures being put in place after a recent incident. She said a written update from the Mall would suffice.

Council Member Andrews asked if there was an update regarding the municipal parking lot between A and B Streets and the impact of construction equipment was having on the number of available parking stalls. She said she'd had two businesses reach out to her. City Manager McAdoo said with Buffalo Bill's closed, there should be plenty of parking.

Economic Development Manager Nguyen said that staff was working with Development Services who issued an encroachment permit for construction at 1025 A Street. He noted that the development of a food hall was a significant project and that there was ample parking at other locations around downtown including the Cinema Place parking structure right across B Street. He noted that there were lots of different reasons why people weren't coming to downtown and not being able to park right in front of a business was going to be a common occurrence as the City grew.

Council Member Andrews asked staff to provide some coaching to the businesses on where they instructed patrons to park. Manager Nguyen said he would ask staff to send them a map of municipal parking lots.

### **COMMITTEE MEMBER/STAFF ANNOUNCEMENTS AND REFERRALS**

Economic Development Manager Nguyen said Specialist Ralston would be presenting an update on the latest Development Pipeline brochure and newly-established website but first noted that the brochure was probably Economic Development's single most important marketing collateral and it was produced through the efforts of several departments.

Specialist Ralston gave a short presentation and noted the new Development Pipeline brochure was hot off the presses just that morning and copies would be distributed.

Council Member Andrews asked if any business names were being released for Lincoln Landing. Manager Nguyen said no, staff let the developer take the lead on announcing tenants, but noted City Sport and Chipolte had already been made public.

Council Member Salinas asked if City Sport was taking one of the front pads. Manager Nguyen told him no, the gym would be in the back along with mainline retailers. Council Member Salinas asked if staff knew who was going in front and was told no.

Economic Development Manager Nguyen then noted that the Hayward had four finalists for a 2022 East Bay Economic Development Alliance Innovation Award. He listed: DuPont EKC for Advanced Manufacturing; Eikon Therapeutics for Life Sciences; Applied Silver under Technology; and CSU East Bay Green Biome Institute for Education. He also noted that CSUEB was going to receive a legacy award for their contribution to education and innovation in the region. A press release was pending, he said and winners would be announced in August.

Council Member Salinas commented that the Development Pipeline kept getting bigger and better and he thanked staff for their efforts.

**ADJOURNMENT:** The meeting was adjourned at 5:49 p.m.



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**File #:** ACT 22-076

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**DATE:** September 22, 2022

**TO:** Council Economic Development Committee

**FROM:** Acting Assistant City Manager

**SUBJECT**

Approval of FY23 CEDC Regular Meeting Schedule

**RECOMMENDATION**

That Committee Members review and approve the attached FY23 Council Economic Development Committee Regular Meeting Schedule.

**ATTACHMENTS**

Attachment I FY23 Draft CEDC Regular Meeting Schedule



## COUNCIL ECONOMIC DEVELOPMENT COMMITTEE 2022-2023 MEETING SCHEDULE

Meeting Location: CITY HALL  
2ND FLOOR, CONFERENCE ROOM 2A  
777 B STREET  
HAYWARD, CALIFORNIA  
**(Meetings held remotely until further notice)**

Meeting Time: 5:00-6:30 P. M.

Meeting Dates: The Council Economic Development Committee meets on the fourth Thursday of each month except where noted otherwise.

September 22, 2022

October 27, 2022

~~November 24, 2022~~ Cancelled

~~December 22, 2022~~ Cancelled

January 26, 2023

February 23, 2023

March 23, 2023

April 27, 2023

May 25, 2023

June 22, 2023

July 27, 2023



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**File #:** RPT 22-076

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**DATE:** September 22, 2022

**TO:** Council Economic Development Committee

**FROM:** Acting Development Services Director

**SUBJECT**

Strategic Roadmap Priority: Update to the Alcoholic Beverage Ordinance

**RECOMMENDATION**

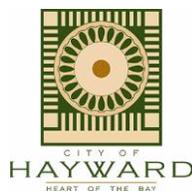
That the Council Economic Development Committee (CEDC) reviews the report and provides feedback to City staff on the items for consideration at the September 22, 2022 CEDC meeting.

**SUMMARY**

When the City Council adopted its Strategic Roadmap Priorities for 2022, one of the priorities identified was to have staff look into possible revisions to the City's Alcoholic Beverage Outlets (ABO) Ordinance ([Hayward Municipal Code Section 10-1.2750](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HACAMUCO_CH10PLZOSU_ART1ZOOR_S10-1.2750ALBEOU) [<https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HACAMUCO\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.2750ALBEOU>](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HACAMUCO_CH10PLZOSU_ART1ZOOR_S10-1.2750ALBEOU)) to better support existing full-service restaurants and encourage more new restaurants to open in the City. In preparation for this update, staff conducted outreach to various stakeholders to solicit input on possible amendments to the ABO Ordinance that could help address the City Council's priority and also potentially attract an alcoholic beverage manufacturing facility having a food service component such as a brewpub to the City as well. To date, staff has received very little feedback from these outreach efforts, suggesting that the ABO Ordinance is not acting as a significant deterrent to growth in the City's full-service restaurant industry. Nevertheless, staff has identified some potential amendments to the ABO Ordinance, which may help address the Council's priority.

**ATTACHMENTS**

Attachment I            Staff Report  
Attachment II          Hayward Municipal Code Section 10-1.2750



**DATE:** July 28, 2022

**TO:** Council Economic Development Committee

**FROM:** Acting Development Services Director

**SUBJECT:** Strategic Roadmap Priority: Update to the Alcoholic Beverage Ordinance

### **RECOMMENDATION**

That the Council Economic Development Committee (CEDC) reviews the report and provides feedback to City staff on the items for consideration at the July 28, 2022 CEDC meeting.

### **SUMMARY**

When the City Council adopted its Strategic Roadmap Priorities for 2022, one of the priorities identified was to have staff look into possible revisions to the City’s Alcoholic Beverage Outlets (ABO) Ordinance ([Hayward Municipal Code Section 10-1.2750](#)) to better support existing full-service restaurants and encourage more new restaurants to open in the City. In preparation for this update, staff conducted outreach to various stakeholders to solicit input on possible amendments to the ABO Ordinance that could help address the City Council’s priority and also potentially attract an alcoholic beverage manufacturing facility having a food service component such as a brewpub to the City as well. To date, staff has received very little feedback from these outreach efforts, suggesting that the ABO Ordinance is not acting as a significant deterrent to growth in the City’s full-service restaurant industry. Nevertheless, staff has identified some potential amendments to the ABO Ordinance, which may help address the Council’s priority.

### **BACKGROUND**

On January 28, 2020, the City Council adopted its FY 2021-23 Strategic Roadmap. The Roadmap identified six strategic priorities for staff to work on over its 3-year lifespan, one of which was to “Grow the Economy.” Included as one of the five projects under this priority was a call to invest in programs that support Hayward businesses and workers. One of the efforts identified under this particular project calls for “revising the alcohol use regulations to support existing and encourage more full-service restaurants” in Year 3 of the Roadmap’s lifespan. Staff from the Planning Division began working with the Police Department and Economic Development Division on this effort in early 2022 to identify possible changes to the ABO Ordinance that could be supported by all departments. Staff subsequently began

conducting outreach to key stakeholders during the spring in an attempt to solicit feedback on the topic before bringing the item to the CEDC.

## **DISCUSSION**

### Summary of Outreach Efforts to Date

In April of this year, Planning Division staff interviewed former Chamber of Commerce president, Kim Huggett, and Downtown Hayward Improvement Association District Manager Dominic Mandri to obtain their input and determine whether their memberships had raised any significant issues with the City's existing regulations governing alcohol sales at restaurants. Neither Mr. Huggett nor Mr. Mandri had received any complaints regarding the current regulations, and neither had any strong opinions for how the City could potentially change them to help existing restaurants improve their business and entice new restaurants to locate in Hayward. Both of them did, however, feel 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. Mr. Huggett, in particular, felt that this was an unrealistic requirement and one that was too difficult to enforce. He felt 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 providing full food service in addition to alcohol service.

In late April, staff also collaborated with the Chamber to circulate a flyer to its membership inviting anyone interested to offer opinions on the subject. The flyer was emailed to all 1,200 members and 341 members viewed the email, equating to a 36 percent viewing rate. In response to this effort, Planning staff was contacted by one individual, the owner of the Dirty Bird Lounge, Aric Yeverino. Finally, the Chamber also published a small article with the same invitation in its May newsletter. No additional responses were received in response to this article.

Planning staff interviewed Mr. Yeverino in early June. He felt strongly that the current 60:40 ratio was too strict and very difficult for any restaurant offering a full bar to comply with given how expensive alcoholic beverages such as premium wines and cocktails can be. He felt that relaxing this standard would reduce anxiety experienced by restaurant owners like himself who do a significant amount of business selling alcohol in addition to food, and his preference would be to eliminate the ratio altogether. Mr. Yeverino also expressed a desire to revise 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 the ABO Ordinance. 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 the ABC, as long as the kitchen remains open up until 30 minutes prior to the bar's closing time.

In May, staff contacted the owners/operators of two East Bay microbreweries who had recently expressed interest in locating in Hayward, one located in Danville and the other in Alameda. Like Mr. Yeverino, the owner/operator of the Alameda-based microbrewery also said that it would help if the City changed the ABO Ordinance to allow a microbrewery to install a kitchen but lease it out to a food service provider rather than have to hire its own food service staff. According to both operators, it can be difficult for individuals who are in the business of producing and/or selling alcohol to try to run a food service in the establishment as well since they may have no experience running a restaurant. The owner/operator of the Danville-based microbrewery did not have any comments specific to the current alcohol regulations but did suggest that the City should consider changing its industrial land use regulations to allow microbreweries as permitted uses rather than requiring them to obtain conditional use permits.

Finally, in early July, staff sent an email to a list of nearly 110 local restaurant owners maintained by the Economic Development Division notifying them of this CEDC meeting and inviting them to contact Planning staff for more information. The City's Community & Media Relations Division also published an article in the July edition of The Stack inviting the public to participate in the CEDC meeting and ran a Stack Extra with the article on the City's website on July 11 as well. Staff was subsequently contacted by the owner of Casa del Toro and the local Metro Taquero restaurants, Alejandro Gamarra. Mr. Gamarra felt that allowing restaurants to offer longer "happy hours" with earlier start times could help them increase business and better cover their expenses, but that was his only suggestion.

In response to the Stack Extra article, one member of the public also contacted staff and opposed making any amendments to the current regulations because she felt it would result in an overall increase in alcohol consumption and the problems often associated with it, such as drunk driving.

#### Possible Amendments to the ABO Ordinance

##### ***Relaxing the Required 60:40 Ratio of Food Sales to Alcohol Sales:***

Section 10-1.2751(i) of the ABO Ordinance currently defines a "full service restaurant" as follows:

A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records

pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.

- (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
- (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
- (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
- (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.

This definition 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 up until midnight, all without requiring any discretionary approvals from City staff, the Planning Commission, or the City Council. However, as stated in the "Summary of Outreach Efforts to Date" section, above, some of the stakeholders who provided input did feel that the current requirement to maintain a minimum of 60 percent of gross receipts from food sales was very difficult to comply with, particularly for establishments that offer premium cocktails and wine.

Staff agrees that this standard is somewhat high and that it could be relaxed. As such, one potential change that may help increase business at existing restaurants and entice new restaurants to open in the City could be to reduce the 60:40 ratio to 50:50. This would be consistent with how the ABC has historically defined bona-fide eating places apart from bars and would ensure that a significant amount of business at each establishment continues to be derived from food sales.

***Allow Different Bar/Restaurant Operators on Same Premises:***

Another potential change to the definition, and one that was also suggested by various stakeholders during the outreach process, could be to allow the owner of an establishment that sells alcohol and has a full-service kitchen to lease the kitchen out to a food service provider through a business partnership, and still allow this type of venture to be considered a full-service restaurant. This would enable an individual or company that is in the alcohol sales/production business, including owners of bars, microbreweries, wineries, or distilleries, to meet the ABO Ordinance's definition of a full-service restaurant by providing an on-site, full-service kitchen to an individual or company that is in the food service business and who could provide that service to the establishment's clientele. The establishment would be able to function like a bar and grill, brewpub, winery, or distillery and be afforded all of the benefits that the ABO Ordinance provides full-service restaurants, even though it would technically house two separate businesses. This change to the definition could be effective at enticing alcohol-oriented businesses such as microbreweries and wineries to Hayward by giving their owners who often do not have experience running restaurants the ability to find a food service provider to run the kitchen and handle the food service component of the business.

The definition could also be further modified to allow the kitchen to either be constructed within the actual establishment or as a freestanding onsite structure that is anchored to the ground and connected to all necessary utilities such as water and sewer. The City recently awarded an Oakland-based business, Arthur Mac's Tap & Snack, a financial assistance incentive to proceed with a concept for a full-service restaurant with outdoor beer garden on a vacant lot at 1060 B Street in which the kitchen and bar will both be housed in shipping containers that will be modified and outfitted with cooking facilities, alcohol-serving facilities, and restroom facilities. As such, a precedent for this type of full-service restaurant layout has already been established; the only change to the definition necessary would be to allow the kitchen and food service to be operated by a separate entity from the alcohol serving establishment.

If the definition is changed to allow these types of arrangements, then to ensure that an establishment utilizing such an arrangement maintains the food service component at all times while alcohol is served, staff advises that it only be allowed to operate under one of three specific types of ABC liquor licenses: a Type 41 license; Type 47 license; or Type 75 license. All three of these licenses require the establishment to operate as a restaurant (or bona fide eating place) as opposed to a bar, with meal service provided up until 30 minutes prior to closing time. The Type 41 license only allows for the sale of beer and wine with meals, while the 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 one of these types of licenses is found to not be operating as a bona fide eating place, then the ABC could take enforcement action or even revoke its license if necessary. This ability to enforce on ABC's part would be effective at ensuring the establishment maintains the food service component as part of its everyday operations.

***Extend Happy Hour Discount Pricing Times:***

Another potential change to the definition suggested by one stakeholder could be to extend the hours when a full-service restaurant is allowed to offer discount (happy hour) pricing for alcoholic beverages. It was suggested that the happy hour start time could be moved up from

4:00 PM to 2:00 PM to enable restaurants to capture more business from people who work earlier shifts and finish in the early afternoon. Staff believes that the current hours of 4:00 to 9:00 are adequate as is. However, if the CEDC wishes to move up the start time to an earlier time in response to the suggestion, then staff recommends that the end time be made earlier as well. For instance, if the definition is changed to allow discount pricing to start at 2:00 instead of 4:00, then staff recommends that the end time be changed from 9:00 to 7:00 as well. Additionally, the current requirement that discounted appetizers and non-alcoholic beverages be offered in conjunction with discounted alcoholic beverages should remain in effect during any new hours.

### **Questions for CEDC Members**

Staff would like to obtain feedback from the CEDC regarding the possible amendments and offers the following questions for discussion:

1. Should the required ratio of food sales to alcohol sales for full-service restaurants currently prescribed by the ABO Ordinance be relaxed from 60:40 to 50:50?
2. Should the definition of full-service restaurant contained in the ABO Ordinance be revised to allow partnerships between alcoholic beverage outlet operators and kitchen/food service operators in a single establishment to qualify as one?
3. Should the City allow freestanding kitchens (such as the Arthur Mac's example cited above) built on the same premises as an alcohol beverage outlet and operated by a separate food service operator to satisfy the requirement for a full-service kitchen for the purposes of defining the outlet as a full-service restaurant?
4. Should the City extend the hours when a full-service restaurant is allowed to offer discount pricing for alcoholic beverages?

### **NEXT STEPS**

Following feedback from the CEDC, staff will prepare draft amendments to the ABO Ordinance for consideration by the Planning Commission and City Council. All amendments to Chapter 10 of the Municipal Code require a recommendation from the Planning Commission, followed by introduction of the draft amended ordinance(s) by the City Council at a first hearing, and, ultimately, adoption of the ordinance by the Council at a subsequent hearing. Staff expects to be able to present the draft amendments to the Commission and Council this Fall.

*Prepared by:* Steve Kolwalski, Associate Planner

*Recommended by:* Sara Buizer, Acting Development Services Director  
Paul Nguyen, Economic Development Manager

Approved by:



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Kelly McAdoo, City Manager

## *SEC. 10-1.2750 ALCOHOLIC BEVERAGE OUTLETS<sup>1</sup>*

### **SEC. 10-1.2750 PURPOSE.**

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Alcoholic Beverage Outlet regulations is to provide for the orderly integration of alcohol-related uses, including the sale of wine and beer, in a manner that will protect public safety and encourage business growth.

- a. In adopting these regulations, it is 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. At the same time, it is also recognized that regulations that promote responsible alcohol sales and consumption can contribute to economic vitality, particularly in the downtown area of Hayward.
- b. Problems which can result include, but are not limited to, crime, littering, loitering, public intoxication, disturbance of the peace, discouragement of more desirable and needed commercial uses, and other similar problems connected primarily with the regular congregation of persons around establishments engaged in the sale of alcoholic beverages for consumption on or off the premises.
- c. It is also recognized that existence of such problems creates a serious impact on the peace, health, safety and welfare of residents of nearby areas including fear for the safety of children and visitors to the area, as well as contributing to the deterioration of neighborhoods and concomitant devaluation of property and destruction of community values and quality of life.
- d. These regulations are intended to ameliorate the types of problems identified above by restricting the location of establishments selling alcoholic beverages in relation to one another and their proximity to facilities primarily devoted to use by children and families with children.
- e. The use permit process is a means to review the effects of establishments selling alcoholic beverages on neighboring uses on a case by case basis, and to prevent the undue concentration of and undesirable impacts on the community stemming from such uses by the imposition of reasonable conditions upon the operation of such uses.

### **SEC. 10-1.2751 DEFINITIONS.**

For the purpose of these regulations, certain terms and words shall have the following meaning:

- a. "Alcoholic Beverage Sales Establishment" shall mean an establishment involving the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages. All alcoholic beverage sales establishments are required to obtain the appropriate license from the State of California Department of Alcoholic Beverage Control (ABC), and an annual alcoholic beverage retail license and a conditional use permit from the City, unless otherwise indicated in these regulations. The fees for the annual alcoholic beverage retail licenses shall be established by the City Council from time to time in

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<sup>1</sup>Note(s)—Ordinance 13-12 , adding Sections 10-1.2750 through 10-1.2776, Chapter 10, Article 1 of the Hayward Municipal Code relating to Alcohol Beverage Regulations, adopted November 19, 2013.

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the City's Master Fee Schedule, and is payable at the time the establishment obtains or renews its business license.

- i. "On-Sale Alcohol-Related Establishment" means any business wherein alcoholic beverages are sold on the premises and are to be consumed on the premises including all related buildings, structures, open spaces and parking areas. This shall also include any facility, inclusive of a portion thereof, which is rented out for special event functions wherein alcoholic beverages are sold or given away on the premises and are to be consumed on the premises.
- ii. "Off-Sale Alcohol-Related Establishment" means any business that sells alcoholic beverages in original, unopened packages for consumption off of the premises where sold.
- b. "Cabaret" is defined in Chapter 6, Article 2 of this Code. All cabarets that serve alcohol must obtain a conditional use permit, unless the cabaret has deemed approved status as defined herein, and a cabaret license as required by Chapter 6, Article 2 of this code.
- c. "Critical Incident" means any event that, in the sole discretion of the Chief of Police, results in a crime of violence; or a large, unruly gathering necessitating a police response of five (5) or more police officers, directly or indirectly resulting from the operation of an alcoholic beverage sales establishment. Crimes of violence include but are not limited to discharge of firearms, robbery, physical assault or assault with a deadly weapon. Police response is the arrival of a police officer at the scene of a disturbance to render whatever service is reasonably required in order to protect public health, safety or welfare.
- d. "Deemed Approved Alcoholic Beverage Establishments" means those establishments identified in Section 10-1.2767.
- e. "Downtown Entertainment Area" means that area generally between A and D Streets and between Second Street and Grand Street.
- f. "Licensee" means the holder of an ABC license, an alcoholic beverage retail license, a cabaret license and/or a use permit for the operation of an alcoholic beverage sales establishment.
- g. "Liquor store" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All liquor stores must obtain a conditional use permit, unless the liquor store has deemed approved status as hereinafter provided. Liquor stores shall not be permitted in the Downtown Entertainment Area, until such time as ABC indicates that the census tract encompassing the Downtown Entertainment Area does not have an overconcentration of off-sale ABC licenses.
- h. "Night Club" see definition of "Bar" in Section 10-1.3500 of this Ordinance ("Definitions"). All night clubs must obtain a conditional use permit, unless the night club has deemed approved status as hereinafter provided. Any night club that permits dancing or live entertainment on a regular basis must obtain a cabaret license as required by Chapter 6, Article 2 of this code, in addition to a conditional use permit.
- i. Restaurant—Full Service. A "full service restaurant" means a sit-down alcoholic beverage sales establishment which is regularly used and kept open for the primary purpose of serving meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals, and which may include an incidental bar, cocktail lounge, or other area designated primarily for the service of alcohol on the premises, which operates as part of the restaurant and is subservient to the primary function of the establishment, and which maintains a minimum of 60 percent of its gross receipts from the sale of meals. For purposes of these regulations, a full-service restaurant does not include fast food restaurants. For the purpose of verifying compliance with the foregoing sales requirement, the sales receipts, accounting ledgers, and any other business records pertaining to the sales of food and alcohol shall be open for inspection by the Chief of Police or his or her designee during regular business hours

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of the restaurant upon seventy-two (72) hours' prior written notice. Full-service restaurants may operate without a conditional use permit, provided that the restaurant observes the performance standards set forth in Section 10-1.2752 and meets the following criteria.

- (1) A full service restaurant shall serve meals to guests at all times the establishment is open for business. An establishment shall not be considered a full-service restaurant if it serves alcohol without meal service being provided.
  - (2) Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.
  - (3) A full service restaurant may offer live or recorded music until midnight without a cabaret license or permit, provided the music is within the parameters established by the City's Noise Ordinance. Dancing or other form of live entertainment besides music is not allowed unless a conditional use permit and a cabaret license or permit is obtained, in accordance with Chapter 6, Article 2 of this code. The right to have live or recorded music in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
  - (4) A full service restaurant may offer reduced price alcoholic beverages served on the premises between the hours of 4:00 p.m. and 9:00 p.m., provided that such beverages are offered in conjunction with reduced price appetizers and reduced price non-alcoholic beverages. The right to have reduced price alcoholic beverages in a full-service restaurant may be revoked or suspended if violations of the requirements in this section or performance standards contained in Section 10-1.2752 occur, in accordance with the procedures outlined in Section 10-1.2770 of these regulations.
- j. "Wine Shop" is defined in Section 10-1.3500 of this Ordinance ("Definitions"). All wine shops must obtain an administrative use permit, unless the wine shop has deemed approved status as hereinafter provided.

## **SEC. 10-1.2752 PERFORMANCE STANDARDS FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.**

All alcoholic beverage sales establishments shall abide by all of the following performance standards:

- a. The establishment does not result in adverse effects to the health, peace or safety of persons residing, visiting, or working in the surrounding area; and
- b. The establishment does not result in jeopardizing or endangering the public health or safety of persons residing, visiting, or working in the surrounding area; and
- c. The establishment does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests; and
- d. The establishment does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute; and

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- e. The establishment's upkeep and operating characteristics are compatible with and do not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood; and
  - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed (exempting employees at retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages); and
  - g. The establishment complies with all of ABC's Retail Operating Standards; and
  - h. The establishment does not sell alcoholic beverages to minors.

### **SEC. 10-1.2753 SECURITY REQUIREMENTS FOR ON-SALE ALCOHOL-RELATED ESTABLISHMENTS WITH CABARET LICENSES.**

All on-sale alcohol-related establishments that offer entertainment pursuant to a cabaret license or cabaret permit shall comply with the performance standards of Chapter 6, Article 2, "Cabarets and Dances."

### **SEC. 10-1.2754 CONDITIONAL USE PERMITS FOR NEW ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.**

Except as otherwise provided herein, no new alcoholic beverage sales establishment may sell alcoholic beverages for either on-site or off-site consumption unless a conditional use permit has been approved for such establishment. A conditional use permit is not required if the establishment is one of the following:

- a. Retail stores having 10,000 square feet or more of floor area and which devote not more than five (5) percent of such floor area to the sale, display, and storage of alcoholic beverages;
- b. Full-service restaurants; or
- c. Special event functions such as neighborhood or community festivals, provided all of the following criteria are met:
  - (1) The person, group, business, or organization sponsoring the event secures all applicable permits from the City of Hayward;
  - (2) The person, group, business, or organization sponsoring the event obtains a temporary on-sale ABC license for each of the dates the event will be held; and
  - (3) The duration of the event does not exceed three (3) consecutive days or five (5) days in any single calendar year, such as the Russell City Blues Festival and the summer street parties sponsored by the Chamber of Commerce.

### **SEC. 10-1.2755 POSTING CONDITIONS OF APPROVAL.**

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.

### **SEC. 10-1.2756 FINDINGS.**

In making the findings required by Section 10-1.2815 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in

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an undue concentration in the area of establishments dispensing alcoholic beverages. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

**SEC. 10-1.2757 APPLICATION FOR CONDITIONAL USE PERMIT.**

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit shall set forth and include the following:

- a. The type of ABC license the applicant is seeking for the establishment; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

**SEC. 10-1.2758 REQUIREMENTS FOR NEW ON-SALE ALCOHOL-RELATED ESTABLISHMENTS.**

- a. With the exception of the Downtown Entertainment Area, no new on-sale alcohol-related establishment shall be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreational center, day care center, or other similar use.
- b. Notwithstanding the above:
  - (1) Outside the Downtown Entertainment Area, the Planning Commission may recommend to the City Council a lesser alternative distance requirement in a particular instance, if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to sale and use of alcoholic beverages.
  - (2) Within the Downtown Entertainment Area, no on-sale alcohol-related establishment shall be established or maintained within a radius of one hundred (100) feet of any off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or of any school, public park, library, playground, recreational center, day care center, or other similar use. However, on-sale alcohol-related establishments that front B Street between Watkins Street and Foothill Boulevard, or Main Street between A and C Streets, shall not be restricted with respect to proximity to any school, public park, library, playground, recreational center, day care center, or other similar use.
  - (3) Within the Downtown Entertainment Area, no more than two (2) on-sale alcohol-related establishments shall be permitted per block side or face, with the exception of new or existing establishments that are exempted under Section 10-1.2754. Determination of location on a block side or block face shall be made by referring to the street address of the on-sale alcohol-related establishments on a block between the two immediate cross streets.

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## **SEC. 10-1.2759 REQUIREMENTS FOR NEW OFF-SALE ALCOHOL-RELATED ESTABLISHMENTS.**

With the exception of the Downtown Entertainment Area, no new off-sale alcohol-related establishment will be permitted within a radius of five hundred (500) feet of any other on-sale or off-sale alcohol-related establishment (with the exception of new or existing establishments which are exempted under Section 10-1.2754), or within five hundred (500) feet of any school, public park, library, playground, recreation center, day care center, or other similar use.

## **SEC. 10-1.2760 CONDITIONS OF APPROVAL.**

To implement official City policy and to attain the purpose for requiring use permit approval, as stated in Section 10-1.3205 and Section 10-1.2750, as well as the findings listed in Section 10-1.3225, the Planning Commission, or the City Council on referral or appeal, may attach to approvals such conditions as it deems necessary. Violations of any of these conditions unless explicitly stated otherwise are independent grounds for permit revocation. These conditions may include, but are not limited to:

- a. Commission by the licensee or any employee of the licensee of a criminal offense for which: 1) the licensed establishment was the location where the offense was committed or where there is a direct correlation between the licensee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare.
- b. Alcoholic beverage sales establishments shall provide exterior lighting that is adequate for the illumination and protection of the premises. Lighting shall be installed in such a manner that it does not shine into adjacent residential properties.
- c. Alcoholic beverage sales establishments with off-sale privileges shall prominently post a sign on the exterior of the premises stating that consumption of alcoholic beverages in public is prohibited by law pursuant Chapter 4 of the Hayward Municipal Code.
- d. Alcoholic beverage sales establishments shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
- e. No beer or malt liquor shall be sold in bottles or containers larger than twelve (12) ounces for off-site consumption.
- f. Beer and malt liquor in containers of twelve (12) ounces or less shall not be sold in units of less than one six-pack for off-site consumption.
- g. Wine shall not be sold in bottles or containers smaller than seven hundred fifty (750) ml and wine coolers shall not be sold in containers smaller than twelve (12) ounces and in units of less than one four-pack for off-site consumption.
- h. Distilled spirits shall not be sold in bottles or containers smaller than seven hundred [fifty] (750) ml for off-site consumption.
- i. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the alcoholic beverage sales establishment.
- j. Alcoholic beverage sales establishments shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way.

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**SEC. 10-1.2761 EXISTING ESTABLISHMENTS SELLING ALCOHOLIC BEVERAGES.**

Any alcoholic beverage sales establishment lawfully operating prior to the effective date of these regulations and licensed by ABC for the retail sale of alcoholic beverages for on-site or off-site consumption may continue such operations after the effective date of these regulations. Upon the occurrence of any of the following, however, operation of the establishment shall require approval of a conditional use permit:

- a. The alcoholic beverage sales establishment changes its type of ABC license within a license classification; or
- b. There is a substantial change in the mode or character of operation. As used herein, the phrase "substantial change of mode or character of operation" includes, but is not limited to, expansion in the amount of area devoted to the sales or consumption of alcoholic beverages, a pattern of conduct in violation of other laws or regulations, or a cessation of use for a period of six (6) months or more.

**SEC. 10-1.2762 MODIFICATIONS IN PERMITTED ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.**

Any licensed alcoholic beverage sales establishment operating under either a conditional or an administrative use permit after the effective date of these regulations shall apply for a modification of its use permit pursuant to Section 10-1.3260 of the Hayward Municipal Code when either of the following occurs:

- a. The alcoholic beverage sales establishment changes its type of ABC license within a classification; or
- b. There is a substantial change in the mode or character of operations of the alcoholic beverage sales establishment as defined in Section 10-1.2761.

**SEC. 10-1.2763 NOTICE.**

In addition to the notice required by Section 10-1.2820, in the case of applications for conditional use permits or appeals of administrative use permits pursuant to these regulations, notice shall also be provided to occupants of buildings located on parcels within five hundred (500) feet of the perimeter of the subject property for which use permit approval is sought.

**SEC. 10-1.2764 LETTER OF PUBLIC CONVENIENCE OR NECESSITY.**

The Planning Director is authorized to issue letters of public convenience or necessity to ABC for alcoholic beverage establishments that have approved conditional or administrative use permits or where the establishment engaged in the sale of alcoholic beverages is exempt from a conditional use permit. No finding of public convenience or necessity shall be made to ABC in connection with the licensing of bars or liquor stores in any Census tract in which ABC indicates that there is an over-concentration of ABC licenses, unless the Planning Commission, or City Council on appeal or call-up, makes the findings contained in Section 10-1.2756 and approves new bars with a super-majority vote of at least five members (i.e., at least two-thirds of its members).

**SEC. 10-1.2765 EMERGENCY ACTION TO ABATE IMMINENT THREATS TO PUBLIC HEALTH, SAFETY OR WELFARE; SUMMARY SUSPENSION PROCEDURES.**

Whenever the Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, determines that the operation of an alcoholic beverage sales establishment has caused an imminent threat to public health, safety or welfare requiring immediate emergency action, the following procedures will be implemented:

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- a. Informal Procedure. The Chief of Police or designee will attempt to contact the licensee informally by telephone, by electronic communication, in-person meeting or by such other means of communication that the Chief reasonably determines will result in notice to the licensee of the imminent threat and the need for emergency action. The Chief will attempt to discuss with the licensee the circumstances resulting in the imminent threat to public health, safety or welfare and to obtain the licensee's consent for voluntary compliance measures that will, in the reasonable judgment of the Chief of Police, effectively abate the imminent threat to public health, safety or welfare. The informal procedure described in this subsection shall not prohibit the Chief of Police or designee from issuing a notice of suspension pursuant to subsection (b) below if:
- (1) The attempt to contact the licensee fails; or
  - (2) The licensee fails or refuses to immediately implement the voluntary compliance measures that the Chief of Police deems will effectively abate the imminent threat; or
  - (3) The Chief of Police determines that the compliance measures that the licensee implements are insufficient to effectively abate the imminent threat and there are no reasonably feasible additional voluntary compliance measures that would abate the imminent threat; or
  - (4) The Chief of Police determines that the threat to the public health, safety or welfare is so urgent that compliance with the informal procedure set forth above will further jeopardize the public, health, safety or welfare.
- b. Summary Suspension. The Chief of Police, after consultation with the City Manager and the City Attorney, or their respective designees, may summarily suspend the alcoholic beverage sales establishment's City-issued license or permit to operate, for a period of time not to exceed thirty (30) days, if the Chief, the City Manager and the City Attorney, or their respective designees, determine that one or more of the following conditions exist:
- (1) There is an urgent need to take immediate action to protect the public from a substantial threat of serious bodily injury or death existing on or within one hundred (150) feet of the alcoholic beverage sales establishment; or
  - (2) There has been a violation of the alcoholic beverage sales establishment's license or permit or other state, local or federal law or regulation that creates an imminent threat to the public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment; or
  - (3) The licensee has conducted the operation of the alcoholic beverage sales establishment in a manner that creates or results in a public nuisance as defined by Section 4-1.00 of this Code or California Civil Code Sections 3479 and 3480, and that the public nuisance creates an imminent threat to public health, safety or welfare on or within one hundred fifty (150) feet of the licensed establishment.
- c. Notice of Summary Suspension. The summary suspension shall take effect immediately on service of written notice to the licensee of the summary suspension. Written notice shall be provided by personal service on the licensee or, if personal service is not feasible, by U.S. mail and posting in a conspicuous place at the alcoholic beverages sales establishment. The written notice of summary suspension shall include the following information:
- (1) The effective date and the period of the summary suspension; and
  - (2) The grounds and reasons upon which the summary suspension is based; and
  - (3) The process and time deadline for requesting an administrative hearing before the Chief of Police, the City Manager and the City Attorney, or their respective designees (the "Summary Suspension Reviewing Officials") to appeal the summary suspension; and

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- (4) A copy of these Alcohol Beverage Outlet regulations governing summary suspensions.
- d. Duration of Summary Suspension. The summary suspension shall remain in effect until the earliest of the following occurs:
    - (1) The Chief of Police amends the notice of summary suspension to shorten the time period the suspension remains in effect; or
    - (2) The Summary Suspension Reviewing Officials issue a decision after a conducting hearing that modifies or overrules the summary suspension; or
    - (3) Thirty (30) days have passed since the written notice of summary suspension was served.
  - e. Appeal of Summary Suspension.
    - (1) If the licensee wishes to appeal the summary suspension, the licensee must file a written request for an administrative hearing before the Summary Suspension Reviewing Officials with the Chief of Police within three (3) business days of service of the notice of summary suspension. The written request shall set forth the grounds for challenging the summary suspension and contact information for the receipt of future notices from the City. If the Chief of Police does not receive a written request for a hearing within this time period, the notice of summary suspension shall become final.
    - (2) The administrative hearing shall be conducted by the Summary Suspension Reviewing Officials within five (5) business days of receipt of the licensee's request for the hearing, unless the licensee requests an extension of time.
    - (3) The Chief of Police shall serve written notice of the hearing on the licensee not later than two (2) business days after receipt of the written request for the hearing from the licensee. The notice of hearing shall contain the date, time and place where the hearing will be conducted. Service of the notice of hearing shall be made in accordance with the contact information provided by the licensee.
    - (4) At the hearing, the licensee shall be given the opportunity to present evidence that either rebuts the grounds for which the summary suspension was issued or demonstrates that the reason or reasons leading to the summary suspension have been mitigated or corrected. The hearing will be conducted informally and technical rules of evidence shall not apply. All evidence that the Summary Suspension Reviewing Officials deem reliable, relevant and not unduly repetitious may be considered.
    - (5) Following the conclusion of the hearing, the Summary Suspension Reviewing Officials shall issue a decision that affirms, modifies or overrules the summary suspension. If the summary suspension is modified or affirmed, additional conditions may be imposed on the license and/or use permit, provided those additional conditions were reviewed at the hearing and those additional conditions are intended to protect public health, safety and welfare or prevent the conduct or condition that gave rise to the summary suspension.
    - (6) The Summary Suspension Reviewing Officials shall either issue an oral decision at the close of the hearing or the Chief of Police may communicate the decision by telephone within twenty-four (24) hours after the close of the hearing. In addition, the licensee shall be served with a written decision within three (3) business days after the close of the hearing. The Summary Suspension Reviewing Officials' decision shall be final on the tenth (10) after the written decision is served, unless appealed as set forth in this subsection.
    - (7) The licensee may appeal the decision of the Summary Suspension Reviewing Officials to the Planning Commission as provided in Section 10-1.2845. Decisions of the Planning Commission

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may be appealed by the licensee to the City Council as provided in Sections 10-1.2825(b) and 10-1.2845. Decisions of the City Council are final.

- (8) Costs of the administrative hearings authorized by this subsection may be established by the City Council from time to time in the Master Fee Schedule and shall be paid by the licensee.
- (9) The failure of any licensee to receive any notice required by this subsection shall not affect the validity of any proceeding hereunder.

#### **SEC. 10-1.2766 CRITICAL INCIDENT RESPONSE FEE FOR ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS.**

In addition to all other fees imposed in accordance with these Alcoholic Beverage Outlet regulations, a critical incident response fee shall be imposed on the party responsible for such incident, including those with deemed approved status as hereinafter provided, whenever the police department responds to a critical incident at or directly or indirectly arising from the operation of an alcoholic beverage sales establishment, and determines through investigation such party is responsible for such incident. No warning shall be required before the imposition of the critical incident response fee. The critical incident response fee shall be the actual cost of police and fire department services, including but not limited to personnel, equipment and mutual aid response costs. The Chief of Police shall provide the party responsible for such incident with an itemized bill for the critical incident, which shall be due and payable in full within thirty (30) days of delivery.

#### **SEC. 10-1.2767 LEGAL NONCONFORMING ALCOHOLIC BEVERAGE SALES ESTABLISHMENTS; DEEMED APPROVED STATUS.**

All establishments engaged in on-sale or off-sale alcoholic beverage sales that were legal and nonconforming uses on the date these Alcoholic Beverage Outlet regulations became effective shall automatically be deemed approved uses as of the effective date of these Alcoholic Beverage Outlet regulations and shall no longer be considered legal, nonconforming uses. Each such deemed approved use may continue to lawfully operate, provided that it does not change its type of retail ABC license or substantially change its mode of operation, as provided in Section 10-1.2761, and provided that it is operated and maintained in compliance with the "deemed approved performance standards" set forth in Section 10-1.2769.

#### **SEC. 10-1.2768 NOTIFICATION TO OWNERS OF DEEMED APPROVED STATUS.**

The Planning Manager or his or her designee shall notify the owner of each deemed approved alcoholic beverage sales establishment, and the property owner if not the same, of the establishment's deemed approved status. Such notice shall be sent via certified mail return receipt requested and shall include a copy of the deemed approved performance standards, with the requirement that these standards be posted in a conspicuous and unobstructed place visible from the entrance of the establishment; that a fee is required and the amount of such fee; and that the establishment is required to comply with all aspects of the deemed approved regulations.

#### **SEC. 10-1.2769 DEEMED APPROVED PERFORMANCE STANDARDS.**

An alcoholic beverage sales establishment shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- a. It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;

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- b. It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
  - c. It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
  - d. It does not result in violations of any applicable provision of any other City, state, or federal regulation, ordinance or statute; and
  - e. Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
  - f. The establishment's employees, except those employees with no customer contact, attend and successfully complete a training class on Responsible Beverage Service within ninety (90) days of being employed; and
  - g. The establishment complies with all of ABC's Retail Operating Standards; and
  - h. The establishment does not sell alcoholic beverages to minors.

#### **SEC. 10-1.2770 PROCEDURE FOR ENFORCEMENT OF DEEMED APPROVED PERFORMANCE STANDARDS.**

- a. When the City Manager or his or her designee determines that a deemed approved alcoholic beverage sales establishment is operating in violation of the deemed approved performance standards, the City may issue a written notice of violation to the owner of the alcoholic beverage sales establishment and the property owner, if not the same. The notice of violation shall be sent by certified mail. Failure of any person to receive notice given pursuant to this section shall not affect the validity of any proceeding that may occur hereunder.
- b. Notice of violation shall describe the nature of the violation, the corrective action to be taken and the time within which the corrective action must be taken. A notice of violation shall also either:
  - (1) Include a warning that a failure to correct the violation within the required time may result in the revocation of the establishment's deemed approved status and the imposition of penalties as provided in the City's Master Fee Schedule; or
  - (2) Provide notice that a public hearing before the Planning Commission will be scheduled, as provided in Section 10-1.2820, at which the Planning Commission shall determine whether the alcoholic beverage sales establishment as operated or maintained constitutes a nuisance and/or whether the establishment is in violation of any other applicable requirements.
- c. After such notice and public hearing the Planning Commission may modify or revoke the deemed approved status of the alcoholic beverage sales establishment. Any such action shall be supported by written findings that the establishment as operated or maintained constitutes a nuisance. As part of any modification, the Planning Commission may impose such conditions as the Planning Commission deems appropriate, including those necessary to obtain compliance with the deemed approved performance standards, to obtain compliance with other applicable laws and to protect the public health, safety and general welfare. If the Planning Commission determines that the establishment's deemed approved status should be revoked, the Planning Commission must find that the imposition of additional conditions on the alcoholic beverage sales establishment is not feasible.

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- d. In deciding whether an alcoholic beverage sales establishment has violated the deemed approved performance standards, and/or in determining the appropriateness of modifying or revoking the deemed approved status, the Planning Commission may consider all of the evidence in the record, including, but not limited to the following:
    - (1) The length of time the establishment has been in violation of the deemed approved performance standards;
    - (2) The nature and impact of the violation of the performance standards on the community;
    - (3) Reasonable steps that the ABC licensee has taken, pursuant to California Business and Professions Code section 24200 to remedy the violation. "Reasonable steps" to remedy a violation include but are not limited to calling the police department in a timely manner; requesting that the persons engaging in activities causing violations of the deemed approved performance standards cease such activities, unless the ABC licensee or his or her employees or agents reasonably believe that their personal safety would be threatened in making that request; and making improvements to the establishment's property or operations. Operators of deemed approved establishments are encouraged to call the police department to handle violations of the deemed approved performance standards. Accordingly, in order to avoid discouraging such calls for service, a violation of the deemed approved performance standards may not be based solely on the number of police calls for service that an establishment generates.
  - e. The decision of the Planning Commission shall be final unless appealed to the City Council in accordance with Section 10-1.2825(b) and 10-1.2845. The decision of the City Council shall be final.
  - f. This section is not intended to restrict the powers and duties that may otherwise apply to deemed approved alcoholic beverage sales establishments and those persons or entities authorized to require conformance with applicable law. In the event of a conflict of law, the more restrictive provision controls.

#### **SEC. 10-1.2771 REVOCATION OF DEEMED APPROVED STATUS.**

An alcoholic beverage sales establishment that has been determined to be in noncompliance with the deemed approved performance standards and has had its deemed approved status revoked shall no longer be considered a legal use and shall cease operation immediately.

#### **SEC. 10-1.2772 LIABILITY FOR EXPENSES.**

Any person who is found to have violated the Alcoholic Beverage Outlet regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

#### **SEC. 10-1.2773 INSPECTION AND RIGHT OF ENTRY.**

To the extent permissible by law, the Chief of Police, the City Manager, the City Attorney, or their respective designees, shall have the right to enter and inspect any alcoholic beverage sales establishment for the purpose of ensuring compliance with the requirements of these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner whenever there is reason to suspect a violation of any of the provisions of the Alcoholic Beverage Outlet regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the alcoholic beverage sales establishment, the Chief of Police, the City Manager or the City Attorney, or their respective designees, may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 et seq., or any successor legislation thereto.

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**SEC. 10-1.2774 NUISANCE.**

It shall constitute a nuisance for any person to operate an alcoholic beverage sales establishment, including deemed approved establishments, in violation of these Alcoholic Beverage Outlet regulations.

**SEC. 10-1.2775 CUMULATIVE REMEDIES.**

Any person who violates any provision of the Alcoholic Beverage Outlet regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law, for the abatement of any violation of the Alcoholic Beverage Outlet regulations. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Alcoholic Beverage Outlet regulations shall be established by the City Council in the Master Fee Schedule.

**SEC. 10-1.2776 ANNUAL REPORT.**

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.



# CITY OF HAYWARD

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**File #:** RPT 22-079

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**DATE:** September 22, 2022

**TO:** Council Economic Development Committee

**FROM:** Assistant City Manager

**SUBJECT**

Future Meeting Topics as of September 22, 2022

**RECOMMENDATION**

That Committee Members review and comment on the attached Future Meeting Topics.

**ATTACHMENTS**

Attachment I Future Meeting Topics as of September 22, 2022



**Council Economic Development Committee  
Future Meeting Topics as of  
September 22, 2022**

<b>RESPONSIBLE STAFF</b>	<b>FUTURE MEETING AGENDA ITEMS</b>	<b>PRESENTATION DATE*</b>
Economic Development	Economic Impacts of COVID-19 & Trends	Standing Item
Economic Development	Hayward Upward Economic Recovery Plan Update: Open for Business Video Marketing Campaign with Cal State East Bay	October 2022
Economic Development	Southland Mall: Update on Security, Holiday Plans, and Retail Leasing Activity	October 2022
Economic Development	Economic Development Division Staffing Capacity Analysis	2022
Public Works/ Information Technology	Update on City Fiber/Broadband Initiatives (Following update to CIC)	2022
Economic Development	Impact of Cannabis Industry on Economic Development*	2022
Planning Staff	Update on Status of Issued Cannabis Permits	2022

\*Subject to change and data availability