



**DATE:** October 29, 2019

**TO:** Mayor and City Council

**FROM:** Development Services Director

**SUBJECT:** Update on Commercial Cannabis Permit Process and Program

### **RECOMMENDATION**

That the City Council provides feedback and guidance on policy options for updating the Commercial Cannabis Regulatory and Land Use Ordinances and adopts the Resolution (Attachment II) authorizing the City Manager to negotiate and execute an amendment to the Agreement with ICF Incorporated LLC to review and update the Commercial Cannabis Program.

### **SUMMARY**

On October 30, 2017, the City Council adopted Ordinances 17-13 and 17-15, which established the City's regulatory and land use ordinances that apply to cannabis operators in the City. In the past 18 months, the City Council has approved Commercial Cannabis Permits for 23 cannabis businesses that include delivery, testing labs, manufacturing, distribution, cultivation, and retail dispensaries. Currently, two of those cannabis businesses are fully operational and several others are approved and/or waiting on building permit issuance; however, a majority of licensees have yet to submit their planning application(s) or their application(s) remains incomplete.

During the past two years that Hayward's cannabis program has been operational, staff has identified several issues and inconsistencies with processes and local regulations that should be resolved before embarking on a new request for applicant proposals. During this same time, the State of California has promulgated several new laws and regulations related to cannabis as the broader industry has evolved. While the City's regulatory and land use ordinances were sufficient to accommodate the first round of applicants, the lack of resources coupled with a greater demand for operational processes and protocols have also presented challenges to the administration and management of the cannabis program in the City.

This report identifies opportunities and recommendations to the current cannabis program to ensure long term success, including an evaluation of what has worked well and what could be improved, taking stock of changes in the broader industry and state regulatory system, and learning from effective and innovative practices from other jurisdictions. The purpose of this work session is to obtain feedback from the City Council on opportunities to

update the City's ordinances to be consistent with the latest State regulations as well as obtain direction on streamlining administrative processes, strengthening auditing and compliance reporting, and enhancing organizational capacities to ensure effective program implementation.

## **BACKGROUND**

In response to State mandated deadlines and per Council direction, the Development Services Department and City Attorney's Office drafted new regulatory and land use ordinances in 2017 to establish guidelines for personal cultivation, as well as land use guidelines and development standards to allow for commercial cultivation, distribution, delivery, manufacturing, testing, and retail dispensary land uses in the City of Hayward. The Ordinances establish a process for the review and selection of cannabis operators who meet the desired set of qualifications over a series of four stages. These stages are:

1. Criminal Background Investigation
2. Competitive Scoring and Ranking
3. Proposer Interviews
4. City Council Approval

Following Council approval, applicants are given 6 months (182 business days) to identify a project site and submit a planning application. In some cases, applicants had pre-selected locations early in the process and were able to submit a planning application shortly after Council approval of their license. In other cases, applicants did not have a location pre-selected and had difficulty finding a site, developing a site-specific operational/safety plan, and submitting a planning application with all necessary documentation within the stipulated timeframe.

The City of Hayward issued the first requests for proposal (RFP) for Commercial Cannabis Businesses on December 8, 2017, with applications due on January 12, 2018. At that time, the City received 77 applications for interested commercial cannabis operators. Four of these applications did not meet the City's background check requirements and thus were disqualified. The remaining 73 applications were reviewed and scored by neutral, third-party consultants HdL and ICF. Application adjudication was completed in early May 2018 and the top scoring applicants were invited to participate in interviews with City staff. Those applicants that were deemed acceptable by the interview panel were recommended for cannabis permits. In June and July of 2018, the City Council approved Commercial Cannabis Permits for 15 businesses and allowed applicants six months to identify a proposed location and submit applications for land use entitlements.

In January 2019, citing continued interest from commercial cannabis operators, the City Council directed staff to convene an Interview Panel to conduct interviews with a second tier of non-retail applicants from the first RFP process. In April 2019, the Interview Panel completed the second round of interviews and provided recommendations to the City Manager for review, who forwarded a recommendation to Council thereafter. To date, a total of 23 commercial cannabis licenses have been issued for cannabis activities that include cultivation, distribution, manufacturing, delivery, retail, and testing labs.

Current Status of Cannabis Licensees. Since 2017, the City Council has approved a total of 23 commercial cannabis licenses to applicants, contingent upon identifying a project site and securing all necessary planning entitlements. To date, the Planning Division has received 14 planning applications, of which 9 are incomplete and pending resubmittal, and 5 that are complete and have been approved or are currently in operation. In addition, one applicant did not file their planning application and let their license expire and another applicant filed a planning application but subsequently had their license revoked by Council. The table below lists the businesses approved for Commercial Cannabis Permits in 2018-2019 and their current operational status.

**TABLE 1: Hayward Commercial Cannabis Licensees (as of October 2019)**

	Company Name	Business Type	Date Approved	Current Status
1	Mijosa, LLC	Cultivation, Manufacturing	June 2018	App Incomplete
2	Empress Extracts	Cultivation	June 2018	App Incomplete
3	Hidden Farms, Inc.	Cultivation	June 2018	App Incomplete
4	Stoned Age Edibles Co.	Manufacturing	June 2018	Operational
5	Green Haven, LLC	Delivery	June 2018	Approved
6	CBRA, Inc.	Distribution	June 2018	Failed to Submit App
7	Manifest, LLC	Distribution	June 2018	Approved
8	Vista Development Ent.	Distribution	June 2018	Revoked
9	Green Grizzly	Microbusiness	June 2018	App Incomplete
10	Sticky Thumb Delivery	Microbusiness	June 2018	App Incomplete
11	American Holdings	Microbusiness	June 2018	App Incomplete
12	Harrens Laboratory	Testing Lab	June 2018	Operational
13	Aunty Honeys	Retail	July 2018	App Incomplete
14	Juva Life	Retail	July 2018	App Incomplete
15	Hayward Station	Retail	July 2018	Approved
16	Meristematic, Inc	Cultivation	May 2019	Awaiting Submittal
17	CBRA, Inc.*	Delivery	May 2019	Awaiting Submittal
18	Mijosa, LLC*	Distribution	May 2019	App Incomplete
19	BAS Research	Manufacturing	May 2019	Awaiting Submittal
20	Empress Extracts*	Manufacturing	May 2019	Awaiting Submittal
21	Gurpreet Singh	Manufacturing	May 2019	Awaiting Submittal
22	Always on Time Consulting	Microbusiness	June 2019	Awaiting Submittal
23	Precision Apothecary	Microbusiness	June 2019	Awaiting Submittal

\* Applicants submitted multiple proposals and were chosen for additional licenses during Round 2.

## DISCUSSION

There are several factors that led staff to propose a systematic review and update to Hayward’s commercial cannabis program including: (i) a series of updates to State regulatory systems; (ii) statewide industry trends; (iii) implementation issues with Hayward’s current program; and (iv) issues related to Hayward staff transitions and organizational capacities. Each of these components is discussed in the report below.

Updates to State Regulations: Since the City adopted its cannabis ordinances in October 2017, there have been a number of regulatory changes at the state level that will need to be addressed. A careful review of Hayward’s current ordinances and the updated state

regulations is needed to ensure consistency and alignment. Some recent regulatory changes and issues of note at the state level include:

- **New Cultivation Regulations:** On January 16, 2019, the California Department of Food and Agriculture ([CDFA](#)) adopted final regulations for state cannabis cultivation licensing, and these regulations went into effect immediately. Some of the key regulatory changes include: clarifying definitions (e.g., “immature plants”, “pre-roll”, “nonmanufactured cannabis product”); clarifying CEQA compliance issues; detailing a number of new license application requirements (e.g., cultivation plans, pest management plans, waste management plans); and articulating a typology for enforcement of state law violations (i.e., Serious, Moderate, and Minor).
- **Uncertain Legal Status of Statewide Cannabis Delivery:** The ability of local jurisdictions to restrict or ban the delivery of cannabis or cannabis products to a location within that jurisdiction is currently still uncertain and under litigation. AB 1530 (which would have given local jurisdictions this authority) was voted down on April 9, 2019, but a new lawsuit filed April 5, 2019 (*City of Santa Cruz v. Bureau of Cannabis Control*) may have long-term impacts on the future of cannabis delivery throughout the state, including those based in Hayward.<sup>1</sup>
- **Assembly Bill 97:** On July 1, 2019, Governor Newsom signed into law AB 97 with the intent to reduce the illicit cannabis market by bringing more people into the legal marketplace and to ensure that persons most harmed by cannabis criminalization be offered assistance to enter the industry through equity programs. This bill has provided state licensing authorities with a greater ability to pursue and fine unlicensed companies that aid and abet any violation of MAUCRSA. Licensed businesses may face fines up to \$5,000, while unlicensed businesses may face fines up to \$30,000 per day in civil fines.
- **CEQA Compliance:** On August 19, 2019, the California Supreme Court ruled that San Diego failed to adequately analyze the potential environmental impacts of its medical marijuana dispensary law. The ruling expands the scope of CEQA by shifting the review threshold from whether actual impacts would occur to merely the potential for impacts to occur. While AB 97 (referenced above) exempts local ordinances from CEQA review through July of 2021, the ruling indicates that CEQA review may be required for local cannabis ordinances in the near future.
- **Redundancy with State Regulations:** Currently, the State regulations address many topics at the state-level that are now redundant with Hayward’s local ordinance. This includes regulated matters of statewide concern such as licensee requirements, operational requirements, consumer safety, advertising, packaging, labeling, testing, cultivation handling and packaging, etc. Hayward’s ordinance and selection process should be amended to reduce redundancy and ensure consistency with state regulations.

**Key Industry Trends:** The medical and adult-use cannabis markets have matured in California since Hayward approved its cannabis ordinance in October 2017. Several

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<sup>1</sup> <https://www.jdsupra.com/legalnews/the-battle-for-the-future-of-cannabis-70288/>

industry trends have implications for Hayward's approach to regulating operational cannabis businesses and selecting future qualified applicants, including:

- **Illicit Cannabis Activity:** Statewide trends indicate that there is still significant illegal cannabis activity. Illegal operations can operate more competitively, and consumer prices are often lower as these companies are not paying taxes or licensing fees. While AB 97 seeks to reduce illicit activity over time, this trend, coupled with limited enforcement against illicit cannabis businesses, means that many local jurisdictions have difficulty in eradicating illegal operations.
- **Increasing Competition:** Roughly 75% of California cities and counties currently have commercial moratoriums in place, meaning that legal cannabis activity is not allowed within their boundaries. These bans foster illicit activity and drive up competition in communities where commercial cannabis is legal. It is anticipated that this trend will reverse over the next decade, with the majority of California communities ultimately expected to allow cannabis sales/activity. This trend will have an impact on the competitive dynamics of the state market. Moreover, as other states legalize cannabis, California's business will become less valuable.
- **Adult-Use Market Share:** Over the coming decade, industry analysts expect the legal cannabis market in California to shift further towards adult-use, becoming roughly 80% adult-use and 20% medicinal.

*Hayward Cannabis Program Assessment:* Based on feedback from City staff, members of the internal Interview Panel, licensed applicants, and the City Council over the first two years of program implementation, the following areas have been identified for possible enhancements and updates:

- **Number of Businesses Currently Operational:** While the Council has approved 23 licenses to date, only two cannabis applicants are currently operational in Hayward. More information is needed to understand the range of operational barriers facing these licensees (e.g., cost factors, bureaucratic processes, competition from unregulated businesses) to improve licensee success rate, expedite the time from approval to operation, and increase benefits for the Hayward community.
- **Streamline Application and Licensing Processes:** While Hayward's RFP process attracted a significant number of quality applicants and the rigorous evaluation protocol led to disqualification of problematic applicants and selection of the best applicant teams, the process was time-consuming for both applicants and City staff. Lessons derived from the first round of RFP and application review could be used to streamline future licensing and appeals processes to be more efficient. Staff resources could then be allocated accordingly.
- **Focus on Implementation, Compliance, and Auditing Processes:** As commercial cannabis businesses begin to operate in the City, increasing attention must be paid to ongoing implementation of the program, monitoring compliance of licensees with applicable regulations to ensure public safety, monitoring payment of the Measure EE cannabis tax, and ensuring that businesses implement their stated community

benefit plans, including local hiring and financial support to various community groups.

*Organizational Capacities:* To date, much of the City's Commercial Cannabis program has been led through a collaborative effort by the City Manager's Office and the Development Services Department, organizational processes could be enhanced to address recent staff transitions and program improvements to further improve the effectiveness and impact of the cannabis program. These opportunities include:

- *Inter-Departmental Coordination and Staffing:* There is currently no central point of contact for cannabis within Hayward government that connects all of the divisions involved in cannabis program implementation. Moreover, recent staff transitions have reduced organizational capacity to centrally coordinate the program, and there are limited staffing resources, which impacts the ability to administer, manage and enforce program regulations. While some jurisdictions have established separate divisions to administer their cannabis programs, the City has relied on existing staff resources. New organizational arrangements are needed to ensure the ongoing smooth operation of the program, particularly as the number of operational businesses and the demand on staff resources increase.
- *Map Workflow:* Both approved licensees and departmental staff have stated that it would be beneficial for the City to more clearly articulate and publicize the workflow for the overall licensing and permitting processes (e.g., Commercial Cannabis Permit, Land-Use Permits, Building Permits), as well as clarify various fees. Flowcharts of the approval process (including fees at each approval stage and expected timelines) would ensure regulatory certainty for businesses while helping implementing departments to ensure efficient processing and coordination. This effort could also assist applicants to better understand the local and state regulatory framework, including taxation and annual auditing requirements, when starting a cannabis business in Hayward.
- *Coordination with County and State Agencies:* As the program shifts toward implementation, it is increasingly important to facilitate coordination between Hayward staff and their counterparts in County and State regulatory agencies. This includes enhanced coordination between the State's Bureau of Cannabis Control, Alameda County and other agencies, including public stakeholders. These points of contact should be clearly established, and inter-agency agreements should be clarified, where necessary, to ensure that applicants and City staff understand the relevant roles and responsibilities.

*Proposed Objectives for the Cannabis Program Update*

Based on past discussions with Council, staff has identified several critical objectives that could be considered if Council supports an update to the cannabis program. Specifically, staff recommends consideration of the following: increasing the program's contribution to a resilient and equitable economy; ensuring public safety; streamlining selection and licensing processes; aligning local ordinances with updated State guidance; ensuring adequate organizational capacity for ongoing program implementation; ensuring full cost

recovery for the program; enforcing compliance with local and state laws; and conducting a second round of commercial cannabis licensing in 2020.

- A. Increasing the Number of Businesses in Hayward: As stated above, in order to realize the full economic and community benefits of the cannabis industry in Hayward, there is a need to understand the range of operational barriers facing cannabis licensees. Staff needs to interview a selection of Hayward licensees to better understand the barriers facing these businesses and, as appropriate, explore opportunities for technical support to help them overcome those barriers and become operational.
- B. Refining Application and Licensing Processes: Drawing from lessons learned during Round 1 of the RFP and licensing processes, staff proposes to explore opportunities for refining and/or streamlining the application, review, and approval process for new cannabis business applicants. This review would involve determining if certain cannabis activities (e.g., testing, delivery) might be allowed without going through the RFP process and/or could be folded into an existing Use Permit process. The objective here would be to update and clarify key requirements of the licensing process (e.g., listing all parties of ownership and their percentages, adding consultant disclosures, clarifying requirements for building and site plans) and highlight any revisions needed to the current application and selection processes (e.g., RFP documents, scoring criteria and weighting, interview protocols, etc.). Additionally, this review could include an exploration of the development of an Equity Program as a component of the application and licensing process. While several jurisdictions in the region have considered and adopted Equity Programs, the City does not currently consider Equity factors when selecting applicants.
- C. Strengthening Auditing and Compliance Processes: While the regulatory ordinance requires applicants be subject to background checks and provide financial records, there is no defined framework or responsible division to ensure that compliance is obtained once an audit is completed. Staff recommends that any updated program provide options for building a more robust auditing and compliance reporting system to ensure that licensees are complying with relevant state/local regulations and follow through on their stated intentions from their license applications. This strengthened system (including clarified record-keeping requirements, procedures for periodic auditing, development of integrated inspection checklists, and possibly updated penalties to incentivize compliance) would improve licensee performance and ensure that the City has robust verification processes for annual renewals.
- D. Developing Mechanisms to Ensure Additional Community Benefits: This component would formalize community commitments with licensees to ensure they are following through on stated intentions (e.g., commitments to economic development, local hiring, etc.). For instance, the City of San Francisco and several communities in other states have developed “community benefits agreements” with licensees, similar to those forged with large tech companies. Early experience is that these can be a useful mechanism for memorializing agreements between the company and the community as conditions for permitting.

- E. Ensuring Adequate Organizational Capacity and Full Cost Recovery: While the current annual license fee may be sufficient to cover the costs of inspections and auditing, staff recommends that the program be thoroughly evaluated to assess the full range of City functions that are impacted by cannabis operations. Proposed cost recovery may consider a broader range of functions including organizational capacities, program management, enforcement, and staff resources. This component would inventory current organizational roles and responsibilities, identify any needed capacity enhancements, explore opportunities for inter-departmental coordination and efficiencies (e.g., integrated inspection checklists), and propose an updated Fee Schedule (including applications, initial licenses, renewals, penalties, etc.) to ensure full cost recovery.
- F. Updating the Commercial Cannabis Ordinance and Land Use Ordinance: The final objective of the proposed program update would be to update the commercial cannabis ordinance and land use ordinance in order to remove any inconsistencies or ambiguities, ensure alignment with current state regulations, and reflect any updated program design decisions made by the Council. Some examples of possible revisions include:
- Clarify the definition of “true parties of interest”;
  - Include mechanisms to allow for transfer of ownership and mergers;
  - Consider some cannabis activities as permitted uses (such as deliveries or testing labs) and, if so, establish a framework to ensure some review of business plans beforehand;
  - Update the land use definitions and land use limitations;
  - Better define Sustainability Plan components and minimum requirements;
  - Update life/safety requirements (FPE), including haz/mat waste disposal protocols and CPTED;
  - Align Municipal Code text with definitions and terms used in updated state regulations, which includes a general cleanup of text. Some ambiguities exist in the current ordinances that create confusion for planning and code enforcement; and
  - Review of current tax collection practices and update, as necessary.

Proposed Work Plan Elements: If directed by Council to proceed with the proposed program review and update, elements of the work plan would likely include:

- Collecting feedback from key City departments that are central to implementation of the program (e.g., planning, police, fire, hazmat, code enforcement, revenue, etc.);
- Conducting broader stakeholder interviews with selected current Hayward licensees to distill feedback on the current application, licensing, and approval processes;
- Conducting a review of successful practices being employed by other comparable California jurisdictions (e.g., Sacramento, Santa Rosa, Costa Mesa, San Diego) and relevant municipalities across the country (e.g., Denver) to extract relevant best practices for successful program management and administration; and
- Conducting additional work sessions with Council and Planning Commission to discuss design details related to each of the program elements described above.



In order to accomplish this review and update, staff is recommending that the Council approve an amendment to the existing contract with ICF Incorporated in the amount of \$70,000. ICF will provide comprehensive support to staff in the review and redrafting of the City's cannabis ordinances and policies.

### **FISCAL IMPACT**

The cost to amend the agreement with ICF Incorporated LLC to review and update the Commercial Cannabis Permit Program is \$70,000 and will be covered with funds within the approved Development Services FY2020 Operating Budget. There will be no additional impact to the General Fund by approving this action.

### **ECONOMIC IMPACT**

Each of the 23 applicants who were issued a license by Council articulated the desire to hire local Hayward residents and to pay them a livable wage. From the information provided by each applicant these firms plan to create an estimated 250 new jobs. These jobs will impact the City as these employees pursue their lives in the Hayward community and therefore contribute to the local economy while also remitting City sales, property, utility user, and other City levied taxes and fees. While the number of jobs and economic impact from the cannabis industry is expected to grow in Hayward, the updated regulatory and land use ordinances will further accommodate economic growth in the City and improve overall organizational efficiencies.

### **STRATEGIC INITIATIVES**

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

### **NEXT STEPS**

Following direction from the Council, staff will finalize the scope of work and begin to update the regulatory and land use ordinances related to cannabis.

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