

CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov



CITY OF
HAYWARD
HEART OF THE BAY

Agenda

Monday, October 30, 2017

7:00 PM

Council Chambers

City Council

Mayor Barbara Halliday
Mayor Pro Tempore Elisa Márquez
Council Member Francisco Zermeño
Council Member Marvin Peixoto
Council Member Al Mendall
Council Member Sara Lamnin
Council Member Mark Salinas

SPECIAL CITY COUNCIL MEETING**CALL TO ORDER Pledge of Allegiance: Council Member Peixoto****ROLL CALL****PUBLIC COMMENTS**

The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Information Items. The Council 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 Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.

ACTION ITEMS

The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council Member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.

CONSENT

1. [MIN 17-142](#) Minutes of the Special City Council Work Session Meeting on October 14, 2017
Attachments: [Attachment I Draft Minutes of 10/14/17](#)
2. [MIN 17-143](#) Minutes of the City Council Meeting on October 17, 2017
Attachments: [Attachment I Draft Minutes of 10/17/17](#)
3. [CONS 17-650](#) Adoption of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); and Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)
Attachments: [Attachment I Staff Report](#)
[Attachment II Summary of Ordinance](#)
[Attachment III Revised Ordinance](#)
[Attachment IV Map of Retail Dispensaries](#)

4. [CONS 17-651](#) Adoption of Ordinance of the City of Hayward, California
Adding Article 14 to Chapter 6 of the Hayward Municipal Code
Regarding Commercial Cannabis Businesses
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Summary of Ordinance](#)
 [Attachment III Revised Ordinance](#)
5. [CONS 17-652](#) Adoption of Ordinance of the City of Hayward, California
Amending Article 6 of Chapter 5 of the Hayward Municipal
Code Regarding Smoking Pollution Control
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Smoking Ordinance Summary](#)
6. [CONS 17-676](#) Resolution of the City Council of the City of Hayward Imposing
a Limit on Cannabis Retail Dispensary Permits
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution](#)
7. [CONS 17-674](#) West Winton Landfill Leachate Conveyance System
Replacement Project: Approval of Plans and Specifications, and
Call for Bids
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Draft Resolution](#)
8. [CONS 17-644](#) Approval of Resolution Accepting the Transfer of Parking
Facilities from the Hayward Successor Agency
- Attachments:** [Attachment I Staff Report](#)
 [Attachment II Resolution](#)

PUBLIC HEARING

9. [PH 17-096](#) Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant) (Report from Interim Development Services Director Bristow) (Continued from 10/17/17)

Attachments: [Attachment I Staff Report](#)
[Attachment II Land Use Ordinance](#)
[Attachment III Resolution \(Findings & Env. Review\)](#)
[Attachment IV Resolution \(Establish New Fees\)](#)
[Attachment V Government Code 65852.2](#)
[Attachment VI Assembly Bill 494 and Senate Bill 229](#)

WORK SESSION

Work Session items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.

10. [WS 17-051](#) Review of Cannabis Business Operator Selection Process (Report from City Manager McAdoo)
11. [WS 17-050](#) Discussion Regarding Measure EE Cannabis Tax Rate (Report from Finance Director Claussen and City Attorney Lawson)

Attachments: [Attachment I Staff Report](#)

CITY MANAGER'S COMMENTS

Oral reports from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items.

ADJOURNMENT**NEXT MEETING, Tuesday, November 7, 2017, 7:00 PM****PUBLIC COMMENT RULES**

Any member of the public desiring to address the Council shall limit her/his address to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.

PLEASE TAKE NOTICE

That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.

PLEASE TAKE FURTHER NOTICE

That the City Council adopted Resolution No. 87-181 C.S., which imposes the 90-day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ****

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.



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Hayward City Hall
777 B Street
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File #: MIN 17-142

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the Special City Council Work Session Meeting on October 14, 2017

RECOMMENDATION

That the City Council approves the minutes of the Special City Council Work Session meeting on October 14, 2017.

ATTACHMENTS

Attachment I Draft Minutes of October 14, 2017



**MINUTES OF THE SPECIAL CITY COUNCIL WORK SESSION MEETING OF
THE CITY OF HAYWARD
Conference Room 2A
777 B Street, Hayward, CA 94541
Saturday, October 14, 2017, 9:00 a.m.**

The City Council meeting was called to order by Mayor Halliday at 9:00 a.m., followed by the Pledge of Allegiance led by Council Member Márquez.

ROLL CALL

Present: COUNCIL MEMBERS Mendall, Zermeño, Márquez, Peixoto, Lamnin, Salinas
MAYOR Halliday
Absent: None

PUBLIC COMMENTS

There were none.

WORK SESSION

1. Review the General Fund Long Range Financial Model & Options to Close the Projected Structural Deficit – Fiscal Sustainability Work Session (Report from Director of Finance Claussen) **WS 17-042**

Staff report submitted by Finance Director Claussen, dated October 14, 2017, was filed.

City Manager McAdoo provided an overview of the agenda and laid out the expectations for the day. Finance Director Claussen provided a synopsis of the staff report which included: Assumptions used in the 10-year forecast; budget strategies to help close the City's projected structural deficit; and process used to develop the strategies. Finance Director Claussen provided an overview of the four budget balancing options: 1) revenue heavy; 2) middle of the road; 3) middle of the road 2; and 4) non-revenue heavy Plan B.

Discussion ensued among Council Members and City Staff regarding various strategies: Business License Tax (BLT); Transient Occupancy Tax (TOT); shift sidewalk rehabilitation costs to adjacent property owners; use of Measure C revenue; use of Community Development Block Grants (CDBG) for eligible programs rather than community grants; assess surplus capacity for garage services to other agencies; Card Club Tax; and Real Property Transfer Tax (RPTT).

Finance Director Claussen provided an overview of budget balancing option 1: 5-year plan revenue heavy.

The City Council took a break at 10:28 a.m., and reconvened at 10:43 a.m.

Finance Director Claussen provided an overview of budget balancing option 2: five-year plan middle of the road; option 3: five-year plan middle of the road two; and option 4: five-year plan non-revenue heavy Plan B.

Discussion ensued among Council Members and City staff about the budget strategies recommended by Management Partners. Council Members offered input about the strategies presented in the four options to address the structural budget deficit: obtain input from the City's boards and commissions to evaluate the feasibility of the strategies such as use of CDBG for eligible programs and use of Measure C revenue; perform an inventory of surplus properties; the Business License Tax (BLT) could work if connected to land use policy; when considering revenue measures, consider a rate that is not too high or too low; instead of setting a Card Club Tax on a single business, consider communicating with the business owner to expand the business model; use of CDBG for eligible programs needs to be further vetted and examined by the Community Services Commission and local partners; modify the cost saving strategies related to wages, benefits and working conditions by changing the language "bargaining groups" to "all employees"; if parking revenue is considered via enforcement, provide ample notice to residents; prioritized use of Measure C revenue should have in mind the promise that was made to the voters; have the Council Infrastructure Committee review suggestions related to use of Measure C revenue; be cautious about a hiring freeze as this could create employee burnout; engage bargaining groups if reduction of work hours is considered; include the new hotels in the Transient Occupancy Tax (TOT) assumption; consider a "sin" tax on gas, alcohol, tobacco, gambling, greenhouse gas, soda; shifting sidewalk rehabilitation costs to adjacent property owners could create an issue with compliance; have proposed revenue measures reviewed by the Council Budget and Finance Committee; consider placing one ballot measure every two years; pursue legislation related to local sales tax; address disproportionate increases in healthcare costs; and evaluate prepayment options for unfunded liabilities.

City Council took a lunch break at 12:02 p.m., and reconvened at 12:36 p.m.

Council Members had an opportunity to use the Model and run scenarios with selected strategies.

Council Members were asked to place dots next to the strategies and the five additional strategies that the Council wanted staff to consider. The five additional strategies offered by Council Members were: 1) Litter impact fee as a part of BLT; 2) Other potential "sin" taxes: gas, alcohol, tobacco, gambling, greenhouse gas, soda; 3) Address disproportionate increases in healthcare costs; 4) Employee volunteer work week reduction to 37.5 hours per week; and 5) Evaluate prepayment options for unfunded liabilities to decrease overall amount due.

Eleven strategies received three or more dots: Strategy (1) Increase Real Property Transfer Tax (RPTT); Strategy (2) Increase Business License Tax (BLT); Strategy (4) Increase Transient Occupancy Tax (TOT); Strategy (5) Implement Marijuana Processing Tax; Strategy (8) Make Fleet Utilization Improvements; Strategy (10) Eliminate General Fund Subsidies for Capital Projects and Reduce Capital Fund Investments from General Fund to Maximum Extent



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Possible); Strategy (17) Continue Working with Employee Groups to Share Pension Contributions and Retiree Medical Costs; Strategy (20) Review Fleet Operations Policies; Strategy (21) Prioritized Use of Measure C Revenue; Strategy (27) Assess Opportunities for Service Sharing Arrangements/Regionalization of Services; and Strategy (XX) Identify potential cost saving strategies related to wages, benefits, and working conditions. Two of the additional strategies offered by Council Members also garnered three or more dots: 1) litter impact fee as a part of BLT; and 2) evaluate prepayment options for unfunded liabilities to decrease overall amount due.

The strategies that garnered three or more dots were plugged into the Model and the Council could see changes to the General Fund balance in real time.

City Manager McAdoo indicated that staff would conduct further research on the feasibility of the strategies and options that were identified by the Council; would meet with managers during the Management Update Meeting on November 9, 2017; would meet with bargaining groups; and would return to Council in January 2018 with an update to the Model and further next steps.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 2:30 p.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



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File #: MIN 17-143

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Minutes of the City Council Meeting on October 17, 2017

RECOMMENDATION

That the City Council approves the minutes of the City Council meeting on October 17, 2017.

ATTACHMENTS

Attachment I Draft Minutes of October 17, 2017



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 17, 2017, 7:00 p.m.**

The City Council meeting was called to order by Mayor Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Council Member Mendall.

ROLL CALL

Present: COUNCIL MEMBERS Zermeño, Márquez, Mendall, Peixoto, Lamnin, Salinas
MAYOR Halliday
Absent: None

CLOSED SESSION

City Attorney Lawson announced the City Council convened in closed session regarding three items: 1) conference with labor negotiators pursuant to Government Code 54957.6; 2) conference with legal counsel pursuant to Government Code 54956.9 regarding Russell City Energy Company v. City of Hayward, California Court of Appeal, No. A144749; 3) conference with legal counsel pursuant to Government Code 54956.9 regarding City of Hayward, et al v. Board of Trustees, California State University, California, Court of Appeal, No. A132423; and noted there was no reportable action.

PUBLIC COMMENTS

Mr. Jim Drake, Hayward resident, spoke about the trees that were planned to be replaced at Santa Clara and Jackson Streets.

Mr. Monzella Curtis and residents of Aloha Apartments on Jackson Street submitted a document for the record and pleaded with the Council for stronger protection of tenants' rights and stricter rules for landlords and managers.

The following Hayward residents requested a traffic light at the intersection of Tahoe Avenue and Hesperian Boulevard to avoid future accidents and to protect pedestrians. It was noted that pedestrians had been injured at the mentioned crosswalk.

Mr. Samuel Fuenzalida

Mr. Williard Hout

Mr. Eduardo Mauricio Jr.

Mr. Kourosch Dinyari, Hayward resident and president of the Clarendon Hills Homeowners Association on Alquire Parkway, reported there had been an increase in crime at the apartment complex and shared a recent incident.

Ms. Wynn Grcich, Hayward resident, noted that chlorine in drinking water increases breast cancer risk and spoke against the bill related to cell phone towers.

Mayor Halliday noted AC Transit was holding a meeting on October 21, 2017 at Hayward City Hall about enhancements to Transbay routes. Mayor Halliday also recognized the Fire, Police, and Building personnel who have been helping with the fires in Northern California.

Mayor Halliday asked if the Council was amenable to move Item No. 11 before Item No. 9. There was consensus to move up the item.

CONSENT

1. Minutes of the City Council Meeting on September 26, 2017 **MIN 17-133**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the City Council meeting on September 26, 2017.

2. Minutes of the City Council Meeting on October 3, 2017 **MIN 17-136**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the City Council meeting on October 3, 2017.

3. Minutes of the Special City Council Work Session Meeting on October 3, 2017 **MIN 17-139**

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the Special City Council Work Session meeting on October 3, 2017.

4. Approval of Final Map Tract 8302 (Olympic Station), associated with the previously approved Vesting Tentative Tract Map and proposed development of 23 detached single-family homes on a 2.5-acre site located at 645 Olympic Avenue, (APN 465-0055-012-03); Huntwood Avenue, Hayward, Inc. (Applicant/Owner) **CONS 17-410**

Staff report submitted by Development Services Interim Director Bristow, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to adopt the following:

Resolution 17-151, "Resolution Approving Final Map for Tract 8302 and Authorizing the City Manager to Execute a Subdivision Agreement"

5. Filing Nuisance/Abatement/Municipal Code Liens with the County Recorder's Office for Non-Abatable Code Violations **CONS 17-573**

Staff report submitted by Development Services Interim Director Bristow, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to adopt the following:



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Resolution 17-152, "Resolution Confirming the Report and Non-Abatable Code Violations and Penalties Liens List Associated with the Code Enforcement Division and Community Preservation/Rental Housing Programs"

6. Consideration of California Municipal Finance Authority (CMFA) Open Property Assessed Clean Energy (PACE) **CONS 17-634**

Staff report submitted by Utilities and Environmental Services Director Ameri, dated October 17, 2017, was filed.

It was moved by Council Member Peixoto, seconded by Council Member Lamnin, and carried unanimously, to adopt the following:

Resolution 17-153, "Resolution of the City Council of the City of Hayward Approving, Authorizing, and Directing Execution of a Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority; Consenting to the Inclusion of Properties Within the Territory of the City in the California Municipal Finance Authority Open PACE Programs; Authorizing the California Municipal Finance Authority to Accept Applications from Property Owners, Conduct Contractual Assessment Proceedings and Levy Contractual Assessments Within the Corporate Boundaries of the City; and Authorizing Related Actions"

Resolution 17-154, "Resolution of the City Council of the City of Hayward Authorizing the City Manager to Execute Member Addendums to the Association of Bay Area Governments Regional Collaborative Services Agreement with Residential PACE Programs Operating in Hayward"

WORK SESSION

7. Status Updates and Provide Direction on Prioritization of FY 2018 Schedule of Activities Related to Housing Affordability and Anti-Displacement Strategies (Report from City Manager McAdoo) **WS 17-049**

Staff report submitted by Library Director Reinhart and Assistant City Manager Hurtado, dated October 17, 2017, was filed.

City Manager McAdoo provided a synopsis of the staff report.

Mayor Halliday opened the public comments section at 7:34 p.m.

Ms. Aisha Wahab, Hayward resident, recommended having more affordable housing; having strategic high-density developments; supporting “just cause” evictions; adjusting the affordable housing percentage for new developments and reconsidering in-lieu fees; adjusting rent increases based on CPI; and combating displacements.

Mr. Ruben Medrano, Hayward resident, spoke about issues with his lease agreements at Aloha Apartments.

Ms. Mia Carbajal, East Bay Housing Organizations (EBHO) representative, suggested that the Council request proposals on how to strengthen the rent control ordinance and include a “just cause” eviction, and asked for consideration of anti-displacement strategies.

Mr. Joe Navarro, Hayward resident, supported having discussion related to housing affordability and anti-displacement strategies, and hoped for a dialogue beyond profits that includes the human and compassion aspect.

Mr. Zachariah Ojendra, Hayward resident, recommended applying the rent control ordinance and eviction for cause to more units; increasing the applicability of the rental unit definition; lowering rent increase limits; getting rid of vacant decontrolled units; supporting the repealing of the new construction clause of the Costa-Hawkins Act; and considering community land trust proposals.

Mayor Halliday closed the public comments section at 7:50 p.m.

Council Members were overall in agreement with the four overarching affordable housing strategies and programs. Council Members expressed prioritization for the following: Strategy 4 (Issue NOFA/RFP for Measure A1 Affordable Rental Housing Development Projects); Strategy 5 (Update and Revise the Affordable Housing Ordinance); Strategy 1 (Residential Rent Stabilization Ordinance – Additional Study and Review); and the Anti-Displacement overarching affordable housing strategies and programs to prevent displacement of current residents from their homes.

Council Members also expressed a desire to explore other strategies: consider stricter control of rent and a “just cause” eviction with an education component; address situations such as the outcry from renters who were displaced after a management firm sold the apartment complex to another firm and increased rents; continue to streamline the permitting process; look for strong legislation that places a moratorium on no cause evictions; bring more affordable housing incorporated with market rate housing; have the proper protocols in place to ensure protection of neighborhoods’ rights when bringing the City into compliance related to Accessory Dwelling Units; get the Rental Housing



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Association involved with rent issues and make them a part of the solution to help affected renters.

There was a request to hold a work session before issuing NOFA/RFP for Measure A1 Affordable Rent Housing Development projects.

8. Discussion of the Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees (Report from City Manager McAdoo) **WS 17-046**

Staff report submitted by Library and Community Services Director Reinhart and Assistant City Manager Hurtado, dated October 17, 2017, was filed.

City Manager McAdoo provided a summary of current Affordable Housing Ordinance requirements and introduced Mr. David Doezema from Keyser Marston Associates who provided an overview of the Residential Nexus and Financial Feasibility Study.

Mayor Halliday opened the public comments section opened at 8:32 p.m.

Ms. Pamela Glassoff, Eden Information & Referral employee, noted her agency receives a high volume of housing related calls from low-income residents and recommended allowing rents for the on-site units to be set up at 50% of Area Median Income (AMI).

Ms. Lisa Vorderbrueggen, Building Industry Association of the Bay Area (BIA) representative, urged the Council to retain the fee-by-right option for affordable housing units; reward developers for providing affordable units on-site; set in-lieu fees at a reasonable level; and grandfather any development projects in the pipeline.

Rev. Sophia DeWitt, East Bay Housing Organizations (EBHO) program director, supported increasing impact fees to provide more funding for the creation of affordable housing, and expressed concern about eliminating the fee-by-right payment for larger projects.

Ms. Mia Carbajal, EBHO representative, supported the possibility of raising residential impact fees, and expressed that eliminating the fee-by-right for large projects would hinder the City's ability to raise enough local match to attract outside funding for affordable housing.

Ms. Chu Rao, developer, requested a mechanism for developers, housing agencies and City staff to have meaningful dialogue around timelines for development projects.

Mr. Tony Dutra, Dutra Land and Consulting Services, Inc. president, requested that the Affordable Housing Ordinance have a grandfathering provision for projects that have filed applications with the City, and to also consider a combination of alternatives.

Mr. Andy Madeira, Senior Vice President of Real Estate Development for Eden Housing, noted the need to have in-lieu fees to build affordable housing units.

Ms. Marcela Ruiz, Hayward resident, via a Spanish-English interpreter, spoke about housing-related irregularities with Aloha Apartments.

Mr. Zachariah Oquenda, Hayward resident, noted that Goals 2 and 5 of the Housing Element addressed housing needs and the commitment to people from various socio-economic backgrounds; and asked that staff evaluate community land trust.

Ms. Heather Enders, Hayward resident and Planning Commission Member, supported the argument in favor of affordable inclusionary housing and a policy that allows for an increased fee structure. Ms. Enders also wanted the Council to reevaluate school and park impact fees.

Mayor Halliday closed the public comments section at 9:07 p.m.

Discussion ensued among Council Members, Mr. David Doezema, and City staff about the findings in the Residential Nexus and Financial Feasibility Study and the recommendation for amendments to the Affordable Housing Ordinance (AHO) and related fees. The City Council appreciated the comments offered by all stakeholders.

Council Members offered the following feedback regarding key policy questions: keep the fee-by-right option but set it to a high level; allow developers to pay in-lieu fees as long as they are high; increase AHO fees at the upper end of the range (\$20) per square foot; adjusting fees annually based on the rate of increase in the Consumer Price Index (CPI) was the general consensus with one preferring the ENR Historical Construction Cost Index; for the grandfathering provision in the AHO, consider a middle point for developers who have their applications in the pipeline; there was some agreement with the preliminary recommendations related to inclusionary requirements for rental and homeownership; requirements should be the same regardless of geographic location; incentivize complete communities by building units that are affordable by design; for the grandfathering provision, have a menu of options that can be offered to the development community so they are not exempt but have options that benefit the community such as a land dedication; incentivize on-site affordable units with lower units that are owner occupied or primarily renter occupied and prioritized for existing Hayward residents in need of housing; use resources to measure the need in the community related to housing; consider transit-oriented inclusionary requirements; have staff present the Council two to three options on how to increase funding streams from applicants who are in the stage of application submitted but not finalized; maximize the fee option to leverage enough revenue for additional funding; do not impose geographical conditions in the AHO but perhaps provide leverage in some areas; provide more analysis on amount of money needed to build



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affordable housing; and provide more analysis about the monitoring cost of doing the rental on-site.

Mayor Halliday noted staff would make modifications to the AHO amendments and bring the ordinance to the Council meeting on November 7, 2017.

PUBLIC HEARING

9. Adoption of a Resolution and Introduction of Ordinances Related to Cannabis: 1. Zoning Text Amendment (Application No. 201705042) to Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code. 2. Land Use Regulations pertaining to Medical and Adult Use Cannabis within the City of Hayward. 3. Ordinance adding Article 14 to Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses. 4. Ordinance amending Article 6 of Chapter 5 of the Hayward Municipal Code regarding Smoking Pollution Control. 5. Revisions in the City's 2018 Master Fee Schedule to include Commercial Cannabis Licensing and Inspection program. (Report from City Attorney Lawson and Interim Development Services Director Bristow) **PH 17-091**

Staff report submitted by Development Services Interim Director Bristow and City Attorney Lawson, dated October 17, 2017, was filed.

Senior Planner Lochirco provided an overview of the proposed land use ordinances, revisions to the smoking pollution control ordinance, and revisions to the Master Fee Schedule for commercial cannabis licensing. Senior Planner Lochirco noted that Attachment III (Land Use Ordinance) had been revised to clarify buffers from park areas to specify parks containing children's playgrounds and/or children's activities and to add a provision that would allow the Planning Commission the ability to reduce the required buffer from public parks and open space areas upon findings of necessity. Senior Assistant City Attorney Vigilia provided an overview of the regulatory ordinance.

Discussion ensued among Council Members and City staff regarding: proposed land use ordinance and regulatory ordinance; Administrative Use Permit (AUP) and Conditional Use Permit (CUP); scoring criteria for the Request for Proposal (RFP) process; limiting the number of cannabis businesses; process for checking if someone is under the influence of cannabis; including valid workers' compensation insurance and labor agreement language in the scoring criteria of the RFP; restricting delivery hours of operation within business hours; buffers for administrative uses and conditional uses; hours of operation; 600-foot buffer zone from sensitive land uses; cannabis delivery v. distribution; process for renewing a permit and license revocation; fees to recuperate startup cost; specify the timeframe in which the City needs to be notified of a change in ownership; inspections;

special use permit findings, increasing the annual cannabis license fee to cover youth education as a community benefit.

Mayor Halliday opened the public hearing section at 11:08 p.m.

Mr. Nasser Azimi, president for O'Hana Growers, urged the Council to not limit the number of cannabis permits, but allow the RFP and the CUP process to control any proliferation of bad operators.

Mr. Chad Hagle suggested that the City not allow applicants to submit an RFP without an identifiable site or to be highly favored if they do. Regarding Section 10.1-3603 of the ordinance, Mr. Hagle urged the Council to treat the Downtown CBD zone differently when applying the buffer to the Giuliani Plaza Children's Park to avoid eliminating most of the downtown from consideration by cannabis operators.

Ms. Charnel James, with GreenWise Consulting, provided a document for the record and concurred with the prior speaker about applying the 600-foot buffer from the boundary of the Children's Playground at Giuliani Plaza. Ms. James asked that the language in Findings Number 1 be eliminated or reworded and Findings Number 3 be eliminated because it was already a requirement under the CUP process.

Mr. Brent Alfieri noted that the Bureau of Cannabis Control can issue a temporary license if the applicant has a valid license permit or other authorization issued by the local jurisdiction.

Ms. Denise Martellacci was concerned with the requirement to have "armed" security guards. Ms. Martellacci suggested that for social events, cannabis consumers have private closed events.

Mr. George Boyadjian, with 420 College, asked the City to consider safe places for cannabis consumption and asked that a buffer of 200-foot be considered for the Downtown and that applicants providing identifiable sites be given more points during the RFP process.

Mr. Dustin Watson requested that the hours of operation not be codified in the ordinance, and if needed, recommended changing the hours from 9am to 9pm.

Ms. Lauren Mendelsohn, with a law firm representing a local resident and prospective applicant, expressed concern with the former language in the land use ordinance related to parks, and urged the Council to not have "armed" security guards at the premises.

Ms. Esther Lopez, prospective applicant, appreciated the flexibility provided to prospective cannabis applicants.

Ms. Roberta Chew, Caltrans retiree, recommended that approved retail sites have entrance and exit points to avoid interference with other businesses and stay away from residential areas. Ms. Chew asked that proposed maps be improved to make them more legible.



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777 B Street, Hayward, CA 94541
Tuesday, October 17, 2017, 7:00 p.m.**

Mr. Hector Villasenor requested that labor agreement be included in the proposal and to consider the two IRS provisions relating to cannabis businesses. Mr. Villasenor requested changing hours of operations and noted that most transactions happen between 6pm to 12am.

Mayor Halliday closed the public hearing section at 11:32 p.m.

Council Member Zermeño offered a motion per staff's recommendation with friendly amendments: to include valid workers' compensation insurance and labor agreement as part of the scoring process for the Request for Proposals (RFP); align delivery hours with alcohol regulations; and change hours of operation from 9am to 9pm.

Council Member Mendall seconded the motion with the following amendments: adopt a resolution to limit the number of retail licenses to three; modify the ordinances by removing the word "armed" from the security guard language; evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; and review language to allow a business application to move forward absent a provisional/permanent State license, but not allow to open until it has a provisional/permanent State license.

Council Member Zermeño accepted the friendly amendments offered by Council Member Mendall.

Council Member Salinas expressed support for the motion with caution and recommended to add a youth education community benefit component in the RFP related to smoking and health risk factors.

Council Member Lamnin offered an amendment to the motion that hours of operation not be included in the ordinance but be specified in the Conditional Use Permit application process.

Council Members Mendall and Zermeño were amenable to the amendment offered by Council Member Lamnin.

Discussion ensued about removing cannabis businesses from certain districts, and it was noted that the intent was to remove cannabis businesses from zones that are primarily residential.

Council Member Márquez expressed support for the motion including all friendly amendments.

Mayor Halliday expressed support for the motion with caution. In response to Mayor Halliday's inquiry about the 600-foot buffer in the Downtown, staff noted there is opportunity to be flexible with safety protocols in place which could be included in the Conditional Use Permit process.

The motion on the floor was re-stated as follows: per staff recommendation with the following friendly amendments: to include valid workers' compensation insurance and labor agreement as part of the scoring process for the Request for Proposals (RFP); align delivery hours with alcohol regulations; remove hours of operation from the ordinance and have them specified in the Conditional Use Permit application process; adopt a resolution to limit the number of licenses to three retail dispensaries; remove the word "armed" from the security guard language; evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; allow applications to move forward with provisional/permanent State license, but not allow them to open without the provisional/permanent State license; and include in the RFP process a youth education community benefit component.

It was moved by Council Member Zermeño, seconded by Council Member Mendall, and carried unanimously with the friendly amendments, to adopt the following:

Resolution 17-156, "Resolution Adopting Findings Supporting Amendments to the City of Hayward Municipal Code Establishing Regulations for Personal Cannabis Cultivation and the Establishment of Commercial Cannabis Land Use Regulations"

Introduction of Ordinance 17-_, "Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses Through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); An Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)"

Introduction of Ordinance 17-_, "Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses"

Introduction of Ordinance 17-_ "Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control"



**MINUTES OF THE CITY COUNCIL MEETING OF
THE CITY OF HAYWARD
Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, October 17, 2017, 7:00 p.m.**

Resolution 17-157, “Resolution Amending the City of Hayward 2018 Fiscal Year Master Fee Schedule for Commercial Cannabis Licensing Associated with Amendments to Chapter 6, Article 14 and Zoning Text Amendment to Chapter 10 of the Hayward Municipal Code Related to Commercial Cannabis Businesses”

10. Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant) (Report from Interim Development Services Director Bristow) **PH 17-089**

It was moved by Council Member Mendall, seconded by Council Member Márquez, and carried unanimously to continue the item to October 30, 2017.

Council Member Márquez requested that the item be the first item on the October 30, 2017 agenda.

11. Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing for Financing of Airport Development Improvements by APP Properties, Inc. (Report from Public Works Director Fakhrai) **PH 17-090**

Staff report submitted by Public Works Director Fakhrai, dated October 17, 2017, was filed.

Airport Manager McNeeley provided a synopsis of the staff report.

In response to Council Member Márquez’s inquiry about the proposed resolution referring to a City Treasurer, staff noted the reference should be to Finance Director and not City Treasurer.

There being no public comments, Mayor Halliday opened and closed the public hearing section at 10:03 p.m.

It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried unanimously, to adopt the following:

Resolution 17-155, “Resolution Approving the Issuance by California Statewide Communities Development Authority of Tax-Exempt Obligations in an Aggregate Principal Amount Not-To-Exceed \$750,000 for the Facility (As Defined Below) and Authorizing Related Actions”

CITY MANAGER'S COMMENTS

There were none.

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Mayor Halliday noted that the October 24, 2017 Council meeting was canceled and a special meeting would be held on Monday, October 30, 2017.

ADJOURNMENT

Mayor Halliday adjourned the meeting at 12:12 a.m.

APPROVED:

Barbara Halliday
Mayor, City of Hayward

ATTEST:

Miriam Lens
City Clerk, City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-650

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Clerk and City Attorney

SUBJECT

Adoption of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); and Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Summary of Ordinance Published on 10/27/2017
Attachment III	Revised Ordinance
Attachment IV	Revised Map



DATE: October 30, 2017

TO: Mayor and Council Members

FROM: City Clerk and City Attorney

SUBJECT Adoption of Ordinance of the Council of the City of Hayward Enacting Comprehensive Regulations for Personal Cannabis Cultivation and Commercial Cannabis Land Uses Through the Amendment of Hayward Municipal Code, Chapter 10, Article 1 (Zoning Ordinance); Article 2 (Off-Street Parking Requirements); Article 24 (South Hayward BART/Mission Boulevard Form-Based Code); and Article 25 (Hayward Mission Boulevard Corridor Form-Based Code)

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

BACKGROUND

The Ordinance was introduced by Council Member Zermeño at the October 17, 2017, meeting of the City Council with the following vote:

AYES:	COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Salinas, Lamnin MAYOR: Halliday
NOES:	None
ABSENT:	None
ABSTAIN:	None

The motion included the following amendments: 1) amend the ordinance to remove hours of operation and have it specified in the Conditional Use Permit process, and align delivery hours with alcohol regulations; 2) modify the ordinance by removing the word “armed” from the security guard language; 3) include language about workers’ compensation and labor agreement in the Request for Proposal (RFP) scoring process; 4) adopt a resolution to limit the number of commercial cannabis retail dispensaries to three; 5) evaluate modifying the language in the ordinance to remove all cannabis related uses from the Form-Based Code and Neighborhood Commercial-Residential districts; 6) review language to allow a business application to move forward absent a permanent/temporary State license but not allow to open until it has a provisional/permanent State license; and 7) add youth education as a community benefit component to the RFP.

- 1) Amend 10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery – D. Operational Requirements. 4. Hours of Operation as follows:
Hours of Operation. A Commercial Cannabis Retail Dispensary may operate up to seven (7) days per week with the hours of operation determined by the Planning Commission with the issuance of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City’s Police Department. The basis for any restriction on the hours of operation shall be specified in the permit.
- 2) Amend 10-1.3604 General Requirements. F. Security as follows:
Security. Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, ~~armed~~ Security Guard ~~Officer~~ on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:
- 3) Include workers’ compensation and labor agreement language to the Request for Proposal scoring process. This language has been added to the Request for Proposals, which will be presented to the City Council separately at the October 30 special meeting under item WS 17-051.
- 4) Adopt a resolution to limit the number of commercial cannabis retail dispensaries to three. This resolution has been prepared and is included as a separate item, CONS 17-676, for City Council consideration.
- 5) Evaluate modifying the language in the ordinance to remove retail dispensaries from the Form-Based Code and Neighborhood Commercial-Residential districts. Staff has removed the commercial cannabis retail dispensaries as a conditionally permitted land use in the Neighborhood Commercial-Residential zoning district, the Hayward/Mission Boulevard Corridor Form Based Code district, and the South Hayward BART/Mission Boulevard Corridor Form Based Code district. These mixed-use zoning districts contain a significant amount of existing or planned residential development and this land use trend is expected to continue. Staff does recommend that the Neighborhood Commercial zoning district be conditionally permitted to allow retail dispensaries as most of these areas area developed predominately with commercial land uses and serve residents in adjacent neighborhoods. If Council decides to remove the Neighborhood Commercial zoning district as an area where retail dispensaries are conditionally permitted, the Tennyson Corridor, portions of Foothill Boulevard near downtown, and areas along Harder Road and Hesperian Boulevard would be eliminated as areas for potential development and redevelopment. The revised cannabis land use map is provided as Attachment IV.

- 6) Review language to allow a business application to move forward absent a permanent/temporary State license but not allow to open until it has a provisional/permanent State license. Staff has reviewed the proposed ordinance language and has determined that modifications are not necessary at this time. The existing language will not prohibit applicants from obtaining a local cannabis permit if the State is only issuing temporary permits beginning on January 1, 2018 nor does it prevent applicants from moving through the local permit process prior to the State permit process. The existing ordinance language does not require an applicant to obtain a state permit prior to applying for a local cannabis permit. The existing language prohibits operation until both local and state licenses have been obtained.

- 7) Add youth education as a community benefit component to the RFP. Staff has referenced "youth education" as a community benefit in the RFP, which will be presented to the City Council separately at the October 30 special meeting under item WS 17-051.

The revised Ordinance in its entirety has been included as Attachment III.

STRATEGIC INITIATIVES

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

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, October 27, 2017. Adoption at this time is therefore appropriate.

NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared by: Miriam Lens, City Clerk and Michael Lawson, City Attorney

Recommended by: Miriam Lens, City Clerk and Michael Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE); ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS); ARTICLE 24 (SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE); AND ARTICLE 25 (HAYWARD MISSION BOULEVARD CORRIDOR FORM-BASED CODE).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that:

A. Pursuant to its police powers, and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transporting, and testing within its jurisdiction.

B. The City has previously prohibited, through exclusionary zoning ordinance, both medical and non-medical adult cannabis land uses and regulations within the City.

C. The City wishes to establish a uniform regulatory structure for all medical and non-medical adult cannabis uses in the City in accordance with state law.

Section 2. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance):

- SEC. 10-1.800 - NEIGHBORHOOD COMMERCIAL DISTRICT (CN)
- SEC. 10-1.820 - CONDITIONALLY PERMITTED USES.
- SEC. 10-1.845 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.
- SEC. 10-1.900 - NEIGHBORHOOD COMMERCIAL-RESIDENTIAL DISTRICT (CN-R)
- SEC. 10-1.920 - CONDITIONALLY PERMITTED USES.
- SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)
- SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.
- SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)
- SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES
- SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)
- SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES
- SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)
- SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.

- SEC. 10-1.1530 - CENTRAL CITY—RESIDENTIAL SUBDISTRICT (CC-R)
- SEC. 10-1.1533 - CC-R CONDITIONALLY PERMITTED USES.
- SEC. 10-1.1540 - CENTRAL CITY—PLAZA SUBDISTRICT (CC-P)
- SEC. 10-1.1543 - CC-P CONDITIONALLY PERMITTED USES.
- SEC. 10-1.1555 - MINIMUM DESIGN AND PERFORMANCE STANDARDS FOR CC-C, CC-R, AND CC-P SUBDISTRICTS
- SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)
- SEC. 10-1.1615 - USES PERMITTED.
- SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.
- SEC. 10-1.1645 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.
- SEC. 10-1.1800 - LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT DISTRICT (LM)
- SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.
- SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

Section 3. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 2 (Off-Street Parking Requirements):

- SEC. 10-2.340 - OFFICE, RETAIL, AND SERVICE USES.
- SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES.

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 24 (South Hayward BART/Mission Boulevard Form-Based Code):

- SEC. 10-24.300 - STANDARDS AND TABLES

Section 5. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 25 (Hayward/Mission Boulevard Corridor Form-Based Code):

- SEC. 10-25.400 - STANDARDS AND TABLES

Section 6. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600:

Chapter 10-1.3600

CANNABIS

Sections:

- 10-1.3600 Purpose
- 10-1.3601 Limitation on Use
- 10-1.3602 Personal Cannabis Cultivation
- 10-1.3603 Commercial Cannabis Businesses
- 10-1.3604 General Requirements
- 10-1.3605 Commercial Cannabis Cultivation

- 10-1.3606 Commercial Cannabis Manufacturing
- 10-1.3607 Commercial Cannabis Retail and Delivery
- 10-1.3608 Special Events
- 10-1.3609 Findings
- 10-1.3610 Grounds for Permit Revocation or Modification
- 10-1.3600 Purpose.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions).

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

Introduced at the meeting of the Hayward City Council held October 17, 2017, the above entitled Ordinance was introduced by Council Member Zermeño.

This ordinance will be considered for adoption at the meeting of the Hayward City Council, to be held on October 30, 2017, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: October 27, 2017
Miriam Lens, City Clerk
City of Hayward

ORDINANCE NO. ____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE); ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS); ARTICLE 24 (SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE); AND ARTICLE 25 (HAYWARD MISSION BOULEVARD CORRIDOR FORM-BASED CODE).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that:

A. Pursuant to its police powers, and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transporting, and testing within its jurisdiction.

B. The City has previously prohibited, through exclusionary zoning ordinance, both medical and non-medical adult cannabis land uses and regulations within the City.

C. The City wishes to establish a uniform regulatory structure for all medical and non-medical adult cannabis uses in the City in accordance with state law.

Section 2. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance to read as follow:

SEC. 10-1.800 - NEIGHBORHOOD COMMERCIAL DISTRICT (CN)

SEC. 10-1.820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the CN District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (e) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

SEC. 10-1.845 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.**Commercial Buildings and Uses.**

For commercial buildings (including second story residential uses) refer to the design criteria contained in the City of Hayward Design Guidelines, the Hillside Design and Urban/Wildland Interface Guidelines and the following specific criteria and standards.

- i. [Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- j. Decks and Ramps.
- k. Drive-in Establishments - Special Standards and Conditions.
- l. Fences, Hedges, Walls.
- m. Grading
- n. Landscaping.
- o. Lighting,
- p. Mixed-Use Development.
- q. Outdoor Storage.
- r. Parking.
- s. Retaining Walls.
- t. Roof-Mounted Equipment.
- u. Signs.
- v. Surfacing.
- w. Trash and Recycling Facilities.
- x. Window Coverage.

SEC. 10-1.900 - NEIGHBORHOOD COMMERCIAL-RESIDENTIAL DISTRICT (CN-R)**SEC. 10-1.920 - CONDITIONALLY PERMITTED USES.**

- a. Administrative Uses. The following uses are permitted in the CN-R District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) [Commercial Cannabis Delivery](#)
 - (b) Medical/dental laboratory, [including Cannabis Testing Laboratory](#)

SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)**SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.**

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) [Commercial Cannabis Delivery](#)
 - (b) Medical/dental laboratory, [including Cannabis Testing Laboratory](#)
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.

- (b) Brewery or Distillery.
- (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
- (d) [Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)
- (e) Dance or night club.
- (f) Liquor store.
- (g) Theater, Large Motion Picture.
- (h) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)

SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CO District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) [Commercial Cannabis Delivery](#)
 - (b) Medical/dental laboratory, [including Cannabis Testing Laboratory](#)
 - (c) Pharmaceutical sales. (Where accessory to a medical office or clinic, and where it does not exceed 3,000 square feet).

SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)

SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) [Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See [Section 10-1.1045](#) for special requirements);

SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret, Dance or Nightclub. (See Chapter 6, Article 2 for regulations.)
 - (d) [Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

- (e) Convenience Market
- (f) Liquor store.
- (g) Pawn Shop
- (h) Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See [Sec. 10-1.1045](#) for special requirements.)

SEC. 10-1.1530 - CENTRAL CITY—RESIDENTIAL SUBDISTRICT (CC-R)

SEC. 10-1.1533 - CC-R CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - [Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

SEC. 10-1.1540 - CENTRAL CITY—PLAZA SUBDISTRICT (CC-P)

SEC. 10-1.1543 - CC-P CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See General Regulations Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) [Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)
 - (c) Dance or night club.
 - (d) Convenience Market
 - (e) Liquor store

SEC. 10-1.1555 - MINIMUM DESIGN AND PERFORMANCE STANDARDS FOR CC-C, CC-R, AND CC-P SUBDISTRICTS

- g. [Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- h. Decks and Ramps.
- i. Fences, Hedges, Walls.
- j. Grading.
- k. Landscaping.
- l. Lighting, Exterior.
- m. Office Uses in the CC-P Subdistrict.
- n. Open Space (Residential).
- o. Outdoor Storage.
- p. Parking, Driveways and Paving.
- q. Roof-Mounted Equipment.
- r. Signs.
- s. Surfacing.
- t. Trash and Recycling Facilities.
- u. Window Coverage.

SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)**SEC. 10-1.1615 - USES PERMITTED.**

- a. Primary Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District as primary uses, when not adjacent to a residentially zoned property or properties, when not specified as an administrative or conditional use and when the use is conducted completely within an enclosed building(s) provided that minor open storage may be permitted as an ancillary use.
- (2) Administrative and Professional Offices/Services.
- (a) Architectural, drafting and engineering offices.
 - (b) Banks and financial institutions.
 - (c) Commercial Cannabis Delivery
 - (d) Interior design studio.
 - (e) Manufacturer's representative office.
 - (f) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (g) Office. (Offices may constitute no more than 50 percent of the area of a building except when located in a building within a planned industrial park of 25 acres or more in area, as defined on the map on file in the Planning Division.)

SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of an administrative use permit:
- (1) Industrial Uses.
- (a) Any Industrial use(s) located on a parcel(s) which abuts an, R, A MH, OS or residential PD zoning district.
 - (b) Brewery or liquor distillery, including grain elevators.
 - (c) Commercial Cannabis Cultivation (up to 5,000 square feet)
 - (d) Commercial Cannabis Distribution
 - (e) Contractors storage yard.
 - (f) Industrial equipment sales or rental.
 - (g) Perfume or vinegar manufacture.
 - (h) Railroad yard.
 - (i) Recycling collection area.
 - (j) Sandblasting activities.
 - (k) Truck terminal.
 - (l) Truck rental.
 - (m) Truck storage yard.
 - (n) Vehicle dismantling facility. (Indoors only)
 - (o) Wind energy conversion system.
 - (p) Hazardous materials use and storage
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of a conditional use permit:

- (1) Industrial Uses.
 - (a) Commercial Cannabis Cultivation, over 5,000 square feet
 - (b) Commercial Cannabis Medical and Non-Medical Manufacturing, Level 1
 - (c) Hazardous materials use and storage
 - (d) Major outdoor storage.
 - (e) Recreational vehicle storage yard.
 - (f) Public storage facilities.

SEC. 10-1.1645 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

Industrial Buildings and Uses.

For industrial buildings and uses refer to the following specific criteria and standards.

- h. Cannabis. Refer to Section 10-1.3600, Cannabis.
- i. Decks and Ramps.
- j. Fences, Hedges, Walls.
- k. Food Vendor Permit.
- l. Grading.
- m. Landscaping.
- n. Lighting, Exterior.
- o. Outdoor Storage.
- p. Parking.
- q. Retaining Walls.
- r. Roof-Mounted Equipment.
- s. Signs.
- t. Surfacing.
- u. Trash and Recycling Facilities.
- v. Truck Loading Facilities.
- w. Yard Exceptions.
- x. Window Coverage.

SEC. 10-1.1800 - LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT DISTRICT (LM)

SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the LM District subject to approval of an administrative use permit:
 - (1) Light Manufacturing Uses.
 - (a) Laboratories, including cannabis, commercial, testing, research, experimental or other laboratories, including pilot plants.

SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

Special standards and conditions as set forth below are applicable to uses enumerated in this Section and listed in the individual districts. Departure or variation from these standards is permitted only when it can be established by the applicant that the intent and purpose of the district or the necessary findings for permit approval, as specified in this ordinance, are not

compromised. Where warranted by ordinance regulations or to implement official City policy, standards of development may be required that exceed those listed in this Section.

- d. [Cannabis, Personal Cultivation and Commercial Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- e. Garage Sales.
- f. Livestock, Apiaries, and Household Pets.
- g. Manufactured Housing Regulations.
- h. Outdoor Gatherings.
- i. Private Street Criteria.
- j. Recycling Facilities and Recycling Collection Facilities.
- k. Fence Regulations for Vacant Properties.
- l. Vehicle Parking, Repair, Display, and Storage Requirements

Section 3. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 2 (Off-Street Parking Requirements) to read as follow:

SEC. 10-2.340 - OFFICE, RETAIL, AND SERVICE USES.

The minimum number of off-street parking spaces required for office, retail, and service uses shall be:

USES	PARKING SPACES REQUIRED
OFFICES, medical and dental offices, clinics and laboratories, including Cannabis Testing Laboratories	1.0 for each 200 square feet of gross floor area
RETAIL establishments characterized by hand-carried merchandise in which a customer makes quick purchases or rentals in small quantities, including: Cleaners without a cleaning plant Convenience stores Commercial Cannabis Retail Dispensaries Delicatessen Doughnut shops Ice cream shops Laundry without a cleaning plant Off-sale liquor establishments Take out restaurants Video stores	1.0 per 175 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is 10,000 square feet or less or 1.0 per 215 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is over 10,000 square feet

SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES. The minimum requirements for wholesale, manufacturing, storage, transportation, and similar uses are:

USES	PARKING SPACES REQUIRED
Bakeries, wholesale Bottling establishments Canneries <u>Commercial Cannabis Cultivation</u> <u>Commercial Cannabis Distribution</u> Communications equipment and service facilities Creameries Freight transportation terminals Laundry and/or dry-cleaning plants Lumber yards Manufacturing, processing, or assembling uses Utility yards Wholesale or warehouse establishments	1.0 for each 500 square feet of gross floor area, or If the building or structure has leasable bays of 2,500 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,000 square feet of gross floor area, or If a building or structure has leasable bays of 10,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,500 square feet of gross floor area, or If a building or structure has leasable bays of 20,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 2,000 square feet of gross floor area.

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 24 (South Hayward BART/Mission Boulevard Form-Based Code) to read as follows:

SEC. 10-24.300 - STANDARDS AND TABLES

TABLE 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T4	T5	CS
a. RESIDENTIAL			
Multiple Family	P	P	-
Second Dwelling Unit	P	P	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-
b. LODGING			
Bed & Breakfast	AU	AU	-
Hotel	CU	CU	-

c. OFFICE			
<u>Commercial Cannabis Delivery</u>	<u>AU</u>	<u>AU</u>	
Office	P	P	-
d. RETAIL			
Alcohol Sales**	CU	CU	-
Artisan/Craft Production	P	P	-
Appliance Repair Shop	P	P	
Check Cashing & Loans	-	-	-
Dance/Nightclub	-	-	-
Equipment Rentals	AU	AU	-
Home Occupation	P	P	-
Indoor Recreation	AU	AU	CU
Kennel	AU	AU	-
Liquor Store	-	-	
Massage Parlor	CU	CU	-
Media Production	AU	P	-
Pawn Shop	-	-	
Personal Services	P	P	-
Printing and Publishing	AU	P	-
Recycling Collection Area	AU	AU	-
Restaurant	P	P	-
Retail Sales	P	P	CU
Tattoo Parlor	-	-	
Tobacco Specialty Store	-	-	-
Small Motion Picture Theater	P	P	CU
Large Motion Picture Theater ⁽¹⁾	CU	CU	CU
Live Performance Theater	P	P	CU
e. CIVIC			
Assembly*	AU	AU	CU
Conference Center	-	CU	CU
Cultural Facility	P	P	CU
Park & Recreation	P	P	P
Parking Facility	AU	AU	CU
Public Agency Facility	P	P	P
Religious Facility*	AU	AU	CU
Wind Energy	P	P	P
f. OTHER: AGRICULTURE			
Vegetable Garden	P	-	P
Urban Farm	P	P	P
Community Garden	P	P	P
Green Roof			
Extensive	P	P	P
Semi Intensive	P	P	P
Intensive	P	P	P

Vertical Farm	-	P	P
g. OTHER: AUTOMOTIVE			
Automobile Repair (Minor)	AU	AU	-
Automobile Repair (Major)	CU	CU	-
Drive-Through Facility	CU	CU	-
Gas Station	CU	CU	-
Taxi Company	AU	AU	-
h. OTHER: CIVIL SUPPORT			
Fire Station	P	P	P
Hospital	CU	CU	CU
Medical/Dental Clinic	AU	AU	CU
Mortuary	AU	AU	CU
Police Station	P	P	P
i. OTHER: EDUCATION			
Day Care Center	P	P	CU
Day Care Home	AU	AU	-
Educational Facility	AU	AU	CU
Vocational School	AU	AU	CU

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
- (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT
- * Places of Assembly and Religious Facility: for properties fronting Mission Blvd., such uses are not allowed within one-half mile of existing similar uses that front Mission Blvd.
 ** Unless exempted by the Alcohol Beverage Outlet Regulations contained in [Section 10-1.2735\(b\)](#) of the Hayward Municipal Code or specifically exempted by this Code.
⁽¹⁾ An application for conditional use Permit for a Large Motion Picture Theater shall be accompanied by a study acceptable to the Planning Director documenting the absence of negative impact upon the downtown of the opening of another Large Motion Picture Theater.

Section 5. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 25 (Hayward/Mission Boulevard Corridor Form-Based Code) to read as follows:

SEC. 10-25.400 - STANDARDS AND TABLES

Table 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T3	T4-1	T4-2	T5	CS
a. RESIDENTIAL					
Multiple Family ^{1,2}	CU	P/CU	P/CU	P/CU	-
Second Dwelling Unit ^{1,2}	P	P/CU	P/CU	P/CU	-
Single Family ^{1,2}	P	-	-	-	-
Live/Work ^{1,2}	-	P/CU	P/CU	-	-
Emergency Homeless Shelter ^{1,2}	-	P/CU	P/CU	-	-
Single Room Occupancy (SRO)	-	-	-	CU	-
b. LODGING					
Bed & Breakfast	CU	AU	AU	AU	-
Hotel	-	AU	AU	AU	-

c. OFFICE					
<u>Commercial Cannabis Delivery</u>		<u>AU</u>	<u>AU</u>	<u>AU</u>	
Office	CU	P	P	P	-
d. RETAIL					
Alcohol Sales	-	CU	CU	CU	-
Artisan/Craft Production	-	P	P	P	-
Appliance Repair Shop	-	P	P	P	-
Check Cashing & Loans	-	-	-	-	-
Dance/Nightclub	-	-	-	-	-
Equipment Rentals	-	AU	AU	AU	-
Home Occupation	P	P	P	P	-
Indoor Recreation	-	AU	AU	AU	CU
Kennel	-	AU	AU	AU	-
Liquor Store	-	-	-	-	-
Massage Establishment ³	-	-	-	-	-
Media Production	-	AU	AU	P	-
Pawn Shop	-	-	-	-	-
Personal Services	CU	P	P	P	-
Printing and Publishing	-	AU	AU	P	-
Recycling Collection Area	-	AU	AU	AU	-
Restaurant	-	P	P	P	-
Retail Sales	-	P	P	P	CU
Tattoo Parlor	-	-	-	-	-
Tobacco Specialty Store	-	-	-	-	-
Small Motion Picture Theater	-	P	P	P	CU
Large Motion Picture Theater ⁴	-	CU	CU	CU	CU
Live Performance Theater	-	P	P	P	CU
e. CIVIC					
Assembly	CU	AU	AU	AU	CU
Conference Center	-	-	AU	AU	CU
Cultural Facilities	CU	AU	AU	AU	CU
Park & Recreation	P	P	P	P	P
Parking Facility	-	AU	AU	AU	CU
Public Agency Facilities	CU	P	P	P	P
Wind Energy	P	P	P	P	P
f. OTHER: AGRICULTURE					
Vegetable Garden	P	P	P	-	P
Urban Farm	P	P	P	P	P
Community Garden	P	P	P	P	P
Green Roof	P	P	P	P	P
Vertical Farm	-	-	-	P	P
f. OTHER: AUTOMOTIVE					
Automobile Repair (Minor)	-	AU	AU	AU	-
Automobile Repair (Major)	-	CU	CU	CU	-

Drive-Through Facility	-	CU	CU	CU	-
Gas Station	-	CU	CU	CU	-
Taxi Company	-	AU	AU	AU	-
f. OTHER: CIVIL SUPPORT					
Fire Station	CU	P	P	P	P
Hospital		AU	AU	AU	AU
Medical/Dental Clinic		AU	AU	AU	CU
Mortuary	-	AU	AU	AU	-
Police Station	CU	P	P	P	P
f. OTHER: EDUCATION					
Day Care Center	CU	P	P	P	CU
Day Care Home	P	AU	AU	AU	-
Educational Facilities	-	AU	AU	AU	CU
Vocational School	-	AU	AU	AU	CU
f. OTHER: LIGHT INDUSTRIAL					
Research and Development	-	-	P	-	-
Wholesale	-	-	P	-	-
Manufacturing/Assembly of Clothing	-	-	P	-	-
Woodworking Shop	-	-	P	-	-
Light Manufacturing	-	-	P	-	-

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
- (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT
- ¹ For properties located within Commercial Overlay Zone 1, as shown in the Regulating Plan (Figure 4-1), residential units are not permitted on the ground floor.
- ² For properties located within Commercial Overlay Zone 2, as shown in the Regulating Plan (Figure 4-1), residential units are only allowed on the ground floor with a conditional use permit.
- ³ Massage establishments are only permitted where mandated by State law.

Section 6. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600 to read follows:

Chapter 10-1.3600

CANNABIS

Sections:

- 10-1.3600 Purpose**
- 10-1.3601 Limitation on Use**
- 10-1.3602 Personal Cannabis Cultivation**
- 10-1.3603 Commercial Cannabis Businesses**
- 10-1.3604 General Requirements**
- 10-1.3605 Commercial Cannabis Cultivation**
- 10-1.3606 Commercial Cannabis Manufacturing**
- 10-1.3607 Commercial Cannabis Retail and Delivery**
- 10-1.3608 Special Events**
- 10-1.3609 Findings**
- 10-1.3610 Grounds for Permit Revocation or Modification**

10-1.3600 Purpose.

This Chapter provides the location and operating standards for Personal Cannabis Cultivation and Commercial Cannabis Businesses to ensure neighborhood compatibility, minimize potential environmental impacts, provide safe access to medicine and provide opportunities for economic development.

10-1.3601 Limitations on Use.

A. Compliance with City Code. Personal Cannabis Cultivation and Commercial Cannabis Businesses shall only be allowed in compliance with this Chapter and all applicable regulations set forth in the City Code, including but not limited to, the cannabis business tax ordinance, and all regulations governing building, grading, plumbing, septic, electrical, fire, hazardous materials, nuisance, and public health and safety.

B. Compliance with State Laws and Regulations. All Commercial Cannabis Businesses shall comply with all applicable state laws and regulations, as may be amended, including all permit, approval, inspection, reporting and operational requirements, imposed by the state and its regulatory agencies having jurisdiction over Cannabis and/or Cannabis Businesses. All Cannabis Businesses (Medical and Non-Medical) shall comply with the rules and regulations for Cannabis as may be adopted and as amended by any state agency or department including, but not limited to, the Bureau of Cannabis Control, the Department of Food and Agriculture, the Department of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.

C. Compliance with Local and Regional Laws and Regulations. All Cannabis Businesses shall comply with all applicable Alameda County and other local and regional agency regulations, including, but not limited to, regulations issued by the Regional Water Quality Control Board and the Alameda County Public Health Department.

D. Commercial Cannabis Businesses shall provide copies of state, regional and local agency permits, approvals or certificates upon request by the City to serve as verification for such compliance. Commercial Cannabis permits issued pursuant to Article 14, Chapter 6 of this Code are valid for one year.

E. Applications for Administrative or Conditional Use Permits pursuant to this Chapter will not be accepted unless an applicant has already obtained a commercial cannabis permit pursuant to Article 14, Chapter 6 of this Code.

10-1.3602 Personal Cannabis Cultivation.

Personal Cannabis Cultivation for medical and adult use shall be permitted only in compliance with the provisions of this Article and shall be subject to the following standards and limitations.

A. **Cannabis Maximum Limitation.** The personal cultivation of cannabis is limited to no more than six (6) mature plants within a single private residence or upon the grounds of that private residence, at one time regardless of the number of residents. For purposes of this section, “private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

B. **Residency Requirement.** Cultivation of cannabis may occur only on parcels with an existing legal residence occupied by a full-time resident.

C. **Outdoor Cultivation.** Cannabis plants shall not be located anywhere in a front or street side yard. Cannabis plants are permitted in side and rear yards only if fully screened from public view with a solid fence or wall.

D. **Indoor Cultivation.** All structures used for Personal Cannabis Cultivation (including accessory structures, greenhouses, and garages) must be legally constructed with all applicable Building and Fire permits (including grading, building, electrical, mechanical and plumbing) and shall adhere to the development standards of the underlying zoning district.

E. The following operating requirements are applicable to personal cannabis cultivation:

1. **Visibility.** No visible markers or evidence indicating that cannabis is being cultivated on the site shall be visible from the public right of way.
2. **Security.** All enclosures and structures used for cannabis cultivation shall have security measures sufficient to prevent access by children or other unauthorized persons.
3. **Prohibition of Volatile Solvents.** The manufacturing of cannabis products for personal non-commercial consumption shall be limited to processes that are solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug and Cosmetic Act. The use of volatile solvents to manufacture cannabis products for personal consumption is prohibited.

10-1.3603 Commercial Cannabis Businesses.

Commercial Cannabis Businesses shall be administratively and conditionally permitted only in compliance with the provisions of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and shall be subject to the following standards and limitations.

A. Land Use. All Commercial Medical and Non-Medical Cannabis Businesses shall be located in compliance with the requirements of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and as designated in the Zoning Code. For purposes of this Chapter, Commercial Cannabis Businesses shall include the following land use classifications, all of which are further defined in Chapter 10, Section 10.1-3500 (Definitions):

1. Commercial Cannabis Cultivation, up to 5,000 sf
2. Commercial Cannabis Cultivation, 5,001 sf or greater
3. Commercial Cannabis Dispensaries (Retail)
4. Commercial Medical and Non-Medical Cannabis Distribution
5. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1
6. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2
7. Commercial Medical and Non-Medical Cannabis Testing Laboratory

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children’s playground(s) or similar area dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced as part of the issuance of a Conditional Use Permit from the Planning Commission 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 a commercial cannabis business. The distance shall be measured from the closest boundary line of the property on which the Commercial Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

C. Development Standards. The development standards for specific cannabis land uses in this Chapter supplement and are required in addition to the underlying zoning districts listed in Chapter 10, Article 1 (Zoning Ordinance), Chapter 10, Article 2 (Off-Street Parking Regulations), Chapter 10, Article 22 (Green Building Requirements for Private Development), Chapter 10, Article 24 (South Hayward BART Mission Form Based Code), and Chapter 10, Article 25 (Hayward/Mission Boulevard Form Based Code) of the Hayward Municipal Code.

10-1.3604 General Requirements.

The following general operating requirements are applicable to all Commercial Medical and Non-Medical Cannabis Businesses. In addition, requirements specific to each Cannabis Business subtype are set forth in subsections 10-1.3605 (Commercial Cannabis Cultivation), 10-1.3606 (Commercial Cannabis Manufacturing) and 10-1.3607 (Commercial Cannabis Retail Dispensary and Delivery).

A. **Dual Licensing.** The City recognizes that state law requires dual licensing at the state and local level for all Cannabis Businesses. All Cannabis Operators shall therefore be required to diligently pursue and obtain a state cannabis license at such time as the state begins issuing such licenses, and shall comply at all times with all applicable state licensing requirements and conditions related to that license.

1. **New Operators.** New Commercial Cannabis Businesses which have received land use permit approval pursuant to this Chapter shall not commence operations until the Business can demonstrate that all necessary state and local licenses and agency permits have been obtained.

2. **Grounds for Revocation.** Once state licenses and agency permits become available, failure to demonstrate dual licensing in accordance with this Chapter shall be grounds for revocation of a City approved permit. Revocation of a local permit and/or a state license shall terminate the ability of the Commercial Cannabis Business to operate until a new permit and/or state license is obtained.

B. **Age Restriction.** No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a licensed Commercial Cannabis Business.

C. **Inventory and Tracking.** All Cannabis Businesses shall, at all times, operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.

D. **Multiple Permits Per Site.** Multiple Cannabis Businesses and Cannabis Operators proposed on any one site or parcel shall be permitted only if all the proposed Cannabis Businesses and their co-location operators are located on separate and distinct premises as defined in Business and Professions Code section 26001 and have obtained all necessary local and state permits or licenses, and land use approvals from appropriate local and state agencies. Subject to the provisions of this Zoning Ordinance, Cannabis Operators holding multiple licenses from the state may operate from a single premises to the extent such operation is consistent with state law, as it may be amended from time to time.

E. **Transfer of Ownership Operator.** A permittee shall notify the City if it intends to transfer ownership or operational control of a Commercial Cannabis Business. The transferee shall be responsible for complying with all applicable local and state licensing requirements. Any conditions imposed upon the transferor by the original conditional use permit shall be binding upon any subsequent transferees. Any transfer of ownership or operational control of a Commercial Cannabis Business which results in a lapse of normal operations for a period of six months or more shall be required to obtain a new use permit, consistent with Sections 10-1.3170 or 10-1.3270 of this Code, as applicable.

F. **Security.** Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, security guard on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:

1. **Security Cameras.** Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.
2. **Alarm System.** A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.
3. **Secure Storage and Waste.** Commercial Cannabis products and associated product manufacturing, distribution or cultivation waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance.

4. Transportation. Commercial Cannabis Businesses shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Commercial Medical and Non-Medical Cannabis products and currency in accordance with state law.

5. Building Security. All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.

6. Emergency Access. Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

7. Background Checks. All employees working in a Commercial Cannabis Business shall be subject to background/LiveScan checks. Additionally, all employees shall furnish the Hayward Police Department a state or federal registered Identification Card, upon request.

8. Inspections. During regular business hours, all Commercial Cannabis Business premises shall be accessible, upon request, to an identified Hayward Police Department or Code Enforcement employee for random and/or unannounced inspections.

G. Odor Control. All Commercial Cannabis Businesses shall incorporate and maintain adequate on-site odor control measures such that the odors as a result of cultivation, manufacturing, distribution, transport or sales of Cannabis and Cannabis-related products cannot be readily detected from outside of the structure in which the Business operates or from other non-Cannabis businesses adjoining the Commercial Cannabis Business. Any land use application filed with the City of Hayward requesting a Commercial Cannabis Business shall include an Odor Mitigation Plan certified by a professional engineer or industrial hygienist that includes the following:

1. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;

2. Staff training procedures; and

3. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.

10-1.3605 Commercial Cannabis Cultivation

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides additional requirements for Commercial Cannabis Cultivation.

A. Administrative Use Permit or Conditional Use Permit Required. Depending on the size of the facility, an Administrative Use Permit or Conditional Use Permit shall be required for Commercial Cannabis Cultivation, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Cannabis Cultivation businesses up to 5,000 square feet of gross floor area are permitted in select zoning districts, subjected to an Administrative Use Permit. Commercial Cannabis Cultivation businesses containing 5,001 square feet or greater gross floor area are conditionally permitted in select zoning districts, subject to issuance of a Conditional Use Permit.

B. Outdoor Commercial Cultivation Prohibited. The commercial cultivation of Medical and Non-Medical Cannabis may only be conducted within a fully enclosed space.

C. Pesticides. The Commercial Cultivation of Medical and Non-Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

D. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Cultivation Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

E. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3606 Commercial Medical and Non-Medical Cannabis Manufacturing

In addition to the General Operating Requirements set forth in Section 10.1-3604, this section provides additional operational requirements for Commercial Cannabis Manufacturing:

A. Conditional Use Permit Required. A Conditional Use Permit shall be required for all Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1 operations, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2 is prohibited.

B. Extraction Processes. Commercial Cannabis Manufacturers shall utilize only extraction processes that are (a) solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act, and/or (b) use solvents exclusively within a closed loop system that meets the requirements of the federal Food, Drug, and Cosmetic Act including use of authorized solvents only, the prevention of off-gassing, and certification by a California licensed engineer. The use of volatile solvents, defined as Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2, is prohibited.

C. Loop Systems. No closed loop systems shall be utilized without prior inspection and approval of the City’s Building Official and Fire Code Official.

D. Standards of Equipment. Manufacturing, processing and analytical testing devices used by the Cannabis Manufacturer must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third-party testing agency or engineer and approved for the intended use by the City’s Building Official and Fire Code Official.

E. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible Cannabis Products must be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the Cannabis Manufacturer’s facility where that individual participates in the production of edible Cannabis Products.

F. Edible Product Manufacturing. Commercial Cannabis Businesses that sell or manufacture edible cannabis products shall obtain a permit from the Alameda County Public Health Department. Permit holders shall comply with State and County health permit requirements. These requirements provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, demonstrate industry manager knowledge, ensure safe food preparation practices and delineate acceptable levels of sanitation for preparation of edible products.

G. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Manufacturing Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

H. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery.

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides location and operating requirements for Commercial Cannabis Retail Dispensaries and Delivery Businesses:

A. Conditional Use Permit or Administrative Use Permit Required. A Conditional Use Permit shall be required for Commercial Cannabis Retail dispensaries, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. An Administrative Use Permit shall be required for Commercial Cannabis Delivery businesses, pursuant to the land use regulations contained within Chapter 10, Article 1 (Zoning Ordinance).

B. Drive-Through Dispensaries. Drive-through, Drive-up or walk-up window services in conjunction with Commercial Cannabis Retail Dispensaries is prohibited.

C. Setbacks and Buffers. In addition to the zoning requirements and development regulations contained in Chapter 10 (Zoning Ordinance), all Commercial Cannabis Retail dispensaries shall be subject to the following:

1. Overconcentration. To avoid overconcentration, a Commercial Cannabis Retail Dispensary shall not be located within 1,000 feet of any other Commercial Cannabis Retail Dispensary within the City of Hayward.

2. Legal Non-Conforming Use. Establishment of a school or sensitive land use, as defined in Business and Professions Code Section 26054 and Health and Safety Code Section 11362.768, within the required buffer of a Commercial Cannabis Retail dispensary after such facility has obtained a Conditional Use Permit shall render the Retail dispensary a legally non-conforming use, which is subject to the protections and provisions of Section 10-1.2900 (Non-Conforming Uses).

D. Operational Requirements. In addition to project specific conditions of approval, Commercial Cannabis Retail dispensaries shall comply with the following operational requirements:

1. Employees. The Commercial Cannabis Retail Operator shall maintain a current register of the names of all employees employed by the Commercial

Cannabis Retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.

2. Recordkeeping. The Commercial Cannabis Retail Operator shall maintain patient and sales records in accordance with state law.

3. Protocols and requirements for patients and persons entering the site. No person shall be permitted to enter a Commercial Cannabis Retail dispensary without government issued photo identification. A Commercial Cannabis Retail dispensary shall not provide Cannabis or Cannabis Products (Medical or Non-Medical) to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government-issued photo identification card or a valid physician's recommendation under Section 11362.712 of the Health and Safety Code.

4. Hours of Operation. A Commercial Cannabis Retail Dispensary may operate up to seven (7) days per week with the hours of operation determined by the Planning Commission with the issuance of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City's Police Department. The basis for any restriction on the hours or operation shall be specified in the permit.

5. Secured Access. A Commercial Cannabis Retail Dispensary shall be designed to prevent unauthorized entrance into areas containing Cannabis or Cannabis Products. Limited access areas accessible to only authorized personnel shall be established.

6. Product Storage. Commercial Cannabis and Cannabis Products that are not used for display purposes or immediate sale shall be stored in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.

7. Cannabis Paraphernalia. No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit. The sale of such products must comply with the City's zoning code and any other applicable state regulations.

8. On-site Physician Restriction. Commercial Cannabis Retail dispensaries shall not have an on-site or on-staff physician to evaluate patients and provide a recommendation for Medical Cannabis.

9. Site Management. The Commercial Cannabis Retail operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises during business hours if directly related to the patrons of the subject retailer. For purposes of this subsection, “Reasonable steps” shall include calling the police in a timely manner; and requesting those engaging in nuisance activities to cease those activities, unless personal safety would be threatened in making the request.

10. Permit Display. All Commercial Cannabis Retail dispensaries shall maintain a copy of the valid operating license issued by the City on display during business hours and in a conspicuous place so that the same may be readily seen by all persons entering the facility.

11. Storefront Entrance & Accessibility. The storefront entrance of a Commercial Cannabis Retail dispensary shall be ADA accessible and placed in a visible location that provides an unobstructed view from the public right of way.

E. On-Site Consumption. In general, On-Site Consumption of cannabis and cannabis products by customers or employees is prohibited. If permitted, the consumption of Cannabis and Cannabis Products shall be subject to the following requirements:

1. Patients. Qualified Patients, as defined by state law, shall not be permitted to consume medical cannabis on the site of a Commercial Cannabis Retail dispensary except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as follows:

i. Conditional Use Permit applications for a Commercial Cannabis Retail business shall include a statement as to whether the use will include on-site consumption by patients of Medical Cannabis and Medical Cannabis Products.

ii. If on-site consumption will be included, the application shall describe the operational plan and specific extent of such provision, security protocols, and how the consumption will comply with the requirements set forth in this Chapter and state law. Specifically, any on-site consumption shall be subject to the following conditions: (1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) Cannabis consumption is not visible from any public place or non-age restricted area; (3) sale or consumption of alcohol or tobacco is not allowed on the premises.

2. Employees. Employees of a Commercial Cannabis Retail facility who are qualified patients may consume Medical Cannabis or Medical Cannabis Products on-site within designated spaces not visible by members of the public, provided that such consumption is in compliance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law.

3. Signage and Public Notice. The entrance to a Commercial Cannabis Retail dispensary shall be clearly and legibly posted with a notice indicating that smoking, vaping, and consumption of cannabis and cannabis products is prohibited on site, except as permitted in accordance with Chapter 5, Article 6 of the Hayward Municipal Code (Smoking Pollution Control) and state law.

F. Delivery Services. In addition to the requirements established in this Chapter for Commercial Cannabis Retail Dispensaries, the delivery of Medical and Non-Medical Cannabis and Cannabis Products shall be subject to the following requirements:

1. An Administrative Use Permit shall be required for Commercial Cannabis Delivery Only businesses, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. If the delivery service is ancillary to a Commercial Cannabis Retail Dispensary, a Conditional Use Permit that identified both uses shall be required.

2. A Commercial Cannabis Retail Dispensary shall not conduct sales exclusively by delivery.

3. All applications for Commercial Cannabis Retail dispensary shall indicate a statement as to whether the proposed use will include delivery of Cannabis and Cannabis Products to customers or qualified patients.

4. If delivery services will be provided as part of the Commercial Cannabis Retail operations, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this Chapter and state law.

5. Delivery vehicles shall not contain identifiable markings that associate the delivery service with the cannabis business.

6. Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site.

10-1.3608 Special Events

A. Temporary special events that involve onsite cannabis sales to, and consumption by persons 21 years of age or older shall not be allowed unless the

Commercial Cannabis Business obtains a special event permit from the City pursuant to the adopted Rules and Regulations for Food Vendors and the Rules and/or the Regulations for Special Event Organizers, as applicable, and, demonstrates that it possesses a local cannabis business permit and state license for retail cannabis sales.

B. Permit Required. Applications for a special event that includes cannabis shall be considered a Temporary Use, per Chapter 10, Article 1 (Zoning Ordinance) and shall obtain an Administrative Use Permit, pursuant to the zoning district and location of the event.

10-1.3609 Findings

In addition to the required findings contained in Section 10-1.3125 (Administrative Use Permit) and Section 10-1.3125 (Conditional Use Permit), every land use application requiring discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted;
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;
3. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

10-1.3610 Grounds for Permit Revocation or Modification

In addition to the permitting requirements contained in Chapter 6 (Businesses, Professions and Trades), the reviewing authority may require modification, discontinuance or revocation of a Conditional Use Permit or Administrative Use Permit for a Commercial Cannabis Business permit if the review authority finds that the use is operated or maintained in a manner that it:

- A. Adversely affects the health, peace or safety of persons living or working in the surrounding area;
- B. Contributes to a public nuisance; or
- C. Has resulted in excessive nuisance activities including disturbances of the peace, illegal drug activity, diversion of Commercial Cannabis or Commercial Cannabis

Products, public intoxication, smoking in public, harassment of passerby, littering, or obstruction of any street, sidewalk or public way; or

D. Violates any provision of the Hayward Municipal Code or condition imposed by a City issued permit, or violates any provision of any other local, state, regulation, or order, including those of state law or violates any condition imposed by permits or licenses issued in compliance with those laws.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add the following Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions) to read and provide as follows:

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

“Commercial Cannabis Business” means an entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

“Cannabis Delivery” means the commercial transfer of Cannabis or Cannabis Products to a customer, including Medical Cannabis or Cannabis Products, to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code. “Delivery” also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables clients or patients to arrange for or facilitate the commercial transfer by a permitted Commercial Cannabis Retail dispensary.

“Edible Cannabis Product” means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“Greenhouse” means a permanent enclosed structure for the propagation and growing of plants, constructed with a translucent roof and/or walls.

“Marijuana” See **“Cannabis”**.

“Medical Cannabis” or **“Medical Cannabis Product”** means cannabis or a cannabis product, respectfully, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medical cannabis patient in California who possesses a physician’s recommendation.

“Microbusiness” means a commercial cannabis business holding a license issued by the State Bureau of Cannabis Control for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer pursuant to Business and Professions Code sections 26050 and 26070.

“Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

“Commercial Cannabis Distribution” means the procurement, sale, and transport of medical and non-medical adult recreational use Cannabis and medical and non-medical adult recreational use Cannabis Products between Commercial Cannabis Businesses.

“Commercial Cannabis Manufacturing” means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Commercial Cannabis Manufacturing - Level 1” means the manufacturing of cannabis products using nonvolatile solvents, or no solvents. A Commercial Cannabis Manufacturing Level 1 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail facility.

“Commercial Cannabis Manufacturing - Level 2” means the manufacturing of cannabis products using volatile solvents. A Commercial Cannabis Manufacturing Level 2 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail dispensary. For purposes of this section, “volatile solvents” shall include ethanol and all solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, as such section may be amended.

“Medical Marijuana” See **“Medical Cannabis”**.

“Commercial Cannabis Operator” or **“Operator”** means the person or entity that is engaged in the conduct of any commercial medical or non-medical adult recreational Cannabis use.

“Commercial Cannabis Retail Dispensary” means a facility where Commercial Cannabis or Commercial Cannabis Products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical and non-medical adult recreational use Cannabis or medical and non-medical adult recreational use Cannabis Products as part of a retail sale.

“Commercial Cannabis Testing Laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____ , 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

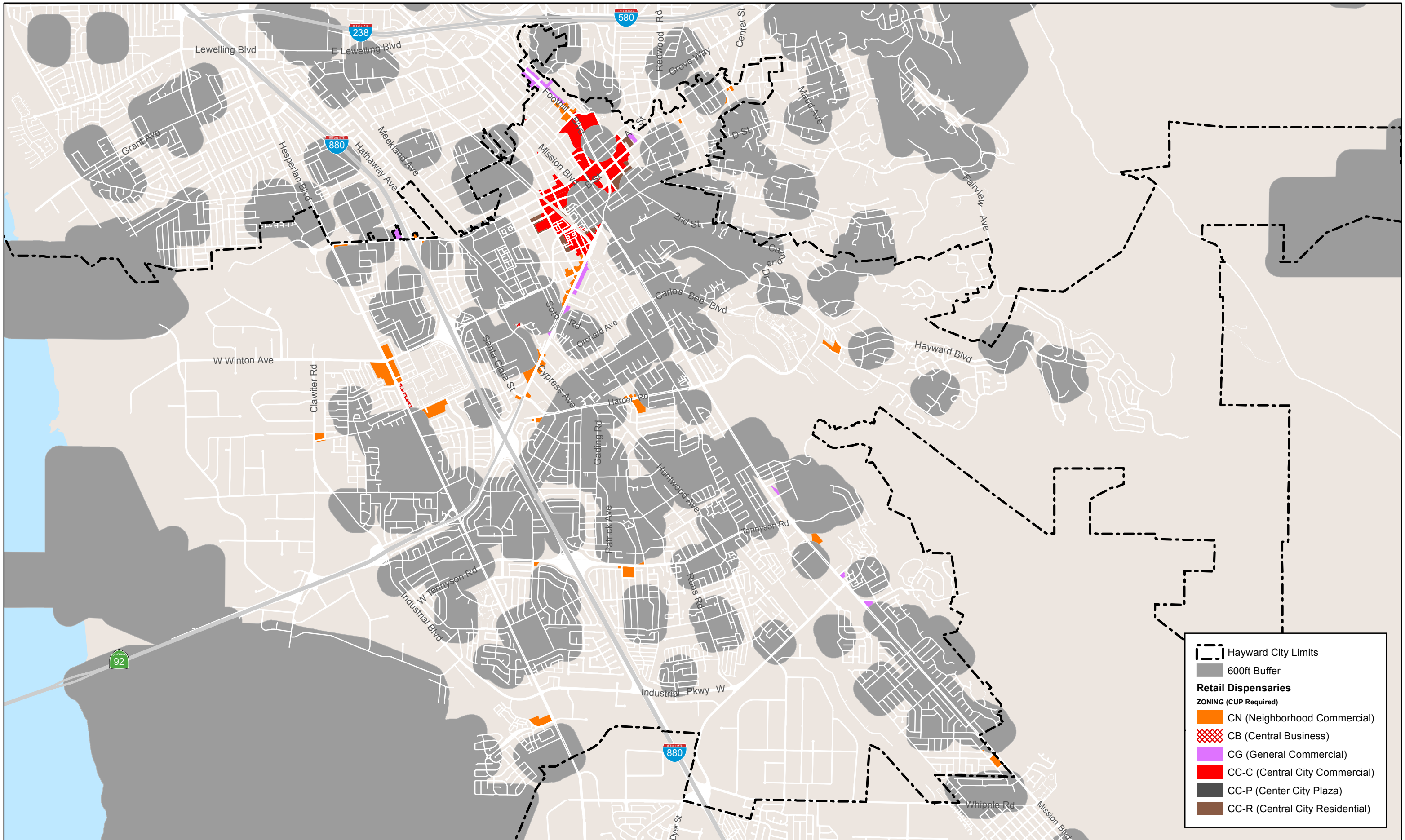
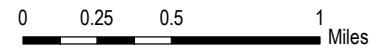
ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



Commercial Cannabis Retail Dispensaries – Zoning Districts



Hayward City Limits

600ft Buffer

Retail Dispensaries

ZONING (CUP Required)

CN (Neighborhood Commercial)

CB (Central Business)

CG (General Commercial)

CC-C (Central City Commercial)

CC-P (Center City Plaza)

CC-R (Central City Residential)

Note: Sensitive Receptors include libraries, community centers, public parks, recreation centers, youth centers, K-12 schools, and day care centers.



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-651

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Clerk and City Attorney

SUBJECT

Adoption of Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Summary of Ordinance Published on 10/27/2017
Attachment III	Revised Ordinance



DATE: October 30, 2017

TO: Mayor and Council Members

FROM: City Clerk and City Attorney

SUBJECT Adoption of Ordinance of the City of Hayward, California Adding Article 14 to Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

BACKGROUND

The Ordinance was introduced by Council Member Zermeño at the October 17, 2017, meeting of the City Council with the following vote:

AYES:	COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Salinas, Lamnin
	MAYOR: Halliday
NOES:	None
ABSENT:	None
ABSTAIN:	None

The Ordinance has been modified to address comments from the City Council as follows:

- Section 6-14.13(a)(5) has been amended to eliminate specific hours of operation.
- Section 6-14.13(b)(4) has been amended to delete the word “armed” from the security guard language.

During the comments offered by the City Council, there was a desire to specify the timeframe in which the City needs to be notified of a change in ownership related to cannabis business. City staff has reviewed the regulatory ordinance and finds that the notification is currently addressed in the code enforcement administrative regulations and the City Manager has the authority to modify the regulations as needed. Within the annual cannabis license, owners/applicants are required to notify the City and update their applications within ten (10) days for a change of ownership.

The revised Ordinance has been included to this item as Attachment III.

STRATEGIC INITIATIVES

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

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, October 27, 2017. Adoption at this time is therefore appropriate.

NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared and Recommended by: Miriam Lens, City Clerk
Michael Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 14 TO CHAPTER
6 OF THE HAYWARD MUNICIPAL CODE REGARDING COMMERCIAL CANNABIS
BUSINESSES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 14 is added to Chapter 6 of the Hayward Municipal Code
and is hereby enacted to read as follows:

ARTICLE 14

COMMERCIAL CANNABIS BUSINESSES

SEC. 6-14.00 FINDINGS AND PURPOSE.

SEC. 6-14.10 DEFINITIONS.

SEC. 6-14.11 PERMIT REQUIRED.

SEC. 6-14.12 REVIEW OF APPLICATIONS.

SEC. 6-14.13 OPERATING AND PERFORMANCE STANDARDS.

SEC. 6-14.14 RECORDS AND INSPECTIONS.

SEC. 6-14.15 PERMIT RENEWAL.

SEC. 6-14.16 ENFORCEMENT.

SEC. 6-14.17 PERMIT SUSPENSION OR REVOCATION AND HEARING.

SEC. 6-14.18 CITY MANAGER AUTHORITY

SEC. 6-14.19 TAXES.

SEC. 6-14.20 FEES.

SEC. 6-14.21 NON-CONFORMING USES.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

Introduced at the meeting of the Hayward City Council held October 17, 2017, the above entitled Ordinance was introduced by Council Member Zermeño.

This ordinance will be considered for adoption at the meeting of the Hayward City Council, to be held on October 30, 2017, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: October 27, 2017
Miriam Lens, City Clerk
City of Hayward

ORDINANCE No. 17-__

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 14 TO CHAPTER 6 OF THE HAYWARD MUNICIPAL CODE REGARDING COMMERCIAL CANNABIS BUSINESSES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 14 is added to Chapter 6 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 14

COMMERCIAL CANNABIS BUSINESSES

SEC. 6-14.00 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- (a) In 2015 the state enacted a comprehensive regulatory framework (AB 243, AB 266, SB 643) for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. The legislation was collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA).
- (b) On November 8, 2016, the voters of the state adopted Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized adult cannabis use, possession and cultivation for non-medicinal purposes and created a regulatory framework for non-medicinal cannabis businesses.
- (c) The intent of MCRSA and AUMA was to establish a comprehensive regulatory system for cultivation, production and sale of cannabis and cannabis products, thereby weakening the illicit market for cannabis.
- (d) On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis.
- (e) On June 15, 2017 the state legislature enacted Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) which consolidated

- provisions of MCRSA into the regulatory framework of the AUMA, thereby creating a unified regulatory scheme for medicinal and adult use cannabis.
- (f) Under MAUCRSA, beginning on January 1, 2018 the state will issue licenses for businesses to engage in cultivation, manufacturing, testing, distribution and retail sale of cannabis and cannabis products.
 - (g) MAUCRSA specifically authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to MAUCRSA.
 - (h) It is the intent of the City Council to authorize and regulate specific types of cannabis businesses licensed pursuant to state law.
 - (i) The purpose of this Article is to establish local regulations for permitting and operation of specified commercial cannabis businesses within the City of Hayward.
 - (j) This ordinance is necessary to protect the public health, safety and welfare of the citizens of the City of Hayward.

SEC. 6-14.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

“Applicant” means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of a business entity, who applies to obtain a permit under this Article.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether

crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety code.

“Cannabis Product” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

“Commercial Cannabis Business” includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as permitted by this Article.

“Cannabis Testing Laboratory” means a laboratory described in Section 26101 of the California Business and Professions Code holding a Type 8 license as described in Section 26050(a) of the California Business and Professions Code.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“Delivery” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“Distribution” means the procurement, sale, and transport of cannabis and cannabis products between state licensees.”

“Manufacture” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“Manufacturer” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products

either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medical/medicinal cannabis” or “Medical/medicinal cannabis product” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Owner” means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance. (2) The chief executive officer of a nonprofit or other entity. (3) A member of the board of directors of a nonprofit. (4) An individual who will be participating in the direction, control, or management of the person applying for a permit.

“Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Sell,” “sale,” and “to sell” include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a state licensee to the state licensee from whom the cannabis or cannabis product was purchased.

“State Licensee” means a person or entity that has been issued a license pursuant to state law for commercial cannabis activity as defined by state law.

SEC. 6-14.11 PERMIT REQUIRED.

- (a) It is unlawful for any person to own, conduct, operate or maintain, any commercial cannabis business in the City of Hayward without a valid commercial cannabis permit issued pursuant to this Article.
- (b) The City Council may, by resolution, direct the City Manager to call for applications from any parties interested in obtaining a commercial cannabis permit.
- (c) The City Council may, by resolution, establish a limit on the number of permits to be issued pursuant to this Article.
- (d) A permit issued pursuant to this Article does not authorize the permittee to operate a commercial cannabis business until the permittee has obtained appropriate land use approvals pursuant to the Hayward Zoning Ordinance, obtained an appropriate cannabis license from the State, paid all applicable fees, charges, taxes and deposits, and complied with other applicable state and local laws and regulations.
- (e) A permit issued pursuant to this Article does not confer a property interest or vested right to receive a future permit pursuant to this Article.
- (f) A permit issued pursuant to this Article shall be valid for one (1) year from the date the permittee receives land use approval and shall be accompanied by the payment of an annual permit fee in an amount established by resolution of the City Council.
- (g) No permit issued pursuant to this Article shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a commercial cannabis business must submit a new application for a permit in accordance with this Article.

- (h) This Article does not apply to the individual use, possession or cultivation of medical cannabis or cannabis for adult use as regulated by state law.

SEC. 6-14.12 REVIEW OF APPLICATIONS

- (a) The City Manager shall establish procedures for accepting and evaluating applications submitted pursuant to this Article. The evaluation process shall include a method for scoring and ranking each application.
- (b) Upon completing the evaluation of all applications, the City Manager shall prepare a report to the City Council and provide a recommendation regarding selection of permittees.
- (c) Applications shall include information required by the City Manager including, but not limited to the following:
- (1) A detailed description of the type of commercial cannabis business that includes proposed hours of operation/shift scheduling; type of specialized equipment to be used for cultivation or manufacturing; whether hazardous materials, including volatile solvents or gases are proposed to be used as part of the operation; how industrial waste will be disposed of; anticipated gross annual revenue; list of State licensed transportation and distribution providers serving the facility, if known; anticipated frequency of deliveries serving the facility; other pertinent information involving the operation of the facility.
 - (2) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number, identification number or other form of government issued photo identification and Social Security number.
 - (3) The names and addresses of all persons financially interested in the business.
 - (4) The full, true name under which the business will be conducted.
 - (5) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter,

together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.

- (6) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one (1) or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one (1) of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within ninety (90) calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.
- (7) Proposed location(s) within the City where the business will be located including documentation showing that the property owner of the proposed location(s) consents to the operation of a commercial cannabis business at the location.
- (8) A security plan describing proposed security arrangements for the premises including, but not limited to: alarm systems; surveillance equipment; use of security personnel; lighting plans; plans for securing points of entry.
- (9) A summary of the applicant's relevant experience, if any, in operating permitted commercial cannabis businesses in other

jurisdictions, with contact information for references in those jurisdictions.

- (10) Category of state cannabis license(s) the applicant holds or intends to apply for.
- (11) A summary of any regulatory actions currently pending or taken against the applicant, including issuance of notices of violation, citations, suspension or revocation of licenses, or similar actions, related to any business owned or operated by the applicant related to air quality, water quality, storage or use of hazardous chemicals, building code violations, or public health and safety violations. The name and location of the jurisdiction or agency, which took the action shall also be included.
- (12) Written authorization for the city, its agents, and employees to conduct a background investigation of the applicant and the responsible managing officer/employee of the commercial cannabis business, including submission of fingerprints for criminal background investigation.
- (13) Community benefit proposals.
- (14) A conceptual site plan with proposed interior and exterior building designs and layouts.

(d) In addition to the information described in (c) above, each application shall be accompanied by a refundable deposit in an amount established by resolution of the City Council.

(e) The City Manager or his/her designee shall review the applications to determine compliance with subdivision (c) of this section. Upon written notice that an application is incomplete, the applicant may submit additional information as requested by the City. Failure to submit requested information may be deemed an abandonment of the application resulting in no further action being taken by the City.

(f) The City Manager or his/her designee shall investigate the truth of the statements set forth in the application to determine if an applicant is qualified to obtain a commercial cannabis permit. An application will be rejected if:

- (1) It is found to contain material misstatements or omissions;
- (2) The applicant is determined to be ineligible or prohibited from obtaining a state cannabis license pursuant to state law.
- (3) The applicant, or any of its officers, directors, or owners is found to have been convicted of any of the following offenses: A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code; A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code; A felony conviction involving fraud, deceit, or embezzlement; A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.
- (4) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.
- (5) The applicant, or any of its officers, directors, or owners, has been sanctioned by a state licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities.

SEC. 6-14.13 OPERATING AND PERFORMANCE STANDARDS.

Permittees shall operate in conformance with the following minimum standards, and such standards shall be incorporated into the conditions of approval for land use approval of the business pursuant to the Zoning Ordinance.

(a) Operations.

- (1) All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054

and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children's playground(s) or similar use dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced following the issuance of a Conditional Use Permit from the Planning Commission 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 a commercial cannabis business. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

- (2) Cannabis or cannabis products, whether for medicinal or adult recreational use, shall only be sold to individuals authorized by state law to purchase such cannabis or cannabis products.
- (3) No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a permitted Commercial Cannabis Business.
- (4) Operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.
- (5) Permittees engaged in retail sales ~~may operate between the hours of 8:00a.m. and 8:00 p.m., up to seven (7) days per week or as~~ shall maintain hours of operation as specified approved as part of by a Conditional Use Permit.
- (6) Retail sales of cannabis that violate state or local law are expressly prohibited.
- (7) No cannabis odors shall be detectable outside of the facility.

- (8) Permittees shall employ only persons at least 21 years of age at any permitted facility within the City of Hayward.
 - (9) Subject to Section 10-1.3607 of this Code, consumption or ingestion of cannabis or cannabis products on the premises of a permittee, including outdoor areas and parking lots, is prohibited.
 - (10) Permittees shall provide the City Manager or his/her designee, and all residents, businesses and property owners within 100 feet of the permitted premises with the current name, phone number, secondary phone number and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the premises may be reported. This information shall be updated as necessary to keep it current.
 - (11) Permittees shall have an on-site manager at each permitted facility within the City of Hayward who is responsible for overall operation during times that employees are conducting operations, and shall provide the City Manager or his/her designee with contact information for all such persons, including telephone number and email address. Permittees shall also provide the City with the name and contact information including phone number of at least one manager that can be reached 24-hours a day.
 - (12) Permittees shall take all reasonable steps to discourage and correct conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding a permitted facility. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti. Graffiti must be removed from property and parking lots under the control of the permittee within 72 hours of discovery.
- (b) Security.
- (1) Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-

time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.

- (2) A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.
- (3) All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.
- (4) Permittees shall utilize **armed** security officers possessing a valid Department of Consumer Affairs "Security Guard Card" during hours of operation.
- (5) Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

SEC. 6-14.14 RECORDS AND INSPECTIONS.

- (a) Permittees shall maintain books, records, accounts and all data and information

relevant to its operations and allow the City access to such records for purposes of conducting an audit or examination to determine compliance with this Article, the Hayward Municipal Code, and other local regulations, including compliance with local tax obligations.

- (b) Permittees shall allow inspection by the City of any facility permitted pursuant to this Article to verify compliance with the requirements of this Article, the Hayward Municipal Code and the requirements of state law.

SEC. 6-14.15 PERMIT RENEWAL.

- (a) A commercial cannabis permit must be renewed annually. Permittees may apply for renewal in writing no later than sixty (60) days before the expiration of the current permit. The application for renewal shall include:
- (1) A statement updating information from the original permit application or certifying that the information contained in the original permit application is unchanged.
 - (2) Verification that the permittee has renewed or is in the process of renewing a previously issued state cannabis license and is otherwise in compliance with the requirements of state law.
 - (3) Authorization for updated criminal background checks.
 - (4) A renewal fee as established by the City Council.
- (b) As part of the renewal process permittees shall allow inspection of any permitted facility by the Building Official, Fire Marshall or their designees, and other City officials to verify compliance with applicable building and safety regulations. Any violations noted shall be corrected within a reasonable time as determined by City staff.
- (c) As a condition to renewal of the permit, the permittee must pay any fees, charges, taxes or deposits required by this Article and applicable provisions of the Hayward Municipal Code.
- (d) Failure to correct violations or pay applicable fees, charges, taxes or deposits may result in denial of a permit renewal request.
- (e) Permits shall be renewed for a period of one (1) year.

SEC. 6-14.16 ENFORCEMENT. A violation of this Article is declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances. Additionally, any violation of this Article may be enforced subject to the provisions relating to administrative citations found in Chapter 1, Article 7.

SEC. 6-14.17 PERMIT SUSPENSION OR REVOCATION AND HEARING.

- (a) The City Manager may suspend or revoke a permit issued pursuant to this Article for failure to comply with any performance or operating standards set forth in this Article, or any other requirement of this Article or Code, or applicable local or state regulation. Such suspension or revocation shall only be made upon a hearing granted to the permit holder before an independent hearing officer upon no less than fourteen (14) days' written notice to the permit holder. The notice of suspension or revocation hearing shall generally state the grounds for the proposed action and the time and place of the hearing.
- (b) The hearing officer shall receive written and oral testimony and any other evidence he/she deems relevant to the issue of suspension or revocation. The hearing officer shall not be bound by the rules of evidence in conducting the hearing described herein. The hearing officer shall issue a written decision within 10 business days after the conclusion of the hearing. The decision of the independent hearing officer shall be final and conclusive.

SEC. 6-14.18 CITY MANAGER AUTHORITY. The City Manager may establish administrative regulations and policies to implement any provision of this Article.

SEC. 6-14.19 TAXES. The City Council may establish by resolution the tax rate to be imposed on all gross sales for all products associated with medical or adult use cannabis, from cultivation, distribution, manufacturing, and retailing of cannabis or cannabis products.

SEC. 6-14.20 FEES. The City Council may establish by resolution any fees that shall be charged for administration and implementation of this Article. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

SEC. 6-14.21 NON-CONFORMING USES. No use which purports to have engaged in cultivation, manufacturing, processing, distribution, testing, transportation, or sale of medical cannabis or adult use cannabis prior to the enactment of this Article shall be deemed to have been a legally established use pursuant to the provisions of the Hayward Municipal Code, Hayward Zoning Ordinance, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal non-conforming or other similar status.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the

authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of, _____ 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____ , 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-652

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Clerk

SUBJECT

Adoption of Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

ATTACHMENTS

Attachment I Staff Report
Attachment II Summary of Ordinance Published on 10/27/2017



DATE: October 30, 2017
TO: Mayor and Council Members
FROM: City Clerk
SUBJECT Adoption of Ordinance of the City of Hayward, California Amending Article 6 of Chapter 5 of the Hayward Municipal Code Regarding Smoking Pollution Control

RECOMMENDATION

That the Council adopts the Ordinance introduced on October 17, 2017.

BACKGROUND

The Ordinance was introduced by Council Member Zermeño at the October 17, 2017, meeting of the City Council with the following vote:

AYES:	COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Peixoto, Salinas, Lamnin
	MAYOR: Halliday
NOES:	None
ABSENT:	None
ABSTAIN:	None

STRATEGIC INITIATIVES

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

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, October 27, 2017. Adoption at this time is therefore appropriate.

NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared by: Avinta Madhukansh-Singh, Management Analyst

Recommended by: Miriam Lens, City Clerk

Approved by:

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

Kelly McAdoo, City Manager

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING ARTICLE
6 OF CHAPTER 5 OF THE HAYWARD MUNICIPAL CODE REGARDING
SMOKING POLLUTION CONTROL

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 6 of Chapter 5 of the Hayward Municipal Code and is hereby amended and enacted.

SEC. 5-6.00 - TITLE.

SEC. 5-6.01 - FINDINGS AND PURPOSE.

SEC. 5-6.02 - DEFINITIONS.

SEC. 5-6.03 - APPLICATION TO CITY FACILITIES, AREAS, AND VEHICLES.

SEC. 5-6.04 - PROHIBITION OF SMOKING IN PUBLIC PLACES, AND CERTAIN OTHER AREAS.

SEC. 5-6.05 - REASONABLE SMOKING DISTANCE REQUIRED—20 FEET.

SEC. 5-6.06 - AREAS NOT SUBJECT TO SMOKING REGULATIONS.

SEC. 5-6.07 - POSTING OF SIGNS.

SEC. 5-6.08 - TOBACCO AND CANNABIS SAMPLES PROHIBITED.

SEC. 5-6.09 - VENDING MACHINES RESTRICTED.

SEC. 5-6.10 - ENFORCEMENT OFFICER.

SEC. 5.6.11 - CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

SEC. 5-6.12. - OTHER APPLICABLE LAWS.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

Introduced at the meeting of the Hayward City Council held October 17, 2017, the above entitled Ordinance was introduced by Council Member Zermeño.

This ordinance will be considered for adoption at the meeting of the Hayward City Council, to be held on October 30, 2017, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance is available for examination by the public in the Office of the City Clerk.

Dated: October 27, 2017
Miriam Lens, City Clerk
City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-676

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Attorney

SUBJECT

Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits

RECOMMENDATION

That the City Council approves the attached resolution (Attachment II).

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution



DATE: October 30, 2017
TO: Mayor and City Council
FROM: City Attorney
SUBJECT: Resolution of the City Council of the City of Hayward Imposing a Limit on Cannabis Retail Dispensary Permits

RECOMMENDATION

That the Council adopts the attached resolution (Attachment II).

BACKGROUND

At the October 17, 2017, meeting of the City Council, direction was given to staff to prepare a resolution imposing a limit of up to three (3) permits to be issued to cannabis retail dispensary businesses.

STRATEGIC INITIATIVES

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

FISCAL IMPACT

There is no fiscal impact associated with this report.

PUBLIC CONTACT

Notice was provided as required by the Brown Act for this item.

NEXT STEPS

The permit limit will be incorporated into the Request for Proposals that staff is preparing in conjunction with an outside consultant for selection of cannabis business operators.

Prepared by: Michael G. Vigilia, Senior Assistant City Attorney

Recommended by: Michael S. Lawson, City Attorney

Approved by:

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

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO 17-

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD IMPOSING A
LIMIT ON CANNABIS RETAIL DISPENSARY PERMITS

WHEREAS, on November 8, 2016, the voters of the state adopted Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized adult cannabis use, possession and cultivation for non-medicinal purposes and created a regulatory framework for non-medicinal cannabis businesses; and

WHEREAS, on November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis; and

WHEREAS, Prop. 64 authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to state law; and

WHEREAS, the City Council has adopted a series of ordinances that create a comprehensive local regulatory framework for medicinal and adult-use cannabis businesses; and

WHEREAS, the local regulations allow the City Council to impose limits on the number of commercial cannabis permits to be issued by the City; and

WHEREAS, the City Council has determined that imposing a limit on the number of permits to be issued to cannabis retail dispensaries promotes and protects the public health, safety, and welfare of the citizens of the City of Hayward.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that no more than three (3) permits shall be issued for cannabis retail dispensaries in the City of Hayward.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-674

DATE: October 30, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT

West Winton Landfill Leachate Conveyance System Replacement Project: Approval of Plans and Specifications, and Call for Bids

RECOMMENDATION

That Council adopts the attached resolution approving the plans and specifications for the West Winton Landfill Leachate Conveyance System Replacement Project and calling for bids to be received on November 30, 2017.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Draft Resolution



DATE: October 30, 2017

TO: Mayor and City Council

FROM: Director of Utilities & Environmental Services

SUBJECT: West Winton Landfill Leachate Conveyance System Replacement Project:
Approval of Plans and Specifications, and Call for Bids

RECOMMENDATION

That Council adopts the attached resolution approving the plans and specifications for the West Winton Landfill Leachate Conveyance System Replacement Project and calling for bids to be received on November 30, 2017.

BACKGROUND

The West Winton Landfill (the landfill) is a closed San Francisco Bay-front landfill located at the western terminus of Winton Avenue in Hayward. The landfill covers an area of approximately sixty acres and is maintained as recreational open space and is used as a passive public park as part of the East Bay Regional Park District's Hayward Regional Shoreline. The facility was operated as a regional landfill by Waste Management of Alameda County, then called Oakland Scavengers, from 1930s until its closure in mid-1970s, and as such, the landfill's waste is owned by Waste Management, while the underlying land is owned by the City which acquired title in 1978. Perimeter trails are owned and maintained by the East Bay Regional Park District as part of its Regional Shoreline Trail system, which forms a portion of the Bay Trail system. Pursuant to an Order from the Water Board, and under an agreement with Waste Management, the City operates and maintains the leachate conveyance system, and Waste Management maintains the leachate extraction system (wells and pumps).

The leachate extraction system (LES) was installed in 1993 to mitigate a leachate seep and the system is located on the west perimeter levee. In 1996, the system was expanded to the landfill's eastern panhandle where an additional extraction well was installed. The system had been operating reliably until earlier this year after the unusually wet season when the system began to experience a number of leaks. The leachate conveyance system consists of a relatively shallow buried PVC piping system. The piping has been in place for approximately twenty-four years. Over time and particularly after heavy rain this past winter following several years of drought conditions, it is expected that some settlement has occurred. Because of these conditions, increased pressure on the buried piping system may have advanced pipe joint cracks resulting in leachate leaks. The landfill leachate conveyance system is an important component of managing leachate levels in the landfill. Tidal influences and to some extent precipitation can

penetrate the landfill cap and cause liquid levels to rise. It is important to keep the system functioning so that water level gradients are drawn toward the extraction wells where the leachate can be pumped out and conveyed to the Water Pollution Control Facility for further treatment. Under a Waste Discharge Requirement issued by the California Regional Water Quality Control Board (Water Board), buildup or mounding of leachate levels which can adversely impact waters of the State is prohibited. Therefore, it is essential to have a functioning leachate extraction system at all times.

City staff noticed a leachate stain at the landfill in April and immediately reported it to the Water Board. The City received a Notice of Violation on April 25, 2017 from the Water Board because of said failure of the leachate conveyance system. City staff investigated the failure and what may have contributed to it. There was significant work required to determine the source of the failure and work with the Water Board to identify the appropriate corrective measures. The system also experienced a failure on July 28, 2017 and two more in September.

Staff has been keeping the Water Board informed and coordinating its work with the Board staff.

DISCUSSION

The purpose of this project is to replace the existing leachate conveyance system with a new, more robust high density polyethylene piping system. In addition, new vaults will be installed with isolation valves and cleanout fittings to allow staff to isolate individual well heads while continuing to leave the remain wells in service. These vaults will allow staff easier access to isolate parts of the system, and fittings to allow pipe segments to be cleaned as necessary.

Staff has prepared plans and specifications for replacement of the leachate conveyance system. In addition, staff has worked closely with the Water Board and the Alameda County Department of Environmental Health to develop a health and safety plan to protect human health and the environment from exposed wastes and/or leachate during construction. In addition, staff has worked with the East Bay Regional Parks District to coordinate work that will take place in the public access paths during construction.

ECONOMIC IMPACT

There are no short-term economic impacts to Hayward customers. This cost will be absorbed as part of the maintenance budget for the landfill.

STRATEGIC INITIATIVES

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

FISCAL IMPACT

The estimated project costs are as follows:

Design and Administration Services – City Staff	\$ 15,000
Construction Contract (Estimated)	\$120,000
Administration, Inspection & Testing – City Staff	\$ 20,000
Compaction Testing	\$ 5,000
Permitting	<u>\$ 10,000</u>
Total	\$170,000

The failure of the leachate system is unexpected and therefore is not included in the Adopted FY 2018 Capital Improvement Program (CIP).

Annual landfill maintenance, which includes mowing, monitoring, minor repairs, and other routine tasks, is funded by the Wastewater Operating Fund. The FY 18 budget is approximately \$290,000. There is not sufficient budget to cover the cost of the project, but given that it is necessary and required to meet the City’s West Winton Landfill Maintenance Order, staff will request that funds be appropriated from the fund balance at the time of the request to award the construction project.

SUSTAINABILITY FEATURES

The leachate conveyance system is essential to protecting the waters of the state from potential degradation that might be caused by groundwater and tidal waters mixing with landfill leachate. Improving the conveyance system will reduce the potential for leachate to be conveyed via groundwater or tidal marshes to the San Francisco Bay.

PUBLIC CONTACT

Staff has contacted the affected agencies (i.e., Regional Water Quality Control Board, East Bay Regional Park District, Alameda County Department of Environmental Health, and Waste Management) about this project and is closely coordinating this work with said agencies.

SCHEDULE

The following schedule has been developed for this project:

Approval of Plans and Specifications and Call for Bids	October 30, 2017
Receive Bids	November 30, 2017
Award of Construction Contract	December 12, 2017
Issue Notice to Proceed	January 5, 2018
Construction Completion	March 30, 2018

There is a very tight window of time to perform this work which is when there have been a few days of reprieve from heavy rains and before late summer which is the nesting birds season.

NEXT STEPS

Following Council approval, staff will advertise the project for public bidding. Staff will return to the City Council for award of the construction contract after bids have been received and reviewed.

Prepared by: Suzan England, Senior Utilities Engineer

Recommended by: Alex Ameri, Director of Utilities & Environmental Services

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is written above a horizontal line.

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION APPROVING PLANS AND SPECIFICATIONS FOR THE WEST WINTON
LANDFILL LEACHATE CONVEYANCE SYSTEM REPLACEMENT PROJECT,
AND CALL FOR BIDS

BE IT RESOLVED by the City Council of the City of Hayward as follows:

WHEREAS, those certain plans and specifications for the West Winton Landfill Leachate Conveyance System Project, on file in the office of the City Clerk, are hereby adopted as the plans and specifications for the project;

WHEREAS, the City Clerk is hereby directed to cause a notice calling for bids for the required work and material to be made in the form and manner provided by law;

WHEREAS, sealed bids therefor will be received by the City Clerk's office at City Hall, 777 B Street, Hayward, California 94541, up to the hour of 2:00 p.m. on Thursday, November 30, 2017, and immediately thereafter opened by the City Clerk at City Hall, Hayward, California.

NOW, THEREFORE, BE IT RESOLVED, that the City Council will consider a report on the bids at a regular meeting following the aforesaid opening and declaration of same.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: CONS 17-644

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Approval of Resolution Accepting the Transfer of Parking Facilities from the Hayward Successor Agency

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) approving and accepting the transfer of specified parking facilities pursuant to Health and Safety Code Sections 34177(e) and 34181(a)(1), for continued governmental use, operation, and maintenance from the Hayward Successor Agency.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Resolution



DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT Approval of Resolution Accepting the Transfer of Parking Facilities from the Hayward Successor Agency

RECOMMENDATION

That the City Council adopts the attached resolution (Attachment II) approving and accepting the transfer of specified parking facilities pursuant to Health and Safety Code Sections 34177(e) and 34181(a)(1), for continued governmental use, operation, and maintenance from the Hayward Successor Agency.

BACKGROUND

In June of 2011, the California State Legislature enacted Assembly Bill x1 26, as amended by AB 1484, enacted on June 27, 2012, and SB 107, enacted on September 22, 2015 (the "Dissolution Act") to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*). The California Supreme Court in its decision in *California Redevelopment Association v. Matosantos*, issued December 29, 2011, declared the Dissolution Act to be constitutional. Under the Dissolution Act, all California redevelopment agencies, including the Redevelopment Agency of the City of Hayward (the "Dissolved Agency"), were dissolved effective February 1, 2012.

The Hayward Successor Agency, a separate legal entity (the "Successor Agency") was formed to and charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Dissolved Agency.

An oversight board for the Successor Agency (the "Oversight Board") has been formed and is functioning in accordance with Health and Safety Code Section 34179, with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181.

On November 8, 2013, the Successor Agency received a "Finding of Completion" from the California Department of Finance (the "Department") pursuant to Health and Safety Code Section 34179.7, confirming that the Successor Agency had made specified required payments under the Dissolution Statutes.

One of the requirements under the Dissolution Statutes is for the Successor Agency to submit a Long-Range Property Management Plan (the "LRPMP") for approval to the Oversight Board and the Department of Finance (the "DOF"). The Long-Range Property Management Plan provides an inventory of all real properties of the Dissolved Agency, except housing assets, which were transferred to the Hayward Housing Authority. The LRPMP also details a long-range strategic plan that will govern the disposition of all properties.

As required by Health and Safety Code Section 34191.5(b), the Successor Agency prepared a Multi-Asset Long-Range Property Management Plan dated May 19, 2015 (the "Multi-Asset LRPMP") which was submitted to and approved by the Successor Agency's Oversight Board. The Multi-Asset LRPMP was then submitted to and approved by the DOF by letter dated September 4, 2015.

On September 22, 2015, the State enacted SB 107, under which the legislature expanded the authorization of the Oversight Board to direct the transfer of parking facilities and lots dedicated solely to public parking that do not generate revenues in excess of reasonable maintenance costs of the properties, as governmental use properties under Health and Safety Code Section 34181(a)(1). Health and Safety Code Section 34191.3(b) authorized the Successor Agency with a LRPMP approved prior to January 1, 2016 to amend its LRPMP once, solely to allow for the retention of real properties that constitute parking facilities and lots dedicated solely to public parking for governmental use.

The following properties were acquired by the Dissolved Agency for governmental use and constitute parking facilities and lots dedicated solely for public parking as such term is defined in Health and Safety Code Section 34181(a)(2) (the "Parking Facilities"):

NO.	APN	ADDRESS	RECOMMENDED USE
1.	428-0061-039-01	1025 A Street	Governmental Use as parking facilities
2.	427-0001-031-01	22852 Foothill Blvd	Governmental Use as parking facilities
3.	415-0240-002	1154 Russell Way	Governmental Use as parking facilities
4.	415-0240-003-02	1166 Russell Way	Governmental Use as parking facilities

Under the Multi-Asset LRPMP, the properties were designated to transfer to the City for future development pursuant to Health and Safety Code Section 34191.3. After the adoption of SB 107 and as allowed under Health and Safety Code Section 34191.3(b), the Oversight Board adopted Resolution 2016-02 approving revisions to the Multi-Asset LRPMP to change the designation of the Parking Facilities to government use properties (the "Revised LRPMP"). By letter dated January 9, 2017, the Department of Finance advised the Successor Agency that the action to amend the Multi-Asset LRPMP was not approved because the notice of the amendment was not timely submitted to the Department of Finance prior to the July 1, 2016 deadline.

Under Health and Safety Code Sections 34177(e) and 34181(a)(1), the Oversight Board is authorized to approve and direct the disposition of governmental purpose properties constructed and used for roads, school buildings, parks and open space, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings and other governmental purposes to the public jurisdiction generally responsible for the ownership, operation and maintenance of public facilities in the City. The same action was authorized under Resolution 2016-02.

DISCUSSION

The Parking Facilities described above were acquired by the Dissolved Agency for governmental use and constitute parking facilities and lots dedicated solely for public parking as such term is defined in Health and Safety Code Section 34181(a)(2). All the Parking Facilities are surface parking lots currently designated solely for free public parking. As free parking, the parking facilities do not generate any revenue at all and so do not generate revenues in excess of reasonable maintenance costs of the properties.

The sole purpose of the Amendment to the Multi-Asset LRPMP, was to change the designation of the Parking Facilities from properties to be retained for future development, to properties to be retained by the City for governmental use as parking facilities and lots dedicated solely to public parking in compliance with Health and Safety Code Section 34181(a)(2).

Unfortunately, the amendment to the Revised Multi-Asset LRPMP was not recognized by the Department of Finance due to a technicality.

The City, as the public jurisdiction generally responsible for the ownership, operation and maintenance of public facilities in the City, is the appropriate public jurisdiction for the ultimate disposition of the governmental use properties and with respect to the Parking Facilities, the Successor Agency proposes to transfer to the City so that the City may continue to own, operate and maintain the Parking Facilities as parking facilities and lots dedicated solely to public parking under Health and Safety Code Section 34181(a)(2).

The disposition of the Parking Facilities to the City for continued use, operation and maintenance for parking facilities and lots dedicated solely to public parking is consistent with the City's General Plan, the Former Agency's approved redevelopment plan, and other applicable City codes and policies in that these local laws and plans call for continued public use and maintenance of the various Parking Facilities.

The Hayward Oversight Board, at its October 30, 2017 meeting, is scheduled to approve Resolution 2017-03, finding that the Parking Facilities identified in and subject in the resolution are parking facilities and lots dedicated solely to public parking and as of date of transfer will not generate revenue in excess of reasonable maintenance costs of the properties. Additionally, Resolution 2017-03 will direct the transfer of the Parking Facilities, pursuant to Health and Safety Code Sections 34191.3, 34177(e) and 34181(a)(1), to the City and in consideration for the City's continued use, operation, and maintenance of the Parking Facilities for the government purposes. This staff report and accompanying resolution completes the transfer of these Parking Facilities to the City.

ECONOMIC AND FISCAL IMPACT

There is limited economic impact associated with the transfer of the Parking Facilities to the City. The Successor Agency's transfer of these assets does not create any new enforceable obligation or liability for the Successor Agency. The disposition carries forward the goals and objectives of the Successor Agency to divest itself of the properties and assets of the Dissolved Agency and to wind-down its affairs. However, following the transfer of the Parking Facilities, the City will be responsible for maintenance and operation activities which will have a nominal impact on the City's budget.

STRATEGIC INITIATIVES

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

NEXT STEPS

Upon approval of the Resolution, the Successor Agency will transfer the properties, by grant deed, to the City for continued use as parking facilities and lots dedicated solely to public parking under Health and Safety Code Section 34181(a)(2).

Prepared and Recommended by: John Stefanski, Management Analyst II

Approved by:



Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 2017-__

Introduced by Council Member _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD
ACCEPTING TRANSFER OF SPECIFIED PARKING FACILITIES
PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34177(e) AND
34181(a)(1), FOR CONTINUED GOVERNMENTAL USE, OPERATION, AND
MAINTENANCE

WHEREAS, the California state legislature enacted Assembly Bill x1 26, as amended by AB 1484, enacted on June 27, 2012, and SB 107, enacted on September 22, 2015 (the "Dissolution Statutes"), to dissolve redevelopment agencies formed under the "Community Redevelopment Law" (Health and Safety Code Section 33000 et seq.); and

WHEREAS, pursuant to the Dissolution Statutes, the Redevelopment Agency of the City of Hayward (the "Dissolved Agency") was dissolved as of February 1, 2012; and

WHEREAS, the Hayward Successor Agency, a separate legal entity (the "Successor Agency"), successor in interest to the Dissolved Agency, which pursuant to Health and Safety Code Section 34173(g) constitutes a separate legal entity from the City of Hayward (the "City") was formed to and charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Dissolved Agency; and

WHEREAS, the City of Hayward adopted the Downtown Hayward Redevelopment Plan (the "Redevelopment Plan") and the Redevelopment Plan sets forth a plan for redevelopment of the Downtown Hayward Redevelopment Project Area (the "Project Area"), which Redevelopment Plan was being implemented by the Dissolved Agency up until its dissolution; and

WHEREAS, the City Council (the "City Council") of the City serves in a separate capacity as the governing board of the Successor Agency; and

WHEREAS, an oversight board for the Successor Agency (the "Oversight Board") has been formed and is functioning in accordance with Health and Safety Code Section 34179 with specific duties to approve certain Successor Agency actions pursuant to Health and Safety Code Section 34180 and to direct the Successor Agency in certain other actions pursuant to Health and Safety Code Section 34181; and

WHEREAS, on November 8, 2013, the Successor Agency received a "Finding of Completion" from the California Department of Finance (the "Department") pursuant to Health

and Safety Code Section 34179.7, confirming that the Successor Agency had made specified required payments under the Dissolution Statutes; and

WHEREAS, the real property and specified other assets of the Dissolved Agency were transferred to the ownership and control of the Successor Agency as of February 1, 2012 pursuant to Health and Safety Code Section 34175(b); and

WHEREAS, including among others, the following properties are located within the Project Area and subject to the Redevelopment Plan, were acquired by the Dissolved Agency for governmental use and constitute parking facilities and lots dedicated solely for public parking as such term is defined in Health and Safety Code Section 34181(a)(2) (the "Parking Facilities"):

No.	APN	Address	Recommended Use
1.	428-0061-039-01	1025 A Street	Governmental Use as parking facilities
2.	427-0001-031-01	22852 Foothill Blvd	Governmental Use as parking facilities
3.	415-0240-002	1154 Russell Way	Governmental Use as parking facilities
4.	415-0240-003-02	1166 Russell Way	Governmental Use as parking facilities

WHEREAS, the City, as the public jurisdiction generally responsible for the ownership, operation and maintenance of public facilities in the City, is the appropriate public jurisdiction for the ultimate disposition of the Parking Facilities; and

WHEREAS, pursuant to Health and Safety Code Section 34191.5(b), upon receipt of the Finding of Completion, the Successor Agency is entitled to and must prepare and submit a Long-Range Property Management Plan (the "LRPMP") in connection with the property assets of the Successor Agency to the Oversight Board and the Department no later than six months following the issuance by the Department of the Finding of Completion; and

WHEREAS, as required by Health and Safety Code Section 34191.5(b), the Successor Agency then prepared a Multi-Asset Long-Range Property Management Plan dated May 19, 2015 (the "Revised LRPMP") which was submitted to and approved by the Successor Agency's Oversight Board; and

WHEREAS, the Revised LRPMP was then submitted to the Department and was approved by the Department by letter dated September 4, 2015; and

WHEREAS, under the Revised LRPMP the properties were designated to transfer to the City for future development pursuant to Health and Safety Code Section 34191.3, but the City would like to maintain the Parking Facilities for public use; and

WHEREAS, under Health and Safety Code Sections 34177(e) and 34181(a)(1), the Oversight Board is authorized to approve and direct the disposition, by the Successor Agency to the City, of governmental purpose properties constructed and used for roads, school buildings, parks and open space, police and fire stations, libraries, *parking facilities and lots dedicated*

solely to public parking, and local agency administrative buildings and other governmental purposes; and

WHEREAS, the proposed disposition and use of the Parking Facilities called for in this Resolution is consistent with the projects and programs under the Redevelopment Plan, which continues to conform with the City's General Plan and other applicable City codes and policies in that call for continued public use and maintenance of the Parking Facilities for continued public uses; and

WHEREAS, the disposition of the Parking Facilities pursuant to this Resolution is exempt from the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines ("CEQA") pursuant to State CEQA Guidelines Section 15061(b)(3); and

WHEREAS, the staff report (the "Staff Report") accompanying this Resolution contains additional information and analysis upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED the City Council hereby finds, resolves, and determines that the foregoing recitals are true and correct, and, together with information provided by the staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED, that, for the reasons set forth above, the City Council finds and determines that acceptance of the transfer of the Parking Facilities pursuant to Health and Safety Code Sections 34177(e) and 34181(a)(1) is exempt from the requirements of CEQA, and the City Manager or the City Manager's designee, is authorized to file the appropriate notice of exemption with respect to the approval of the Parking Facilities transfer pursuant to this Resolution in accordance with CEQA.

BE IT FURTHER RESOLVED, as allowed pursuant to Health and Safety Code Sections 34191.3, 34177(e) and 34181(a)(1), the City Council hereby accepts the transfer of the Parking Facilities and further agrees and acknowledges that the City will use the Parking Facilities for the government purposes.

BE IT FURTHER RESOLVED that the City Council directs the City Manager, or the City Manager's designee, acting on behalf of the City, to take any action and execute any documents as may be necessary to implement the acceptance and use of the Parking Facilities in accordance with the terms approved in this Resolution.

BE IT FURTHER RESOLVED that this Resolution constitutes the City Council's resolution of acceptance of the conveyance of the Parking Facilities to the City pursuant to Government Code Section 27281.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA OCTOBER ____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: PH 17-096

DATE: October 30, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT

Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant).

RECOMMENDATION

That the City Council adopts the associated Ordinance (Attachment II) and Resolutions (Attachment III and IV) for the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code to update regulations for Accessory Dwelling Units and to establish a new review fee in the City's Master Fee Schedule.

ATTACHMENTS

Attachment I	Staff Report
Attachment II	Land Use Ordinance
Attachment III	Resolution for Findings and Environmental Review
Attachment IV	Resolution to Establish New Review Fee
Attachment V	Government Code Section 65852.2
Attachment VI	Assembly Bill 494 and Senate Bill 229



DATE: October 30, 2017

TO: Mayor and City Council

FROM: Interim Development Services Director

SUBJECT Zoning Text Amendment to Update Regulations Related to Accessory Dwelling Units and Establish a New Fee Associated with Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code (Zoning Text Amendment Application No. 201701087); City of Hayward (Applicant).

RECOMMENDATION

That the City Council adopts an Ordinance (Attachment II) and Resolutions (Attachment III and IV) for the Zoning Text Amendment to Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code to update regulations for Accessory Dwelling Units and to establish a new review fee in the City's Master Fee Schedule.

SUMMARY

City staff is proposing amendments to Chapter 10, Planning, Zoning, Subdivisions, of the Hayward Municipal Code (HMC) to be consistent with recently enacted State legislation regarding the construction of Accessory Dwelling Units (ADUs). Additionally, City staff is proposing an amendment and update to the City's Master Fee Schedule for Zoning Conformance Permits to cover staff time review for ensuring all proposed ADUs comply with the proposed regulations.

BACKGROUND

The State of California, especially the San Francisco Bay Area, is currently experiencing a severe housing crisis with a substantially higher demand for housing than currently exists. This directly impacts housing affordability, including homeowners and renters alike. ADUs, commonly referred to as in-law units, granny flats, second dwellings, and/or cottages, assist to provide housing opportunities in a flexible manner to address the unmet demand for affordable housing for the community. These units typically provide housing for, but is not limited to, students, young professionals, small families, disabled individuals, extended family, senior citizens, etc., while also simultaneously assisting homeowners to offset the cost of homeownership and maintenance by renting out accessory units as an additional source of revenue.

On September 27, 2016, Governor Brown signed Assembly Bill 2299 (Bloom) and Senate Bill 1069 (Wieckowski) into law (Attachment V), requiring local agencies to revise and ease their restrictions on ADUs. This new set of legislation changed development standards and regulations to provide greater flexibility associated with the construction of ADUs, including, but not limited to, location criteria, unit sizes, minimum setbacks, parking requirements, owner occupancy, garage conversions, fire sprinkler requirements, utility fees, etc.

On January 1, 2017, new State regulations related to ADUs became effective requiring cities, counties, and utility agencies to relax restrictions placed on the construction of ADUs. State law mandates that any existing local ordinance that fails to fully meet the requirements of State law shall be deemed null and void, unless and until the local agency adopts an ordinance that complies with the provisions identified within the above-referenced laws.

On October 8, 2017, Governor Brown signed two additional pieces of legislation related to ADUs, Assembly 494 (Bloom) and Senate Bill 229 (Wieckowski), into law (Attachment VI) with clarifying language to the previously adopted amendments to Section 65852.2 of the Government Code referenced above. These two pieces of legislation provided defined instances and locations where ADUs shall be permitted for internal conversions of existing square-footage and revised to what extent a local agency may impose parking requirements.

Current Regulations. Given that the City's current local ordinance for the construction of ADUs is not in compliance with the provisions of State law, it is deemed null and void pursuant to Section 65852.2 of the Government Code. Therefore, until the City of Hayward develops and adopts a local ordinance for ADUs consistent with the provisions of State law, ADUs are subject to the standards of the State.

Previously, the regulations for ADUs (now void) were located within the Minimum Design and Performance Standards section within the underlying residential zoning district, as well as within specified transect zones within the Mission Boulevard Corridor and South Hayward BART Form Based Code areas. To maintain consistency between development standards and various permitted zoning districts for ADUs, a new section within the Hayward Zoning Ordinance will be codified for consolidation purposes.

City Council Work Session. On March 14, 2017, the City Council held a work session ([Staff Report](#) and [Minutes](#)) to examine recent State legislation that allows greater flexibility in development standards to promote the creation of ADUs, to review staff's recommendations on proposed regulations consistent with State law, and to discuss grey areas within State law that allow for local discretion on certain standards and provisions. Key issues that were identified between City Council and staff included:

- a) Conflict between the authority and provisions of State legislation and existing Conditions, Covenants, and Restrictions (CC&Rs) enforced by Homeowners Associations, as applicable;
- b) Additional on-street parking and traffic impacts in already congested residential neighborhoods within the community due to permitted garage conversions and relaxed parking requirements imposed by the State;
- c) Need to develop a notification method to adjacent property owners and/or tenants of proposed ADUs to be constructed nearby; and
- d) Prohibition of ADUs to be used as short-term rentals (e.g. AirBNB, VRBO, Homeaway, etc.) instead of long-term (greater than 30-day rental period) housing stock.

Planning Commission Public Hearing. On July 27, 2017, the Planning Commission held a public hearing ([Staff Report](#) and [Minutes](#)) to review staff's recommendations on the proposed regulations including, but not limited to ADUs within the City. Staff presented a synopsis of the proposed most significant changes from the City's current ADU standards (listed below) and received comments, questions, and suggestions from the commission and the general public. The Planning Commission voted 4-0-0 (two absent) to recommend approval of the Zoning Text Amendment to the HMC and to establish a new review fee for ADUs to the City Council.

DISCUSSION

Staff recommends that Chapter 10 of the HMC be amended to include Section 10-1.2740 for the proposed regulations and development standards for ADUs within the City. The proposed amendments are included in Attachment II, Exhibit "A" – Land Use Ordinance, with deletions shown in ~~strikethrough~~ and new text shown in underlined red text. The items below highlight the most significant changes from the existing regulations to the HMC.

Location Criteria. To ensure that all proposed ADUs are consistent with the goals and policies of the Hayward 2040 General Plan and the intent of appropriate zoning districts, City staff proposes permitting the construction of attached, detached, and internal ADUs in the following zoning districts as accessory, secondary uses: Agricultural (A), Single-Family Residential (RS), Residential Nature Preserve (RNP), Medium-Density Residential (RM), Residential Office (RO), and the Suburban (T3) transect zone within the Mission Boulevard Corridor Form Based Code area provided the property contains a singular existing, lawfully constructed single-family residence.

Staff previously concluded that in consideration of the flexible development configurations granted for Planned Development (PD) rezones, ADUs would not be permitted in already developed PD zones due to conflicting CC&Rs, minimal parking availability, setbacks, and architectural consistency within the development. However, based on recent State legislation signed October 8, 2017, State law now requires that internal ADUs (i.e. conversion or repurpose of existing square-footage) be permitted on sites with existing or proposed single-family dwellings in any zoning district which allows single-family residences by-right regardless of whether they are located in the permitted zoning districts identified above. As such, the following zoning districts would be limited to the internal conversion or repurpose of existing square-footage or structures to create an ADU: Planned Development (PD), Central-City Commercial (CC-C), Central-City Residential (CC-R), Central-City Plaza (CC-P), and Airport-Terminal Medium Density Residential (AT-RM), provided the ADU maintains compliance with the remaining provisions of the proposed Ordinance.

Notwithstanding recent clarifications to State law, detached and attached ADUs will be permitted to be constructed within new single-family residential PD projects provided they are identified within the original development proposal of the PD to encourage homeownership, flexible design, a variety of housing types, and to provide additional housing stock. However, consistent with State law, existing PD developments of single-family dwellings will be limited exclusively to internal conversions of square-footage to create an ADU with respect to the CC&Rs of the appropriate Homeowners Association(s).

Design and Development Standards for All ADUs. All proposed ADUs, either attached, detached, or internal, shall conform to the design and development standards; however, ADUs proposed to be within an existing accessory structure (workshop, pool house, garage, etc.) shall also be subject to the additional provisions in Section 10-1.2745 of the HMC. New language has been proposed to limit the size of all proposed ADUs to a maximum of 50% of the existing habitable floor area of the primary residence, or 1,200 square-feet whichever is less to maintain an ADU that is subordinate and proportional to the primary dwelling. Habitable floor area shall not include patio covers, porches, garages, balconies, decks, etc. In addition, regardless of ADU type, the unit shall not exceed two bedrooms and there shall be no more than one ADU per parcel.

Parking Requirements. The most significant deviation from previous HMC provisions are in relation to parking. State law provides immense flexibility with respect to required parking for ADUs, especially with Assembly Bill 494 and Senate Bill 229 which now mandate a new maximum standard of one parking space per unit or bedroom, whichever is less. Previous HMC standards did not require any additional parking for ADUs, provided the primary structure maintained their parking requirement of a two-car garage. As such, amended per recent legislation, the proposed ordinance will require only one (1) off-street parking space for ADUs, regardless of bedroom count. The parking spaces will be permitted in a flexible configuration including covered, uncovered, and tandem on the parcel in which the ADU is proposed, including parking within the required front yard setback. In the event the parking requirement for the primary residence is converted (i.e. enclosed garage) for the purposes of creating an ADU, then replacement parking shall be required in the same amount on-site, but may also be provided in the flexible configurations listed above.

In any case, parking requirements for ADUs shall be exempt if it meets the following standards: a) the unit is located within one-half mile of public transit and bus stations, b) the unit is located within an architecturally and historically significant historic district, c) the unit is located within the existing building envelope of the primary residence or accessory structure, and d) where there is designated car-share vehicle parking within one block of the unit. Staff will evaluate each ADU on a case-by-case basis to determine whether the listed parking exemptions would be applicable.

Owner Occupancy and Deed Restriction. The proposed regulations will require that the legal property owner of the parcel shall be required to reside in either the ADU or the principal residence located on the property similar to the City's previous standards. At no time, shall the property owner rent out the principal residence and the ADU separately while the property owner resides elsewhere. As such, the ADU and the principal residence shall not be permitted to be used as short-term rentals, with lease periods less than 30 days. In addition, the property owner will be required to submit proof of a recorded deed restriction with the County of Alameda Clerk's Office for current and subsequent property owners as a disclosure acknowledging and binding conformance with the proposed regulations. This restriction will further the State objectives of creating additional permanent housing, while avoiding negative impacts of absentee landlords and the deleterious effects of the conversion of housing stock into commercial enterprises (AirBnB, short-term rentals, etc.). Rather, the deed restriction will be a mechanism to have current and prospective homeowners maintain investment in the property and the community while also increasing rental housing stock for all demographics and populations including senior citizens, expanding families, young professionals, etc.

Utility Impact Fees. ADUs, which can be as large as 1,200 square-feet, can, and in many cases, will, have impacts on water and sewer systems similar to those of a townhouse or a dwelling unit within a multi-family development. Before the current state law regulating utility connections for ADUs, City regulations required all proposed ADUs, either attached, detached, or internal, to have a separate water connection and water meter, and subject to payment of facilities fees and installation fees for the new water connection. Additionally, while the ADU would be allowed to connect to the property's existing sanitary sewer lateral, it would be subject to a sewer connection fee. Separate utility connections allow for the tenants in each dwelling unit to be responsible for their own water and sewer service costs as well as promote water conservation by providing tenants water consumption information for their own household, allowing them to make conscientious decisions about their water usage.

Pursuant to recently enacted State law, proposed ADUs constructed within the building envelope of the existing principal residence, garage, or accessory structure cannot be required to install a new or separate utility connection between the accessory dwelling unit and the utility nor may the local agency impose a related connection fee or capacity charge. These types of ADUs would be treated like a typical residential addition, with review by Utilities and Environmental Services staff to determine if the existing water meter is sufficiently sized to accommodate the additional water fixtures, such as a kitchen sink, bathroom sink, shower, etc. proposed within the ADU. If the additional water fixtures proposed would require that the existing water meter be upsized, a facilities fee (or connection fee as it is commonly referred)

equal to the difference between facilities fees for the larger meter and the existing smaller meter, and a water meter installation fee, would be due. The most common example of this is a property that has an existing 5/8" water meter and with the addition of new water fixtures, requires a 3/4" water meter. The current cost for this would be \$3,446, which includes a facilities fee for a 3/4" water meter of \$9,730, less a facilities fee for the existing 5/8" water meter of \$6,484, plus an installation fee for the new 3/4" water meter of \$200.

For proposed ADUs constructed outside the building envelope of the existing principal residence, garage, or accessory structure, State law allows for a local agency to require a separate utility connection between the accessory dwelling unit and the utility, and to assess a connection fee or capacity charge proportionate to the burden of the proposed accessory dwelling unit upon the water or sewer system. These types of ADUs will be required to install a separate water connection and water meter and will be subject to facilities fees, installation fees, and sewer connection fees. Currently, the utilities fees for a new water connection for an ADU would be \$9,984, which includes a facilities fee of \$6,484 for a 5/8" water meter and a \$3,500 installation fee for equipment, materials, and City labor costs for the installation of the new water service line in the street and water meter. The proposed sewer connection fee for an ADU is equivalent to the fee for a dwelling unit within a multi-family development, which is \$6,853. This is less than what is the sewer connection for single family homes, which is currently \$7,700 per dwelling unit.

Permits Required. Under the proposed regulations, ADUs would be subject to the review and approval of a Zoning Conformance Permit (ZCP) prior to the submission of construction level drawings to the Building Division. The ZCP application is a non-discretionary, ministerial Planning permit that will be reviewed administratively by staff and shall be either disapproved or approved within 120 days of the submission of a complete application per State law; however, it is anticipated that review of a ZCP for an ADU will not exceed a week based on the project scope of work. Staff believes that the ZCP process is warranted to ensure all proposed ADUs comply with the underlying zoning district and adopted design and development standards. Further, a ZCP will assist in maintaining a current record of ADUs as rentable housing stock for the City's Regional Housing Needs Allocation (RHNA), and to ensure ongoing compliance with the City's Rental Housing Inspection Program monitored by the Code Enforcement Division.

However, a discretionary Site Plan Review application will be required for all accessory dwelling units to be proposed atop of existing, legally constructed detached garages that exceed the maximum height limitations for detached, accessory structures. To address concerns of privacy impacts on adjacent properties posed by minimal setback requirements permitted by the State, the Site Plan Review process will allow staff to notice proposed projects and determine whether any mitigation measures can be incorporated into two-story ADUs such as design features, landscaping buffers, or increased setbacks. In addition, this will also allow staff to ensure that the proposed detached, two story ADU remains architecturally subordinate and accessory to the primary residential structure.

ENVIRONMENTAL REVIEW

The proposed text amendment is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the Public Resources Code that exempts the adoption of an ordinance regarding accessory dwelling units in single-family and multi-family zones by cities and counties that implement the provisions of Section 65852.2 of the California Government Code. Therefore, no environmental review is necessary.

ECONOMIC IMPACT

The proposed regulations for ADUs will have a positive economic impact in the community as the updated regulations will provide greater flexibility to spur the development of additional rental housing stock. Such relaxed development standards will assist in removing constraints on housing development in accordance with the intent of State law which can help address housing needs in the City by expediting construction, and lowering development costs.

SUSTAINABILITY FEATURES

The adoption of the Zoning Text Amendment to relax restrictions and standards placed on the development of ADUs will allow for appropriate infill development in already established and existing residential neighborhoods. As such, with the increased development of ADUs, additional housing stock will be generated for the local and regional area to assist in alleviating the housing crisis in the Bay Area as mentioned earlier in this report and also potentially easing commute distances and times. Additionally, the construction of ADUs will allow for homeowners to make use of underutilized/excess land and/or square-footage on their property to create an additional dwelling unit and take advantage of existing utility infrastructure, such as water and sewer.

PUBLIC CONTACT

In April 2017, City staff implemented the Hayward Empathy Action Response Team (HEART) and visited nine different residential neighborhoods within City boundaries to gather a survey sample (in-person and electronically) from the community on the potential benefits and impacts associated with the new State legislation. Approximately seventy-five responses were collected identifying the interests, obstacles, motivators, and impacts from the potential construction of ADUs in their neighborhoods. Survey responses were collected, compiled, and incorporated into the creation of the proposed ADU regulations. In summary, the survey showed that while the public would support the construction of an ADU for additional income and/or for extended family, the biggest obstacle was project cost and unfamiliarity with the City's permitting process for ADUs. Additionally, residents identified on- and off-street parking as their most significant concerns. As such, staff has incorporated and is recommending a minimum parking requirement within the proposed regulations, which are consistent with the provisions and intent of State law.

On October 6, 2017, notice of the public hearing related to the proposed Zoning Text Amendment and adjustment to the City's Master Fee Schedule was published in The Daily

Review, and around that date, notices were posted at City Hall and the Hayward Public Library for review by the general public. In addition, the notice and agenda was sent to an interested parties list via electronic mail.

On October 7, 2017, Planning Division staff received one public comment from a Hayward property owner stating opposition to the owner occupancy requirement. However, staff finds that the owner occupancy requirement follows the provisions of State law, is consistent with the City's previous second dwelling unit ordinance, and warranted based on the reasons identified in "Owner Occupancy and Deed Restriction" section above.

On October 17, 2017, the City Council made a motion and voted 7:0:0 to continue the public hearing item to the October 30th Special City Council meeting.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the strategic initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all consistent with the objectives of the Hayward 2040 General Plan with respect to the "Land Use and Community Character" and "Community Health and Quality of Life" Elements. Further, the item supports the following goals and objectives:

Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

Objective 2: Facilitate the development of diverse housing types that serve the needs of all populations.

FISCAL IMPACT

The ZCP permit fee for ADUs is proposed to be a \$328 flat fee, which is the equivalent of two hours of planning staff time (Attachment IV). Similar to other ministerial permits, the proposed flat fee is based on the average amount of time spent processing an ADU request during the application in-take, plan review, verification of code compliance, issuance of the Zoning Conformance Permit, and the post-permit records management. Based on the existing fee structure of other ministerial permits issued by the City, staff believes the new fee amount for ADU's is appropriate, reasonable and necessary for full cost recovery and administrative efficiency. The proposed amendment to the City's Master Fee Schedule is referenced in Attachment IV, Exhibit "A" – Resolution to Establish New Fees.

NEXT STEPS

Should the City Council adopt the attached Resolutions (Attachments III and IV) and introduce the Ordinance (Attachment II), staff will bring back the Ordinance for adoption at the next City Council meeting scheduled on Tuesday, November 7, 2017. The Ordinance will then become

effective 30 days after the adoption by City Council. Lastly, the Planning Division will submit a copy of the Ordinance to the California Department of Housing and Community Development (HCD) within 60 days as required by State law.

Prepared by: Marcus Martinez, Assistant Planner

Recommended by: Stacey Bristow, Interim Development Services Director

Approved by:



Kelly McAdoo, City Manager

ORDINANCE NO. 17-_____

AN ORDINANCE ADDING SECTION 10-1.2740 TO CHAPTER 10 (PLANNING, ZONING, AND SUBDIVISIONS) OF THE HAYWARD MUNICIPAL CODE TO REVISE AND UPDATE REGULATIONS RELATED TO THE DEVELOPMENT OF ACCESSORY DWELLING UNITS

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 17-__ approving the text changes to the Hayward Municipal Code requested in Zoning Text Amendment Application No. 201701087.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to the development of Accessory Dwelling Units (commonly referred to as in-law units, secondary dwellings, or granny flats), introduced herewith and as specifically shown in this Ordinance.

Section 3. Severance. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 30th day of October 2017, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 7th day of November 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT A

CHAPTER 10 – PLANNING, ZONING, AND SUBDIVISIONS

ARTICLE 1 – ZONING ORDINANCE

SECTION 10-1.200 – SINGLE FAMILY RESIDENTIAL DISTRICT (RS)

SEC. 10-1.215 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the RS District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc., can be met for each dwelling).

SEC. 10-1.245 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

~~n. Second Dwelling Unit, Attached ("Granny or in-law unit"). An attached second dwelling unit ("Granny or in-law unit") may be constructed in accordance with the following standards:~~

- ~~(1) An attached second dwelling unit may only be added to an existing detached single family dwelling on a parcel containing no other dwellings, and which has at least two covered parking spaces, with at least one common wall between the attached second dwelling unit and the living or garage area of the existing dwelling.~~
- ~~(2) An attached second dwelling unit shall contain no more than one bedroom, shall be a minimum of 400 square feet in area and shall not exceed 640 square feet in area. No additional covered parking shall be provided.~~
- ~~(3) Any separate entry constructed for an attached second dwelling unit shall be located only in the side, side street (if approved by the Planning Director) or rear yard.~~
- ~~(4) An attached second dwelling unit shall be counted as part of the primary building coverage requirements and also shall conform to all required lot, yard, and height requirements.~~
- ~~(5) An attached second dwelling unit shall not be sold separately from the primary dwelling, but it may be rented.~~
- ~~(6) An attached second dwelling unit shall only be approved where the owner of the existing dwelling has applied for the building permit and where same owner resides in the primary dwelling at the time of application and occupancy of the attached second dwelling.~~

- ~~(7) Unless exempted, as determined by the Building Official, the primary or existing dwelling and the attached second dwelling unit shall conform to all applicable City code requirements; for example, building, fire, plumbing, electrical. A Certificate of Occupancy shall have been obtained for both units prior to occupancy of the attached second dwelling.~~
- ~~(8) An attached second dwelling unit shall not be located within the garage area or a converted garage area of the existing dwelling unless adequate substitute 2-car garage parking is provided outside required front, side, and side street yards.~~
- ~~(9) The exterior design of the attached second dwelling unit shall appear to constitute an integral part of the primary dwelling and not a separate dwelling unit.~~

SECTION 10-1.300 - RESIDENTIAL NATURAL PRESERVATION DISTRICT (RNP)

SEC. 10-1.315 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the RNP District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.

SECTION 10-1.400 - MEDIUM DENSITY RESIDENTIAL DISTRICT (RM)

SEC. 10-1.415 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RM District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245n., for criteria)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc., can be met for each dwelling)

SECTION 10-1.500 - HIGH DENSITY RESIDENTIAL DISTRICT (RH)

SEC. 10-1.515 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RH District:

(1) Residential Uses.

- (a) ~~Second dwelling unit attached to single family dwelling. (Also referred to as a "Granny Unit." See Section 10-1.545.q for criteria.)~~

SEC. 10-1.600 – RESIDENTIAL-OFFICE DISTRICT (RO)

SEC. 10-1.615 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the uses permitted in the RO District:

(1) Residential Uses.

- (a) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245.n for criteria.)~~ Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- (b) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc.) can be met for each dwelling.

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)

SEC. 10-1.1120 – CONDITIONALLY PERMITTED USES.

a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CO District subject to approval of an administrative use permit:

(4) Residential Uses.

- (c) ~~Attached second dwelling unit. (Also referred to as a "Granny or in-law unit." See Section 10-1.245.n for criteria.)~~
- (d) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc.) can be met for each dwelling.

SEC. 10-1.1520 – CENTRAL CITY – COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1522 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the CC-C District:

- (1) Accessory buildings and uses. (See Section 10.1.1555.)
- (2) Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.
- ~~(2)~~(3) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735.d.)

~~(3)~~ (4) Home occupation. (See definitions)

~~(4)~~ (5) Household pets.

~~(5)~~ (6) Indoor storage. (Clearly subordinate to a primary or conditional use that is open to the public and which conforms to the policies and goals of the Redevelopment Agency and the Central City -Commercial Subdistrict

SEC. 10-1.1530 – CENTRAL CITY – RESIDENTIAL SUBDISTRICT (CC-R)

SEC. 10-1.1532 - USES PERMITTED.

a. Primary Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R District as primary uses.:

(4) Residential Uses.

(a) Artist's loft. (Live above place of business)

(b) Boarding home.

(c) Group home. Within existing single-family dwellings. (6 or fewer residents, excluding staff).

(d) Multiple-family dwellings. (Density per Downtown Hayward Design Plan)

~~(e) Second family dwelling, attached.~~

(f) Single-family dwelling. (Existing as of May 4, 1993, including their accessory structures and uses)

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the CC-R District:

(1) Accessory buildings and uses. (See Section 10.1.1555.)

~~(2)~~ (2) Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.

~~(2)~~(3) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735.d.)

~~(3)~~ (4) Home occupation. (See definitions)

~~(4)~~ (5) Household pets.

~~(5)~~ (6) Indoor storage. (Clearly subordinate to a primary or conditional use that is open to the public and which conforms to the policies and goals of the Redevelopment Agency and the Central City -Residential Subdistrict.

SEC. 10-1.1540 – CENTRAL CITY – PLAZA SUBDISTRICT (CC-P)

SEC. 10-1.1542 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the CC-P District:

(3) Accessory buildings and uses. (See Section 10.1.1555.)

(4) Accessory dwelling unit. (Also referred to as "Granny flat, in-law unit, second dwelling unit." See Section 10-1.2740 for criteria and standards.

~~(2)~~(3) Garage sales. (4 per year per dwelling. See General Regulations Section 10-1.2735.d.)

~~(3)~~ (4) Home occupation. (See definitions)

(4) (5) Household pets.

(5) (6) Indoor storage. (Clearly subordinate to a primary or conditional use that is open to the public and which conforms to the policies and goals of the Redevelopment Agency and the Central City -Plaza Subdistrict

SEC. 10-1.1900 – AIR TERMINAL (AT-RM)

SEC. 10-1.1972 – AT-RM USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the AT-RM District:

(1) Residential Uses.

(a) Accessory dwelling unit. (Also referred to as “Granny flat, in-law unit, second dwelling unit.” See Section 10-1.2740 for criteria and standards.

SEC. 10-1.2000 – AGRICULTURAL DISTRICT (A)

SEC. 10-1.2015 - USES PERMITTED.

b. Secondary Uses. The following uses are permitted as secondary or subordinate uses to the primary uses permitted in the A District:

(1) Residential Uses.

(b) ~~Attached second dwelling unit. (Also referred to as a “Granny or in-law unit.” See Section 10-1.245.n for criteria).~~ Accessory dwelling unit. (Also referred to as “Granny flat, in-law unit, second dwelling unit.” See Section 10-1.2740 for criteria and standards.

(c) Second single-family dwelling. (Where one single-family dwelling already exists on a lot, one additional single-family dwelling may be constructed provided the minimum development standards (lot size, setbacks, height, etc.) can be met for each dwelling.

SECTION. 10-1.2740 - ACCESSORY DWELLING UNITS

SEC. 10-1.2741 PURPOSE.

The ordinance codified in this section establishes regulations for the construction of accessory dwelling units subordinate to single-family dwellings. Accessory dwellings units provide housing opportunities in a flexible manner to address the unmet demand for affordable housing and achieve the goals, objectives, and policies of the Housing Element and General Plan to provide a diverse mix of housing options for the community.

SEC. 10-1.2742 DEFINITIONS.

- a. “Accessory dwelling unit(s)” shall be defined as an attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s).

SEC. 10-1.2743 LOCATION CRITERIA.

- a. Accessory dwelling units as detached, attached, or internal accessory uses shall be permitted in the Single-Family Residential (RS), Residential Nature Preservation (RNP), Medium-Density Residential (RM), Residential Office (RO), Agricultural (A) zoning districts, and in the T-3 Suburban transect zone in the Mission Boulevard Corridor Form-Based Code area, where one legally constructed single-family dwelling exists as the primary structure on the parcel.
- b. Accessory dwelling units limited exclusively to the internal conversion or repurpose of an existing structure shall be permitted in the following zoning districts: Central-City Commercial (CC-C), Central-City Residential (CC-R), Central-City Plaza (CC-P), and Airport-Terminal Medium Density Residential (AT-RM) zoning districts, provided one legally constructed single-family dwelling exists as the primary structure on the parcel.
- c. Planned Development Districts. The new construction of attached and detached accessory dwellings units shall not be permitted in Planned Development (PD) zoning districts, unless otherwise specified within the original development proposal as an amenity. Accessory dwelling units involving the internal conversion of an existing structure shall be permitted provided the proposed unit complies with the criteria set forth in Section 10-1.2743(b) and the remainder of this Article, as applicable.

SEC. 10-1.744 DESIGN AND DEVELOPMENT STANDARDS.

All proposed accessory dwelling units shall comply with the following design and development standards:

- a. Quantity. On any one parcel of land, no more than one accessory dwelling unit shall be allowed regardless of the number of single-family dwellings located on the lot.
- b. Unit Size. All proposed accessory dwelling units shall not exceed 50-percent of the habitable floor area of the existing single-family residence or 1,200 square-feet, whichever is less. Habitable floor area calculation shall not include garages, detached accessory structures, patio covers, porches, covered and uncovered balconies, and decks as determined by the Planning Director.

- c. Maximum Number of Bedrooms. Accessory dwelling units shall not exceed a maximum of two bedrooms as sleeping quarters.
- d. Attached Units. Accessory dwelling units proposed to be attached from the primary residence shall comply with the development standards set forth by the underlying zoning for the primary structure including, but not limited to, setbacks, lot coverage, height, and architectural compatibility.
- e. Detached Units. Accessory dwelling units proposed to be detached from the primary residence shall comply with the minimum design and performance standards set forth by the underlying zoning district for detached, accessory and secondary structures including, but not limited to, setbacks, lot coverage, height, distance between structures, location and architectural compatibility.
- f. Setbacks. Accessory dwelling units proposed to be constructed atop of existing, legal detached garages shall provide a minimum five-foot setback from the interior side and rear property lines, unless a greater setback is required pursuant to Building and Fire standards or the property is a corner lot which shall comply with the minimum street-side setback requirements. Accessory dwelling units proposed to be attached or detached shall conform to the development standards and performance standards set forth in the underlying zoning district.
- g. Height Restrictions. Accessory dwelling units shall comply with the following height restrictions based on the proposed location of the unit:
 - (1) Accessory dwelling units attached to the primary structure shall comply with the height limitations of the underlying zoning district for the principal structure.
 - (2) Accessory dwelling units to be detached from the primary structure shall be limited to the height restrictions set forth in the underlying zoning district for detached, accessory and secondary structures.
 - (3) Accessory dwelling units proposed to be constructed atop of legally constructed detached garages shall be subject to the review and approval of a discretionary Site Plan Review application in accordance with Section 10-1.3000 of the Hayward Municipal Code. In order to deny a Site Plan Review application, the Planning Director shall find that the accessory dwelling unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors. In any instance, the accessory dwelling unit shall be limited to the maximum height restriction of the primary structure within the underlying zoning district
- h. Independent Exterior Access. Accessory dwelling units shall provide an independent exterior access separate from the primary residence. The separate entry constructed for the accessory dwelling unit shall not face the street or the public right-of-way.

- i. Owner Occupancy. The legal property owner of the lot shall be required to reside in either the primary residence or the accessory dwelling unit located on the parcel. At no time shall the property owner rent the primary dwelling and the accessory dwelling unit separately or allow the main house and the accessory dwelling unit to be sublet individually while the property owner resides elsewhere.
 - (1) The accessory dwelling unit shall not be sold separately from the principal residence. The rental and lease period for either unit shall be longer than a minimum of 30-days and shall not be utilized as a short-term rental.
- j. Fire Sprinklers. Accessory dwelling units shall not be required to be equipped with fire sprinklers unless fire sprinkler installation is required for the primary dwelling
- k. Park Dedication In-Lieu Fees. Each accessory dwelling unit whether detached, attached, or internal shall be required to pay the applicable Park-Dedication In-Lieu fee as set forth in Chapter 10, Article 16 of the Hayward Municipal Code (Property Developers – Obligations for Parks and Recreation) prior to the date of final inspection or the date the Certificate of Occupancy is issued for the development, whichever occurs first.
- l. Private Sewage System. If the accessory dwelling unit is proposed to incorporate or utilize a private sewage disposal system (e.g. septic tank or on-site wastewater treatment system), the applicant shall be required to provide documentation and proof by the Alameda County Department of Environmental Health at the time of application. No private sewage disposal shall be permitted where there is an available public sewer within 200-feet, measured along streets, alleys, or public right-of-way upon which a lot abuts pursuant to Chapter 11, Article 3 (Sanitary Sewer System) of the Hayward Municipal Code.

SEC. 10-1.2745 ADDITIONAL PROVISIONS FOR THE CONVERSION OF EXISTING STRUCTURES TO CREATE ACCESSORY DWELLING UNITS.

- a. Setbacks. No side or rear yard setback shall be required for an existing, legally constructed garage or accessory structure that is converted into an accessory dwelling unit provided it is sufficient for fire safety standards as determined by the Hayward Fire Department and Chief Building Official.
- b. Utility Connection Fees. Accessory dwelling units constructed within the building envelope of the existing principal residence, garage, or accessory structure shall not be required to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.
- c. Parking. No additional parking shall be required if the accessory dwelling unit is located is within the existing building envelope of the primary residence or accessory structure, unless it involves the conversion of a garage or reduction of the off-street parking requirement for the parcel.

SEC. 10-1.2746 PARKING.

Accessory dwelling units shall be required to provide parking in accordance with the following requirements:

- a. Parking Requirement for Primary Residence. In any instance, the property shall be required to meet the minimum parking requirement as set forth in Chapter 10, Article 2, Off-Street Parking Regulations for the principal residence prior or concurrent to the application for an accessory dwelling unit.
- b. New Units. Accessory dwelling units shall be required to provide one (1) off-street parking space on the same lot as the unit in a covered, uncovered, or tandem configuration. Parking spaces may be located in the required setbacks provided the proposed location complies with the landscaping requirement in the front yard and minimum standards set forth within the Off-Street Parking Regulations for open parking spaces, unless otherwise approved by the Planning Director.
- c. Garage Conversions. Where garages are converted for the purpose of creating an accessory dwelling unit, replacement off-street parking shall be provided on the same lot as the unit in either a covered, uncovered, or tandem configuration provided the proposed location complies with the landscaping requirement in the front yard and the minimum standards set forth within the Off-Street Parking Regulations for open parking spaces, unless otherwise approved by the Planning Director.
- d. Parking Requirement Exemptions. Off-street parking shall not be required for accessory dwelling units if any of the following circumstances apply:
 - (1) The unit is located within one-half mile of public transit and bus stations.
 - (2) The unit is located within an architecturally and historically significant historic district.
 - (3) Where there is designated car-share vehicle parking within one block of the unit.

SEC. 10-1.2747 PERMIT REQUIRED.

Unless otherwise noted in this Ordinance, the applicant shall be required to obtain the approval of a Zoning Conformance Permit by the Planning Division prior to the submittal of a building permit application to the Building Division. Zoning Conformance Permits shall either be disapproved or approved within 120 days of the submission of a complete application. Application submittal requirements for an Accessory Dwelling Unit shall include the following items, in addition to the required fees for each accessory dwelling unit proposed in accordance with the adopted Master Fee Schedule:

- a. Project Plans. The applicant shall be required to provide a site plan, floor plan, elevations, and cross sections of the proposed accessory dwelling unit drawn to scale.

Plans shall include minimal project information, dimensions, and calculations including, but not limited to the proposed setbacks, lot coverage, height, distance between structures, square-footage, easements, materials, etc. as required by the Planning Director or his/her designee.

- b. Deed Restriction. Prior to the issuance of a building permit for the accessory dwelling unit, the property owner shall file with Alameda County Recorder a deed restriction approved by the City stating compliance with provisions of this Ordinance and Hayward Municipal Code and such deed is binding upon any successor in ownership of the property, and lack of compliance shall be grounds for Code Enforcement action and removal of the accessory dwelling unit.

SECTION 10-1.3500 – DEFINITIONS

SEC. 10-1.3510 - USES AND ACTIVITIES DEFINED.

DWELLING UNIT. One or more rooms with a single kitchen, arranged, designed, used, or intended to be used exclusively for living and sleeping purposes by one family as an independent housekeeping unit. Other definitions include the following:

- a. Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.
- b. Apartment/multiple family dwelling(s): Any building, group of buildings, or portion thereof which includes two or more dwelling units, and which are intended as ownership units, or in the case of apartments, rental or for lease units. Apartment/multiple family dwelling projects may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements.
- c. Condominium dwelling(s): Any building, group of buildings, or portion thereof which includes two or more dwelling units, and for which there is a final map or parcel map. Condominium dwelling projects are usually governed by a Homeowners Association (HOA) with Covenants, Codes and Restrictions (CC&R's), and may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements. Within a condominium, ownership consists of the airspace within a unit and the building(s) and all land within the development are under common ownership.
- d. Single-family dwelling: A detached building containing only one dwelling unit. See Section 10-1.200 for requirements.

- e. Second Single-family dwelling: A second single-family dwelling permitted on a parcel where there is one existing single-family dwelling already, provided minimum lot size and setbacks can be met for both dwellings separately. See Section 10-1.215.b.(1)(b) for requirements.
- ~~f. Second dwelling unit, Attached: A second dwelling unit attached to an existing owner-occupied single-family dwelling which may be rented and contains no more than 640 square feet and no more than one bedroom. Also referred to as a "granny or in-law unit." See Section 10-1.245.n for requirements.~~
- g. Townhouse dwelling(s): Any building, group of buildings, or portion thereof which includes two or more attached dwelling units, and for which there is a final map or parcel map. Townhouse dwelling projects are usually governed by a Homeowners Association (HOA) with Covenants, Codes and Restrictions (CC&R's), and may include private recreational facilities. See Sections 10-1.400 and 10-1.500 for requirements. Townhouse ownership includes the building, the land beneath the building and typically a patio or small yard adjacent to the structure. The remaining land within the development is under common ownership.

ARTICLE 2 – OFF-STREET PARKING REGULATIONS

SECTION 10-2.310 - RESIDENTIAL USES.

The number of off-street parking spaces required for residential shall be:

USES	PARKING SPACES REQUIRED
SINGLE-FAMILY DWELLINGS:	2.0 covered per dwelling unit
If a lot abuts a public or private street that has no parking lane on either side of the street or is posted for no parking on both sides of the street.	2.0 covered per dwelling unit plus 2.0 open per dwelling unit, which shall not block access to the covered parking
If a dwelling with a single car garage was built prior to March 24, 1959	1.0 covered per dwelling unit
MULTIPLE-FAMILY DWELLING(S):	
Studio	1.0 covered and 0.50 open per dwelling unit
One-bedroom	1.0 covered and 0.70 open per dwelling unit
Two or more bedrooms	1.0 covered and 1.10 open per dwelling unit
* Ten percent of the multiple family parking spaces required shall clearly be marked for visitor's parking, at least 70 percent of which shall accommodate standard size vehicles. Where less than 10 parking spaces are required, a minimum of one standard parking space shall clearly be marked for visitor's parking.	* Included in the rental cost, a minimum of one covered parking space shall be assigned to each studio and one-bedroom unit, and a minimum of one covered and one uncovered parking space shall be assigned to each two or more bedrooms or more units. Assigned unused spaces may not be rented to any other party. Any uncovered space may be covered instead.
MOBILE HOMES	2.0 per mobile home space, plus 1.0 guest parking space per three mobile home spaces within a mobile home park
ATTACHED SECOND-FAMILY UNITS (Granny Units) Accessory Dwelling Unit(s)	No additional parking spaces are required for attached second-family units. <u>See Section 10-1.2740 for parking criteria and standards.</u>

ARTICLE 24 – SOUTH HAYWARD BART FORM BASED CODE

TABLE 9. SPECIFIC FUNCTION AND USE

	T4	T5	CS
a. Residential			
Multiple Family	P	P	-
Second Dwelling Unit	P -	P -	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-

(-) = Not Permitted, (P) = By Right, (AU) = Administrative Use Permit, (CU) = Conditional Use Permit

SEC. 10-24.230 BUILDING CONFIGURATION

a. General to T4 and T5 Zones

- i. Buildings on corner Lots shall have two Private Frontages as shown in Table 15. Prescriptions for the second and third Layers pertain only to the Principal Frontage. Prescriptions for the first Layer pertain to both Frontages.
- ii. All Facades shall be glazed with clear glass no less than 30% of the first Story.
- iii. Stories may not exceed 14 feet in height from finished floor to finished floor, except for a first floor Commercial Function, which shall be a minimum of 14 feet with a maximum of 25 feet. A single floor level exceeding 14 feet, or 25 feet at ground level, shall be counted as two (2) stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional Story.
- iv. In a Parking Structure or garage, each above-ground level counts as a single Story regardless of its relationship to habitable Stories.
- v. Height limits do not apply to masts or belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.
- vi. Attics shall not exceed 14 feet in height. Raised basements shall not exceed 3 feet in height up to the finished floor of the first story.

- vii. ~~The habitable area of a Second Dwelling Unit within a Principal Building or an Outbuilding shall not exceed 640 square feet, excluding the parking area.~~ an Accessory Dwelling Unit shall conform to the criteria and standards of Section 10-1.2740 of the Hayward Municipal Code.
- viii. Rooftop improvements shall be required to reduce visual impacts on future buildings that could impact views from existing buildings at higher elevations on the east side of Mission Boulevard, as determined by the Planning Director. Architectural features integral to the building design and solar energy systems should not be screened from view.

SEC. 10-24.500 – DEFINITIONS AND RULES OF INTERPRETATION

~~Second Dwelling Unit: a dwelling unit that is accessory, supplementary, and secondary to the principal dwelling, which may be constructed as an addition to the principal structure or as an accessory to the principal structure.~~ Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.

ARTICLE 25 – MISSION BOULEVARD CORRIDOR FORM BASED CODE

TABLE 9. ALLOWED FUNCTIONS

	T3	T4-1	T4-2	T5	CS
a. Residential					
Multiple Family	CU	P/CU	P/CU	P/CU	-
Second Dwelling Unit	P	P/CU -	P/CU -	P/CU -	-
Single Family	P	-	-	-	-
Live-Work	-	P/CU	P/CU	-	-
Emergency Homeless Shelter	-	P/CU	P/CU	-	-
Single-Room Occupancy (SRO)	-	-	-	CU	-

(-) = Not Permitted, (P) = By Right, (AU) = Administrative Use Permit, (CU) = Conditional Use Permit

SEC. 10-25.230 BUILDING CONFIGURATION

a. General to T3, T4-1, T4-2 and T5 Zones

- i. Buildings on corner Lots shall have two Private Frontages as shown in Table 15. Prescriptions for the second and third Layers pertain only to the Principal Frontage. Prescriptions for the first Layer pertain to both Frontages.
- ii. All Facades shall be glazed with clear glass no less than 30% of the first Story.
- iii. Stories may not exceed 14 feet in height from finished floor to finished floor, except for a first floor Commercial Function, which shall be a minimum of 14 feet with a maximum of 25 feet. A single floor level exceeding 14 feet, or 25 feet at ground level, shall be counted as two (2) stories. Mezzanines extending beyond 33% of the floor area shall be counted as an additional Story.
- iv. In a Parking Structure or garage, each above-ground level counts as a single Story regardless of its relationship to habitable Stories.
- v. Height limits do not apply to masts or belfries, clock towers, chimney flues, elevator bulkheads, church spires, cupolas, domes, ventilators, skylights, parapet walls, cornices, solar energy systems, or necessary mechanical appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.
- vi. Attics shall not exceed 14 feet in height. Raised basements shall not exceed 3 feet in height up to the finished floor of the first story.
- vii. ~~The habitable area of a Second Dwelling Unit within a Principal Building or an Outbuilding shall not exceed 640 square feet, excluding the parking area.~~ an Accessory Dwelling Unit shall conform to the criteria and standards of Section 10-1.2740 of the Hayward Municipal Code.
- viii. Rooftop improvements shall be required to reduce visual impacts on future buildings that could impact views from existing buildings at higher elevations on the east side of Mission Boulevard, as determined by the Planning Director. Architectural features integral to the building design and solar energy systems should not be screened from view.

SEC. 10-25.600 – DEFINITIONS AND RULES OF INTERPRETATION

~~Second Dwelling Unit: a dwelling unit that is accessory, supplementary, and secondary to the principal dwelling, which may be constructed as an addition to the principal structure or as an accessory to the principal structure.~~ Accessory dwelling unit: An attached, detached, or internal residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation and shall be located on the same parcel an existing single-family dwelling is situated or to be situated with the proposed development of single-family dwelling(s). See Section 10-1.2740 for criteria and standards.

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION TO ADOPT A ZONING TEXT AMENDMENT TO CHAPTER 10
(PLANNING, ZONING, AND SUBDIVISIONS) OF THE HAYWARD MUNICIPAL
CODE RELATED TO THE DEVELOPMENT OF ACCESSORY DWELLING UNITS

WHEREAS, on September 27, 2016, Governor Brown signed Assembly Bill 2299 (Bloom) and Senate Bill 1069 (Wieckowski) into law, requiring local agencies to revise and ease restrictions on the development of Accessory Dwelling Units (ADUs);

WHEREAS, on January 1, 2017, Assembly Bill 2299 and Senate Bill 1069 became effective rendering any local ordinance that failed to fully meet the requirements of State law null and void, unless and until the local agency adopts an ordinance that complies with the provisions of the State;

WHEREAS, on March 14, 2017, the City Council held a work session to review State legislation related to the development of ADUs and to provide policy direction to City staff;

WHEREAS, the adoption of an ordinance regarding ADUs in single-family and multi-family zones by cities and counties is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the Public Resources Code;

WHEREAS, on July 27, 2017, the Planning Commission considered Zoning Text Amendment Application No. 201701087 at a public hearing, and voted (4-0-0), that the City Council approve the Zoning Text Amendment; and

WHEREAS, on October 8, 2017, Governor Brown signed two additional pieces of legislation, Assembly Bill 494 and Senate Bill 229, clarifying language related to the previously adopted amendments to Section 65852.2 of the Government Code; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 30, 2017.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

CALIFORNIA ENVIRONMENTAL QUALITY ACT

- A. The proposed text amendment is statutorily exempt from the provisions of the CEQA pursuant to Section 15282(h) of the Public Resources Code that exempts the adoption of an ordinance regarding accessory dwelling units in single-family and multi-family zones by cities and counties that implement the provisions of Section 65852.2 of the California Government Code. Therefore, no environmental review is necessary.

FINDINGS FOR A ZONING TEXT AMENDMENT TO THE HAYWARD MUNICIPAL CODE

- A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;

The proposed text amendment will promote the public health, safety, convenience, and general welfare of the residents of Hayward by providing the flexibility to create a diverse type of housing options for students, young professionals, small families, disabled individuals, extended families, senior citizens, and residents to live, work, study, and play. Additionally, the State Legislature finds, as substantial proof, that ADUs are a valuable form of rental housing stock in California, homeowners benefit from the creation of ADUs as added income, ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character, and California is in a severe housing crisis. The owner occupancy deed restriction will also ensure that all ADUs are compatible with existing single-family neighborhoods they are to be located in. It will maintain accountability with the property owner to verify that all ADU rentals are compliant with health, safety, general welfare, and housing conditions for prospective tenants.

- B. The proposed change is in conformance with all applicable, officially adopted policies and plans;

The proposed Zoning Text Amendment will be consistent with the following goals, policies, and objectives of the Hayward 2040 General Plan and the Complete Communities Strategic Plan:

Infill Development in Neighborhood Land Use Policy LU-3.7: The City shall protect the pattern and character of existing neighborhoods by requiring new infill developments to have complimentary building forms and site features.

Diversity of Housing Types Policy H-3.1: The City shall implement land use policies that allow for a range of residential densities and housing types, prices, ownership, and size.

Flexible Development Standards Policy H-4.1: The City shall review and adjust as appropriate residential development standards, regulations, ordinances,

departmental processing procedures, and residential fees that are determined to be a constraint on the development of housing.

Complete Communities Strategic Plan Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

- C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and

No properties are proposed to be reclassified with the proposed text amendment. The zoning districts in which ADUs will be permitted within the proposed regulations will remain consistent with the previous voided regulations. Therefore, streets and public facilities existing and proposed will be adequate to serve the potential development of ADUs as accessory, secondary uses.

- D. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

No properties are proposed to be reclassified with the proposed text amendment. A beneficial effect will be achieved with the proposed revision to the HMC, as it will allow for more flexible development standards than which previously existed and spur greater development of ADUs with infill development consistent with the existing neighborhood character and scale.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts the findings in support of Zoning Text Amendment Application No. 201701087, subject to the adoption of the companion Ordinance.

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 17-__) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA 30th of October 2017.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 17-

Introduced by Council Member _____

RESOLUTION AMENDING THE CITY OF HAYWARD 2018 FISCAL YEAR MASTER FEE SCHEDULE FOR ZONING CONFORMANCE PERMITS ASSOCIATED WITH A ZONING TEXT AMENDMENT TO CHAPTER 10 OF THE HAYWARD MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS

WHEREAS, Section 15273 of the California Environmental Quality Act (CEQA) Guidelines states that CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purposes of:

1. Meeting operating expenses, including employee wage rates and fringe benefits;
2. Purchasing or leasing supplies, equipment, or materials;
3. Meeting financial reserve needs and requirements;
4. Obtaining funds necessary for capital projects necessary to maintain service within existing service areas; or,
5. Obtaining funds necessary to maintain intra-city transfers as are authorized by City Charter; and

WHEREAS, the City Council finds and determines that this action is exempt from CEQA based on the foregoing provisions;

WHEREAS, in November 2010, California voters approved Proposition 26, which amended Article XIII C of the State constitution regarding the adoption of fees and taxes. Proposition 26 seeks to assure that taxes, which must be approved by the voters, are not disguised as fees, which can be approved by legislative bodies, such as a city council. The proposed amendment to the Master Fee Schedule (MFS) to set a new fee to process simple, ministerial Planning permits is considered a Planning Permit fee pursuant to Exception 1 for Fees for Benefits and Privileges, Article XIII C, § 1(e)(1) of Proposition 26.

WHEREAS, the City's goal is to provide a ministerial Planning permit (Zoning Conformance Permit) to provide efficient, over-the-counter service to support applications for minor projects that are permitted as a matter of right, subject to fixed standards or objective measurements set forth in the Hayward Municipal Code, and to achieve cost recovery cost recovery for the staff time in implementing such a permit;

WHEREAS, the Zoning Conformance Permit (ZCP) will be utilized to review Accessory Dwelling Unit projects in a ministerial manner which will ensure cost recovery during the initial project intake, code compliance review, deed restriction review, issuance of permit and records management post-permit issuance; and

WHEREAS, notice of the hearing was published in the manner required by law and the hearing was duly held by the City Council on October 30, 2017.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby finds and determines as follows:

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby adopts certain changes in the Fiscal Year 2018 Master Fee Schedule, as reflected in attached Exhibit "A".

BE IT RESOLVED that this resolution shall become effective on the date that the companion Ordinance (Ordinance No. 17-__) becomes effective.

IN COUNCIL, HAYWARD, CALIFORNIA 30th of October 2017.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

B. PLANNING

1. Pre-Application Meeting ¹		No Charge
2. Code Assistance Meeting ¹		No Charge
3. Annexation Proceedings		
Costs shall also include, but not be limited to, current annexation filing fees established by the Board of Equalization in manner provided by the State Government Code Section 54902.5.	\$	15,000 Time & Material; Initial Deposit ²
4. LAFCO Utility Service Agreement		
(Preparation and processing of documents in connection with utility service to property outside of the City limits)	\$	5,000 Time & Material; Initial Deposit ²
5. Environmental/Technical Analysis (Contract) Consultant	\$	5,000 Time & Material; Initial Deposit ²
6. General Plan Amendment ¹	\$	12,000 Time & Material; Initial Deposit ²
7. Text Change to Zoning Ordinance ¹	\$	12,000 Time & Material; Initial Deposit ²
8. Rezoning and Prezoning (Including New or Major Modification to a Planned Development) ¹	\$	12,000 Time & Material; Initial Deposit ²
9. Rezoning (Planned Development Precise Plan or Preliminary Plan Minor Modification)	\$	6,000 Time & Material; Initial Deposit ²
10. Conditional Use Permit ¹	\$	6,000 Time & Material; Initial Deposit ²
11. Administrative Use Permit ¹		
a. Livestock	\$	500 Per Application
b. Food Vendors	\$	700 Per Application
c. Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
d. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²

12. Site Plan Review¹		
a. Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
b. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
13. Variance/Warrants - Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
14. Variance/Warrants & Exceptions – Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
15. Modification of Approved Development Plan – Processed Administratively	\$	2,000 Time & Material; Initial Deposit ²
16. Modification of Approved Development Plan – Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²
17. Extension of Approved Development Plan/Applications	\$	1,000 Time & Material; Initial Deposit ²
18. Designation of Historical or Architectural Significance¹	\$	6,000 Time & Material; Initial Deposit ²
19. Development Agreement		
a. Review of application, negotiation of agreements, processing through Planning Commission and City Council	\$	12,000 Time & Material; Initial Deposit ²
b. Amendment Processing	\$	6,000 Time & Material; Initial Deposit ²
c. Annual Review	\$	1,000 Time & Material; Initial Deposit ²
20. Written Verification of Zoning Designation or Similar Request	\$	500 Per Application
21. Research	\$	164 per hour after first 15 minutes

22. Zoning Conformance Permit

a Tier One: Apiaries, Unattended Collection Boxes	\$	210 Per Application
b Tier Two: Household Pets (when required)	\$	53 Per Application
c Tier Three: Accessory Dwelling Unit Application	\$	328 Per Unit

23. Sign Permits

a. Sign Permit (one business)	\$	327
b. Sign Permit (each additional business – same application)	\$	327
	\$	100 Fee Plus
c. Temporary Sign Permit (Banners, Flags, Streamers, Pennants, Bunting, Searchlights, Inflatable Signs, Human Signs)	\$	200 Deposit*

*Temporary sign deposits to be refunded upon removal of signage

d. Portable/A-Frame Signs	\$	50 Encroachment Permit
e. Mural Art	\$	50

Note: Revocable Encroachment Permit also applies to Human signs in the public right of way

24. Sign Program

\$ 817

25. Appeal Fee for Applicant

\$ 6,000 Time & Material;
Initial Deposit²

26. Appeal Fee Other Than Applicant

\$ 400

27. Tentative Tract or Tentative Parcel Map

a. Processed Administratively	\$	4,000 Time & Material; Initial Deposit ²
b. Involving Public Hearing	\$	6,000 Time & Material; Initial Deposit ²

28. Final Parcel Map

\$ 2,000 Time & Material;
Initial Deposit²

29. Final Tract Map

\$ 6,000 Time & Material;
Initial Deposit²

30. Lot Line Adjustment

\$ 4,000 Time & Material;
Initial Deposit²

31. Certificate of Merger or Certificate of Compliance

\$ 4,000 Time & Material;
Initial Deposit²

32. Grading Permit Application

\$ 4,000 Time & Material;
Initial Deposit²

33. Security Gate Application

\$ 1,635

34. Encroachment Permit – Street Events	\$	2,944
The Development Services Director or designee may reduce or waive this fee for certain events. <i>(See Fee Reduction, Waiver, and Sponsorship for Special Events Policy)</i>		
35. Encroachment Permit Application – Major Work (road closures, traffic control, more than 500 linear feet of work, etc.)	\$	4,000 Time &Material; Initial Deposit ²
36. Encroachment Permit Application – Minor Work (sewer laterals, driveway widening, etc.)	\$	327 Plus Public Works inspection fee
38. Tree Preservation		
a. Annual Pruning Certification	\$	817
b. Tree removal/pruning	\$	490
39. Mobilehome Park Closure/Change of Use	\$	9,814
40. Inspections - Planning and Landscape		
a. Code Enforcement Compliance Inspection Fee	\$	125
b. Landscape Inspection and/or re-inspection fee	\$	164 Per Hour
41. Policy Planning Fee		16% of Building Permit Fee

42. Park Dedication In Lieu Fees

a. Single-Family Detached	\$	11,953
b. Single-Family Attached	\$	11,395
c. Multi-Family (including accessory dwelling units)	\$	9,653

43. Affordable Housing Impact Fees

1. Ownership Residential Projects - 20 units or More		
a. Detached Dwelling Units		\$4.61/Square Foot of Habitable Space*
b. Attached Dwelling Units		\$3.87/Square Foot of Habitable Space*
2. Rental Residential Projects - 20 units or More		
a. Projects Receiving All Discretionary Approvals Prior to Dec. 31, 2015 and All Building Permits Prior to Dec. 31, 2017		No Fee
b. All Other Projects		\$3.63/Square Foot of Habitable Space*

*Note: Affordable housing impact fees shall be paid either prior to issuance of a building permit or prior to approval of a final inspection or issuance of an occupancy permit. Fees paid at occupancy shall be increased 10 percent, to \$5.06/sq. ft. of habitable space for detached dwelling units, to \$4.28/sq. ft. of habitable space for attached dwelling units, and to \$3.99/sq. ft. for rental units.

"Habitable Space" means floor area within a dwelling unit designed, used, or intended to be used exclusively for living and sleeping purposes and exclusive of vent shafts, eaves, overhangs, atriums, covered entries and courts and any portion of a structure above ground used for parking, parking aisles, loading areas, or accessory uses.

¹It is recommended that major projects be reviewed at a Pre-Application Meeting prior to submittal of a Development Review Application. A Code Assistance Meeting is also recommended involving project design professionals to address technical code questions.

²This is an initial deposit only. Hourly rate is \$163.58. If during the review of the project the Planning Director estimates that the charges will exceed the deposit, additional deposit(s) will be required. Also, the Planning Director may authorize a lesser initial deposit than shown if he/she determines that processing of an application will not entail need for the full initial deposit. Prompt payments of deposits or outstanding fees owed in association with the application will assure continued staff review of the project. Any surplus deposit remaining shall be refunded promptly upon project completion.



State of California

GOVERNMENT CODE

Section 65852.2

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(Amended by Stats. 2016, Ch. 735, Sec. 1.5. (AB 2299) Effective January 1, 2017.)



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SB-229 Accessory dwelling units. (2017-2018)

SECTION 1. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones.~~ *areas zoned to allow single-family or multifamily use.* The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria,~~ *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence, but may be rented.* ~~not be sold or otherwise conveyed separate from the primary residence.~~

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing,~~ *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached to ~~the existing dwelling~~ or located within the living area of the ~~proposed or~~ existing *primary* dwelling or detached from the ~~proposed or~~ existing *primary* dwelling and located on the same lot as the ~~proposed or~~ existing *primary* dwelling.

(iv) The ~~increased floor~~ *total* area of *floorspace of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area or* 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on ~~an existing~~ *a* driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, *or converted to an accessory dwelling unit*, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ *includes a proposed or* existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or* existing *primary* dwelling, shall be established by ordinance for either attached

or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the *proposed or* existing primary residence or an ~~existing~~ accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a ~~single-family residential zone~~ *zone for single-family use* one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered ~~new residential uses by a local agency, special district, or water corporation to be a new residential use~~ for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of *the* Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 1.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones,~~ *areas zoned to allow single-family or multifamily use.* The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria,~~ *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence, buy* may ~~be rented.~~ *not be sold or otherwise conveyed separate from the primary residence.*

(ii) The lot is zoned ~~for~~ *to allow* single-family or multifamily use and ~~contains an existing,~~ *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached ~~to the existing dwelling~~ or located within the living area of the ~~proposed or~~ existing *primary* dwelling or detached from the ~~proposed or~~ existing *primary* dwelling and located on the same lot as the ~~proposed or~~ existing *primary* dwelling.

(iv) The ~~increased floor~~ *total* area of *floor space of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area or* 1,200 square feet.

(v) The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom.~~ *bedroom, whichever is less.* These spaces may be provided as tandem parking on ~~an existing~~ *a* driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction.~~ *conditions.*

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling *unit or converted to an accessory dwelling* unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ *includes a proposed or* existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983,~~ *an application* for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or* existing *primary* dwelling, shall be established by ordinance for either attached

or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the *proposed or* existing primary residence or an ~~existing~~ accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a ~~single-family residential zone~~ *zone for single-family use* one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, *including, but not limited to, a studio, pool house, or other similar structure*, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered ~~new residential uses by a local agency, special district, or water corporation to be a new residential use~~ for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*

(i) As used in this section, the following terms mean:

- (1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.
- (2) "Local agency" means a city, county, or city and county, whether general law or chartered.
- (3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.
- (4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping,

eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of *the* Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "Tandem parking" that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 2. *Section 1.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Assembly Bill 494. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Assembly Bill 494, in which case Section 1 of this bill shall not become operative.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*



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AB-494 Land use: accessory dwelling units. (2017-2018)

SECTION 1. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence, but may be rented. not be sold or otherwise conveyed from the primary residence.*

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom.~~ *bedroom, whichever is less.* These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction.~~ *conditions.*

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, *or is converted to an accessory dwelling unit*, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983,~~ *an application* for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, *including, but not limited to, a studio, pool house, or other similar structure*, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of *the* Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 1.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in ~~single-family and multifamily residential zones~~ *areas zoned to allow single-family or multifamily use*. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on ~~criteria~~, *criteria* that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit ~~is not intended for sale~~ *may be rented* separate from the primary ~~residence and~~ *residence*, ~~buy may be rented~~. *not be sold or otherwise conveyed separate from the primary residence*.

(ii) The lot is zoned ~~for to allow~~ single-family or multifamily use and ~~contains an existing~~, *includes a proposed or existing* single-family dwelling.

(iii) The accessory dwelling unit is either attached ~~to the existing dwelling~~ or located within the living area of the ~~proposed or~~ existing *primary* dwelling or detached from the ~~proposed or~~ existing *primary* dwelling and located on the same lot as the ~~proposed or~~ existing *primary* dwelling.

(iv) The ~~increased floor total~~ area of *floorspace of* an attached accessory dwelling unit shall not exceed 50 percent of the ~~existing living area, with a maximum increase in floor area of~~ *proposed or existing primary dwelling living area or* 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to ~~a~~ *an accessory dwelling unit or to a portion of an* accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per ~~bedroom~~. *bedroom, whichever is less*. These spaces may be provided as tandem parking on ~~an existing~~ a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not

feasible based upon specific site or regional topographical or fire and life safety ~~conditions, or that it is not permitted anywhere else in the jurisdiction.~~ *conditions.*

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling *unit or converted to an accessory dwelling* unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that ~~contains an~~ *includes a proposed or* existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives ~~its first application on or after July 1, 1983,~~ *an application* for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall ~~accept the application and~~ approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the *proposed or* existing *primary* dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local

development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the *proposed or* existing primary residence or an ~~existing~~ accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a ~~single-family residential zone~~ *zone for single-family use* one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, *including, but not limited to, a studio, pool house, or other similar structure*, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence. *A city may require owner occupancy for either the primary or the accessory dwelling unit created through this process.*

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered ~~new residential uses by a local agency, special district, or water corporation to be a new residential use~~ for the purposes of calculating ~~local agency~~ connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local ~~agency~~ *agency, special district, or water corporation* may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. *The department may review and comment on this submitted ordinance.*

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of *the* Health and Safety Code.

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(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(6) "*Tandem parking*" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 2. *Section 1.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Senate Bill 229. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Senate Bill 229, in which case Section 1 of this bill shall not become operative.*

SEC. 3. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.*



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: WS 17-051

DATE: October 30, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT

Review of Cannabis Business Operator Selection Process

RECOMMENDATION

That the Council reviews this report and presentation and provides feedback on the draft cannabis business operator selection process/request for proposals.

ATTACHMENTS

Attachment I Staff Report



DATE: October 30, 2017
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Review of Cannabis Business Operator Selection Process

RECOMMENDATION

That the Council reviews this report and presentation and provides feedback on the draft cannabis business operator selection process/request for proposals.

BACKGROUND

With the advent of legal cannabis businesses approaching in January 2018, the Council has directed staff to prepare a process by which the City can select cannabis businesses that both fit the desires of the community and create a framework that addresses the needs of a new, emerging market.

Over the past several months, the City has been taking steps to ensure proper and legal implementation of adult and medical cannabis business regulations. Following two work sessions earlier this year, the Council is currently moving forward with establishing a regulatory and land use framework to permit commercial cannabis businesses within the City of Hayward.

At their October 17th meeting, the Council reviewed the proposed regulatory framework and although they expressed overall support for the land use ordinance, the Council identified several additional components for inclusion as part of the RFP scoring and evaluation process. Specifically, the Council directed staff to include a youth education component as part of the public benefit being provided by new commercial cannabis business proposals and indicated a desire for business operators to enter into a labor peace agreement and provide worker's compensation for employees. In addition, the Council directed staff to prepare a resolution to limit the number of commercial cannabis retail dispensaries to no more than three.

To help develop the review of cannabis businesses, the City engaged ICF, a firm with experience developing cannabis license applications, guidelines, and criteria for municipalities locally and in other states that have legalized medical and adult use cannabis. Their staff consists of individuals with expertise in regulation, cannabis, public health, finance, safety, security, environment, and community outreach.

This staff report and presentation outlines the proposed RFP process and identifies possible scoring criteria, as identified by ICF. Staff recommends that the Council reviews the criteria discussed in the presentation and provides feedback on the scoring type and scoring value to assist the consultants in finalizing the RFP document. Once determined, the City will release the RFP and allow prospective business operators an opportunity to submit proposals.

DISCUSSION

Selection of cannabis business operators will take place through a request for proposal (RFP) process which will cover all commercial cannabis business types, including commercial cannabis dispensaries, testing/research laboratories, distribution centers, and grow facilities. The RFP process will ensure transparency and objectivity while providing the City with a competitive process that allows for the selection of the best applicants available. These applicants will hopefully be forward-thinking and offer solutions that implement best practices in management, operations, training, safety and diversion control, reduction of noise or nuisance behaviors, sustainable energy and waste solutions, and local hiring amongst other best practices the City may wish to include.

RFP Process Overview

The RFP’s materials will provide the evaluation criteria to all applicants to ensure a transparent process in which applicants understand the evaluation framework and relative importance (weighting) of each application component. The City will accept questions from potential applicants during the RFP process and will publicly post responses to questions to the RFP. Potential applicants will have to submit their proposals in accordance with City guidelines. Applicants can apply for one or more business type but must provide separate responses to address each specific business type for which they are applying.

The table below provides the current timeline for this process.

TABLE 1: RFP Process Timeline	
Month	Activities
Late October 2017	Develop application, scoring, and weighting criteria
Early November 2017	Release RFP application
Mid-December 2017	RFP application due
Mid-December 2017 – Late January 2018	Review RFP applications, scoring, and recommendations
February 2018	Conduct interviews and select successful applicants
March 2018 - Onward	Program implementation

Application Review Process and Evaluation Criteria

The review of proposals involves four stages to help differentiate applicants who meet the City's desired set of qualifications. Stages one and two will involve an objective application adjudication process, independent of the City, by ICF's neutral third-party team of subject matter experts.

Stage One: Criminal Background Investigation

Applicants who pass a background and criminal history check will advance onto the evaluation phase of the application process. Compliance determinations made in this stage by the City will not be subject to appeal.

Stage Two: Competitive Scoring and Ranking

Neutral third-party subject matter experts, as mentioned earlier, will evaluate this stage of the review process and will consider the responsiveness and quality of each proposal with respect to each of the question topics, for each specific business type.

The proposed evaluation criteria, as well as a description of requested information is as follows:

1. **Business Plan and Operations:** Proposed cannabis business operations, including products and/or services, discussion of compliance with all state and local laws, proposed schedule for start-up, proposed budget including start-up and operating costs, and proof of capitalization for costs. Applicants must provide a financial pro-forma for at least three years of operation. For retail establishments, this could also include the design aesthetic and user experience of the dispensary.
2. **Management Experience:** Experience of the proposed cannabis business management team to determine if they have the requisite managerial, cultivation/agricultural, or research experience to safely, responsibly, and successfully start and manage the long-term operations of a commercial cannabis business.
3. **Safety and Security Plan:** Safety plan and protocols to be implemented, including, discussion of fire prevention and proposed security infrastructure and processes, including but not limited to operational security, transactional security, delivery security, and 3rd party security.
4. **Community Benefits:** Proposed community benefits such as employment opportunities, youth education and other outreach activities, potential tax revenue, and other benefits for local business owners and residents.
5. **Product Testing and Safety:** Proposed product testing and inventory management plan and tools, and description of data management systems used for inventory and recordkeeping as well as discussion of consumer safety as required by state and/or local laws.
6. **Environmental Plan:** Proposed business practices related to energy usage, water conservation and materials / waste management.

7. **Labor and Employment Practices:** Proposed compensation and hiring practices, employee training programs including security, product education/awareness, legal and regulatory standards, local hire preference, labor peace considerations, and worker’s compensation protections, etc.

The evaluation and ranking of proposals will lie within the sole judgement and discretion of the neutral third-party subject matter expert reviewers. These reviewers will evaluate each application against weighted criteria, assigning points in accordance with the table below:

TABLE 2: CRITERIA WEIGHING		
Criteria	Maximum Points	%
Business Plan and Operations	300	30
Management Experience	150	15
Safety and Security Plan	150	15
Community Benefits	150	15
Product Testing and Safety	100	10
Environmental Plan	75	7.5
Labor and Employment Practices	75	7.5
Total	1,000	100%

Stage Three: Proposer Interviews

Following completion of the review process, ICF will recommend a sub-set of the highest-ranking applicants to participate in interview(s) with the City Manager or her designees who will make a final determination on which applicant will continue to the final stage. This will also be the stage where the City will determine the total number of permits that will be allowed for the different types of cannabis businesses, excluding retail dispensaries (already limited to three). According to ICF, typically responses ‘naturally break’ into cohorts that separate the strongly qualified applicants from the less qualified operators, which help to determine the appropriate amount of permits the City should issue.

Stage Four: City Council Approval

Following an objective review and ranking of the application materials and interview process, City staff will recommend operator applicants for the City Council’s consideration for permit award during a City Council public hearing. At the public hearing, these operators should be present to provide a brief public introduction to their team and an overview of their proposed commercial cannabis business. The City Council and Mayor will make the final decision of which applicants are selected for permit awards.

ECONOMIC IMPACT

It is difficult to predict the potential tax revenue stream created by cannabis businesses in Hayward. Different business types (i.e. Manufacturing vs. cultivation) may generate different levels of revenue. Staff will focus efforts on compiling data and information on this matter to assist the Council with determining the optimal tax rate to be imposed.

In late 2016, the University of the Pacific business school and law school authored a report studying the economic impact of the cannabis industry to the greater Sacramento area. The report, among other things, analyzed the potential economic impact of various sectors of the cannabis industry and assumed a range of potential market models from strictly regulated local models to less regulated regional market models. Although the assumptions utilized in the report may not hold true for Hayward, the methodology will be useful to Hayward staff as staff moves forward with a more detailed economic impact analysis.

STRATEGIC INITIATIVES

The proposed regulatory and land use ordinances are consistent with the goals and policies of the Hayward 2040 General Plan, and more specifically, are consistent with two of the Council's Strategic Initiatives: Complete Communities and Tennyson Corridor. Under the proposed regulatory and land use framework, new cannabis land uses could be established in select locations along the Tennyson Corridor and would support the Complete Communities Initiatives by diversifying employment opportunities and creating redevelopment and adaptive reuse of existing properties along the Tennyson Corridor and other locations throughout Hayward. Staff has identified several goals and policies of the Hayward 2040 General Plan, which support the Council's Initiatives:

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

LU-6.1 Land Uses. The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.

ED-1.6 Advances and Specialized Manufacturing. The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to residents and businesses.

ED-3.2 Fast Growing Industries. The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

HLQ-4.1 Adequate Health Care Facilities. The City shall encourage the development and maintenance of a full range of health care facilities, including hospitals, acute care facilities,

neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.

FISCAL IMPACT

The total cost of the ICF contract is \$74,640. This contract includes RFP application review and recommendations for 16 applications. This number may increase depending total number of applications, in which case staff will return to Council for additional contract authorization.

Staff anticipates that there will be a significant cost associated with the administration of land use and regulatory ordinances from cannabis related business operations in the City and that this cost will be dependent on the number and type of businesses Council chooses to allow.

The tasks associated with appropriately administering these businesses would require staff to at a minimum:

- Process applications
- Prepare reports to the Planning Commission and City Council
- Review business plans
- Obtain background investigation results for proposed owners and employees
- Interact with the State's cannabis regulators.

Staff would also be involved in auditing financial records to ensure that the City is receiving appropriate payments relating to the application of Measure EE. Under the current Master Fee Schedule, if staff charges exceed the \$5,000 application amount, the applicant will be billed on a time and materials basis. After the first year of experience with the staff charges associated with these types of applications, staff will return to Council to adjust the deposit amount as needed.

PUBLIC CONTACT

Any questions regarding the RFP process can be directed to the staff contact for this project: John Stefanski, Management Analyst II, who can be reached at 510-583-3904 or at john.stefanski@hayward-ca.gov.

NEXT STEPS

Staff is requesting direction from Council on the following items related to this process at this work session:

1. Criteria: Are there any missing key criteria? Are all the City's priorities included?
2. Criteria Weighting: Does the weighting scheme correctly reflect the Council's priorities among the example criteria?

3. Community Benefits: What specific aspects of community benefit are of value to you? Should more criteria be included on the list?
4. Alignment: How might this process be informed by or align with the Council's priorities and strategic initiatives?
5. Does the Council have any other questions or comments about the application development and operator selection process?

Following Council feedback from this work session, staff will make necessary changes and present the final process at a future City Council meeting.

Prepared and Recommended by: Michael Vigilia, Senior Assistant City Attorney
Jeremy Lochirco, Principal Planner
John Stefanski, Management Analyst II

Approved by:



Kelly McAdoo, City Manager



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: WS 17-050

DATE: October 30, 2017

TO: Mayor and City Council

FROM: Finance Director and City Attorney

SUBJECT

Discussion Regarding Measure EE Cannabis Tax Rate

RECOMMENDATION

That the City Council provides feedback and direction regarding imposition of the Measure EE Cannabis Tax rate.

ATTACHMENTS

Attachment I Staff Report



DATE: October 30, 2017

TO: Mayor and City Council

FROM: Finance Director and City Attorney

SUBJECT Discussion Regarding Measure EE Cannabis Tax Rate

RECOMMENDATION

That the City Council provides feedback and direction regarding imposition of the Measure EE Cannabis Tax rate.

BACKGROUND

On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis and products derived therefrom. This tax is in addition to any other taxes imposed by the City of Hayward or the State of California.

Prop. 64 and its trailer legislation established two distinct state taxes on the cannabis industry. A cultivation tax will be imposed on all harvested cannabis that enters the commercial market at the rate of \$9.25/dry weight ounce for flowers and \$2.75/dry weight ounce for leaves. The state will also impose an excise tax on cannabis and cannabis products sold in California at the rate of 15% of the average market price of any retail sale by a cannabis retailer.

On the same date that Prop. 64 was approved, the voters of Hayward approved Measure EE authorizing the City to impose a local tax not exceeding fifteen percent (15%) of gross sales of adult use of recreational and medical cannabis. The tax may be applied to the cultivation, distribution, manufacturing, business-to-business sales, as well as retail sales.

During previous meetings, there has been general interest from the Council in the cannabis tax rates of neighboring jurisdictions. The tax rates are as follows:

- Berkeley – 2.5% (medical marijuana), 10% recreational contingent on passage of Prop. 19 during 2010 election.*
- Campbell – 7% with maximum rate of 15%.
- Oakland – 5% (medical marijuana), 10% recreational contingent on passage of Prop. 19 during 2010 election.

- Pacifica – 6% initial rate with maximum rate of 10%.
- Pittsburg – 10%
- San Jose – 10%
- San Leandro – 6% through June 2019, 7% beginning July 1, 2019, and 8% on July 1, 2021.
- Santa Cruz – 7% initial rate with maximum rate of 10%.
- Santa Rosa – 8%
- Union City – Ballot measure anticipated in 2018.
- Vallejo – 10%

Each community imposes its respective cannabis tax on a broad range of commercial cannabis activities encompassing retail sales, manufacturing and cultivation, among other related activities. However, there may be variations with respect to specific implementation in each jurisdiction based on the specific language of the respective ballot measures and ordinances adopted in each community.

*Because State Proposition 19 did not pass, these jurisdictions do not have a definitive tax on recreational use cannabis.

DISCUSSION

Tonight, staff is seeking policy direction from the Council with respect to the following items:

- The rate at which the Measure EE approved cannabis tax will be imposed.
 - Rate to be imposed on adult use (recreational) cannabis
 - Rate to be imposed on medical use cannabis
- On which transactions/operations the Measure EE tax should be imposed
 - Cultivation
 - Distribution
 - Manufacturing
 - Business-to-Business sales
 - Retail Sales

More specifically, staff seeks direction from the Council as to which transactions at each operational stage of the commercial chain should be taxed and how operators with multiple permits within the City are to be taxed. With direction on these key factors, staff can develop and implement administrative practices, policy and rules & regulations.

STRATEGIC INITIATIVES

This agenda item relates to the following Council Policies:

Economic Development Strategic Plan:

ED-1.6 Advances and Specialized Manufacturing. The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail. The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to residents and businesses.

ED-3.2 Fast Growing Industries. The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

ED-3.3 Buy Local. The City shall encourage residents, local businesses, colleges, trade schools and community organizations to purchase goods and services from other local businesses to support local jobs and to recirculate within the local economy.

ED-1.4 Emerging and Growing Business Sectors. The City shall establish business attraction efforts that focus on small and medium-sized businesses with emerging and growing business sectors.

ED-6.7 Business Incentives. The City shall provide business incentives to attract, expand, and retain businesses that offer high-quality jobs, generate local sales tax revenue, and/or provide needed goods or services to residents.

General Plan 2040:

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

PFS-1.4 Development Fair Share. The City shall, through a combination of improvement fees and other funding mechanisms, ensure that new development pays its fair share of providing new public facilities and services and/or the costs of expanding/upgrading existing facilities and services impacted by new development.

PFS-2.9 Financial Planning for Sustainability. The City shall continue to maintain and implement its financial plan, which provides a plan for City goal setting in the budget process in implementing its policies, priorities and programs.

FISCAL IMPACT

On October 14, 2017, the Council held a Fiscal Sustainability Workshop in which it considered strategies and options to shape the City's long-term fiscal future. One of the strategies presented and discussed in the session and staff report for this meeting were possible revenues generated from the cannabis tax approved by Measure EE. The City partnered with Management Partners to research many of the strategies presented; Management Partners estimated gross annual tax receipts of approximately \$2.1 million. This amount was calculated on a per capita number from San Jose (gross tax receipts/the number of residents), which came up with \$9.02 per capita. Related to the City of Hayward, staff multiplied \$9.02 by the number of residents and then multiplied the per capita by 1.5 to recognize the difference in rates (as presented at 15%). Staff estimates these revenues to be between \$1 and \$3 million annually depending on the tax rate applied, number of businesses, how the tax is applied, and which types of operations the tax will apply to.

PUBLIC CONTACT

The Council held work sessions regarding cannabis businesses in Hayward in March and July 2017 and introduced ordinances establishing a local regulatory framework for cannabis businesses on October 17, 2017.

NEXT STEPS

Upon direction from Council as to the tax rate to be imposed, staff will prepare a resolution and ordinance codifying Measure EE which includes the tax specific rate to be imposed.

Prepared by: Dustin Claussen, Finance Director
 Michael G. Vigilia, Senior Assistant City Attorney

Recommended by: Dustin Claussen, Finance Director
 Michael S. Lawson, City Attorney

Approved by:



Kelly McAdoo, City Manager