



**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS AND VIRTUAL (ZOOM)
PARTICIPATION
Thursday, January 26, 2023, 7:00 p.m.**

The Planning Commission meeting was called to order at 7:03 p.m. by Acting Chair Lowe. The Planning Commission held a hybrid meeting in the Council Chambers and virtually via Zoom.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present:	COMMISSIONERS:	Ali-Sullivan, Bonilla Jr., Garg, Goodbody, Patterson, Stevens
	ACTING CHAIRPERSON:	Lowe
Absent:	COMMISSIONER:	None
	CHAIRPERSON:	None

Staff Members Present: Blanton, Lochirco, Madhukansh, Ochinero, Schmidt, Tabari, Vigilia

ELECTION OF OFFICERS

Nomination for Chair:

Commissioner Stevens nominated Commissioner Lowe for Chair. Commissioner Lowe declined the nomination.

Commissioner Lowe nominated Vice Chair Ali-Sullivan for Chair. Commissioner Bonilla Jr. seconded the motion. Vice Chair Ali-Sullivan accepted the nomination.

The motion carried with the following roll call vote:

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

Nomination for Vice-Chair:

Commissioner Bonilla Jr. nominated Commissioner Lowe for Vice-Chair; Commissioners Stevens and Ali-Sullivan seconded the motion. Commissioner Lowe accepted the nomination.



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The motion carried with the following roll call vote:

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

Nominations for Secretary:

Vice Chair Lowe nominated Commissioner Patterson for Secretary.

Chair Ali-Sullivan nominated Commissioner Bonilla Jr. for Secretary. Commissioner Bonilla Jr. declined the nomination.

Chair Ali-Sullivan nominated Commissioner Stevens for Secretary. Commissioner Stevens declined the nomination.

Vice Chair Lowe nominated Commissioner Patterson once again for Secretary. Commissioner Patterson accepted the nomination.

The motion carried with the following roll call vote:

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

PUBLIC COMMENTS

Ms. Ro Aguilar (Zoom participant) welcomed the new Planning Commissioners to the meeting, noted the topic on the agenda was complex and wondered if the new Commissioners were prepared to approve the Housing Element.

Mr. Shane Gill (Zoom participant) spoke on behalf of his company which was a local cannabis distributor in Hayward and expressed his support for the approval of the cannabis microbusiness project being considered at 23000 Connecticut Avenue, Suite 5, Hayward CA.



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In response to remarks expressed during the public comment period, Planning Manager Lochirco stated that all three of the new Planning Commissioners had received the agenda packet at the same time as the other Commissioners, and had equal opportunity to read the staff report and review the documents, were prepared to take action if the Commission decided to make a recommendation, and added that if any of the new members of the Planning Commission do not feel that they are in a position to make a recommendation for the items on the agenda, then the members could recuse themselves.

PUBLIC HEARING

Staff requested that the Planning Commission hear Item 2 before Item 1 on the agenda. There being no objections, the Planning Commission proceeded with hearing Item 2 at the meeting.

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

1. Adoption of the 2023-2031 Housing Element for the City of Hayward (PH 23-003)

Principal Planner Schmidt provided a synopsis of the staff report and introduced Mr. Jason Montague with Rincon Consultants who helped the City with its Housing Element update.

Commissioner Garg complimented the amount of outreach that staff had done, shared that she participated in several discussions and presentations related to the housing element, acknowledged that there was a tension in the City between housing affordability and lack of housing stock as the population has gone up, that individuals with high incomes were also having difficulty affording housing in the City, the costs of creating housing had increased, and she wanted to ensure that new construction remains attractive to developers and that it provides housing options that a variety of people can afford. With regards to labor groups, she raised the argument by labor unions that was ensuring that those working on constructions sites are paid fairly to provide higher income to pay for housing and asked whether labor standards in Hayward are stricter than surrounding areas. She requested that staff speak to these concerns.

Principal Planner Schmidt stated while the points raised were valid, such as the need to pay fair wages, she stated that the Housing Element was not the mechanism to implement this policy discussion. She underscored the role of the Housing Element was to remove constraints on the construction of housing and recommended against adding those constraints to the Housing Element so that the California Department of Housing and Community Development (HCD) would certify the document. Staff recommended the



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inclusion of softer language indicating that the City supported and was willing to meet with labor groups, and that policies addressing labor standards be addressed separately.

Commissioner Garg stated that based on her experience in serving on the Community Services Commission and what groups had to do to qualify for Community Development Block Grant funding, she stated there was tension on placing constraints on certain unit types and sizes to ensure units be affordable and attracting contractors who supported those standards. Principal Planner Schmidt concurred there were not enough large rental units within the City and that was the reason for more crowding in rental units than ownership units. Staff discussed adding points to the Notice of Funding Availability for developments that included larger units for families and identified special needs populations. Ms. Schmidt noted the Housing Element did not include requirements that projects must include a specific percentage of large units. She clarified that the Housing Element included an incentive approach rather than a more onerous regulatory approach.

Commissioner Patterson thanked staff for answering the question on Senate Bill (SB) 9 which she had posed before the meeting. She requested that staff elaborate on what was included in underutilized sites in the housing inventory as it seemed this made up a majority of the unit surplus and whether there could be an opportunity to convert to a multifamily housing unit. She also wanted to understand how this related to rehabilitation and repair projects.

Principal Planner Schmidt clarified that no properties with existing residential uses were identified as underutilized sites adding that the underutilized sites were either commercial uses or vacant buildings.

Mr. Jason Montague stated that the sites explored were both vacant and non-vacant sites, which were also known as underutilized sites. Since vacant sites don't have constraints to development, they are explored first for housing opportunities. He underscored that cities typically did not have adequate vacant land to build on to satisfy the Regional Housing Needs Allocation (RHNA). For these reasons, staff had to evaluate non-vacant sites that have high redevelopment potential. Existing uses at these non-vacant sites are reviewed to see if they align with development trends. A majority of the underutilized sites are parking, sites with low floor area ratio and low improvement land-value ratio where the land is worth more than the improvements on them. They analyzed structure age, with most of the structures being at least thirty-five years old; location of the sites which have to align with appropriate zoning and development trends in Hayward; and then through a fair housing lens. Mr. Montague shared that if a site identified in the inventory is developed with a use other than for housing or for lower density than assumed in the inventory, then the City needs to replace the site per the State Law. He noted that the findings were that Hayward did have enough sites to satisfy RHNA, and a backup list was developed with additional



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sites in the event a site doesn't develop in accordance with assumptions in the Housing Element.

Commissioner Stevens requested further details about the Senate Bill (SB) 9 process. He understood that owners of single-family homes could tear the existing structure down, subdivide the lot, and build four new units. Principal Planner Schmidt confirmed that was correct and noted if a renter lived on the lot, the renter could not be displaced for the owner to subdivide, and the property would have to sit vacant for a number of years after the tenant moved in order to allow for this. Ms. Schmidt added that individuals could not buy contiguous pieces of land and then subdivide the lots; and underscored the true intention of the legislation was to enable a property owner to turn a single-family unit into a duplex and protect against largescale investors and developers.

Commissioner Stevens understood that per the legislation, an existing established neighborhood would begin to see lots being subdivided, changing the form of the neighborhood. He expressed concern about historical character homes and essentially there being no control about what is being constructed apart from no more than two units per lot. Principal Planner Schmidt remarked the parcels had to be single-family residentially zoned, and that having an older or established neighborhood did not preclude that neighborhood from following State Law unless the homes or neighborhood are a designated historic structure or district.

Commissioner Stevens asked how the City planned to expedite the SB 9 process. Principal Planner Schmidt explained staff had an objective checklist that SB 9 projects must follow. Staff also developed a frequently asked questions document, made available in English and Spanish, and posted this on the City website. Staff had received three SB three applications so far. Planning Manager Lochirco mentioned the Planning Division was currently working on the development of Residential Design Standards and once adopted, a SB 9 project would be required to follow those standards.

Commissioner Stevens commented if the Objective Standards were rigorous then the City would regain local control over how neighborhoods were shaped. Planning Manager Lochirco confirmed the City could design a clear set of principles that could be context-sensitive for specific neighborhoods. He shared that staff would be bringing forward Objective Standards for the Commission to consider in the coming months.

Commissioner Stevens asked what outcomes were being envisioned with having discussions with the labor unions. Principal Planner Schmidt found setting aside a formal time to establish a good working relationship with partners was a good practice. She envisioned best practices could be identified from these discussions, also being informed of what other jurisdictions were doing in this area.



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Commissioner Stevens suggested the City explore funding schools to teach youth about construction jobs and supplying them with training to be able to enter the construction field. He stated if the City was interested in creating a labor pool, it should be investing in the youth. Principal Planner Schmidt emphasized that the goal of the Housing Element was to get as much good development for as many income levels as possible, without further constraining developments, and noted that funding apprenticeship programs and schools was a great idea but should not be a part of the Housing Element.

Commissioner Goodbody inquired if the labor union discussions would be on a per-project basis. Principal Planner Schmidt answered it would be on an annual basis unless they specifically request a discussion about a project.

Commissioner Bonilla Jr. asked what incentives for housing development were not included in the Housing Element and what constraints were considered that were not removed. Principal Planner Schmidt stated that the cost of development was one of the largest constraints and the City's Impact Fees were a part of this constraint. Staff explored Impact Fees and compared the City's fees to surrounding jurisdictions. The findings were that the City's fees were not relatively high, and she emphasized that the fees make the city a livable place for residents. The other constraint was the City's entitlement process, noting that the city was working towards streamlining the processes and there was no proposal to remove or eliminate the entitlement process. She indicated that in comparison to other jurisdictions, the City's entitlement process was not overly burdensome.

Commissioner Bonilla Jr. mentioned the City often provided a white glove service to help developments navigate the process and wondered if something similar could be done for the Housing Element. He inquired how the Housing Element accommodated and addressed an aging population. Principal Planner Schmidt noted the Housing Element did include incentives to expedite development by connecting with developers early in the process and helping them through the process for commercial and residential projects. With respect to an aging population, Ms. Schmidt restated that developments that accommodated groups identified as special needs would receive special incentives or points enabling them to receive additional funding. She added that universal design guidelines were being developed and the reasonable accommodations ordinance will be updated to remove constraints of a burdensome planning process that may inhibit the addition of structures like ramps.

Commissioner Bonilla Jr. acknowledged that many residents were cost-burdened by high rents and he asked how was the City going to retain affordability of rental units. Principal Planner Schmidt confirmed the only plan in the Housing Element was related to continuing implementation of the Rent Stabilization Ordinance and was not aware if any updates were planned for this Ordinance in the coming years.



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Vice Chair Lowe opened the public hearing at 9:27 p.m.

Mr. Nazario (Zoom participant) asked if the Housing Element included planning for dog parks or children's parks that go along with high density housing. Principal Planner Schmidt answered that per the Zoning Ordinance new development was required to have a certain amount of common and private open space, programming of the space was a the discretion of the developer, with staff input.

Vice Chair Lowe closed the public hearing at 9:29 p.m.

Commissioner Stevens appreciated staff's work but stated he had two areas of concern. The first was that the State of California had taken away the City's ability to form the built environment. He found it troubling that the City would be expediting SB 9 applications because those applications had the potential to change the form of a residential neighborhood. He feared that the public was not aware of those changes and will become aware as housing is torn down and new structures constructed. Mr. Stevens appreciated the Objective Standards that the City will work towards, but did not have high hopes that the City will be able to create a protocol that will be consistent with State Law, resulting in the loss of local control of development. His second concern was that he was unclear why the City felt it must meet with labor unions, especially the carpenters union. In his experience, most residential wood frame construction was built by non-union labor, adding that the marketplace was competitive, and that workers were paid very well for labor due to the limited supply for this type of workforce. He questioned that if the City was to meet with the carpenters union, it should meet with local framing contractors as well as they may have valuable input to provide. He was gravely concerned about SB 9 as the impact of this legislation will become evident towards the end Housing Element's 8-year period.

Commissioner Goodbody thanked staff for their hard work and appreciated staff's thorough answers to the Commission's questions.

Commissioner Bonilla Jr. found the Housing Element to be very comprehensive, appreciated its evolution over the past several years, he found the document to be responsive to the needs identified in the community and found the community outreach to be very robust. He encouraged staff to continue that type of outreach in the future. He expressed his excitement to see the section on fair housing and the City's will to center housing through the lens of race and equity. Mr. Bonilla Jr. supported the City having discussions with labor unions and appreciated Commissioner Stevens' comments. He indicated that discussions should be open between labor groups and the community, encouraged staff to open discussions to other trade groups should they request to meet like the carpenters union have done so, and believed the discussions would create a balance between both parties and foster creative solutions. He requested that staff provide an



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update to the Commission after those discussions take place if they impact the Housing Element.

A motion was made by Commissioner Bonilla Jr., seconded by Commissioner Patterson, to approve the staff recommendation with a revision to include contractors and other groups that employ construction laborers.

Commissioner Stevens supported the language if the City was agnostic to union versus non-union trades. He requested that staff clarify what is meant by expediting SB 9 projects. Principal Planner Schmidt explained that SB 9 project applications were a ministerial permit which bypassed discretionary review by staff. She elaborated that the expedited portion meant that still provide outreach and education about the law and will assist individuals with the application process. Planning Manager Lochirco added that the State created SB 9 legislation and determined that local discretion needed to be ministerial if projects met specific criteria and clarified that the expediting of SB 9 was that if an applicant had interest in pursuing SB 9, that staff provides materials necessary for the applicant to comply with state and local regulations.

The motion passed with the following roll call votes:

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

Item 2 was heard before Item 1.

For agenda item No. 2, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

2. Proposed Cannabis Microbusiness with Manufacturing, Distribution, Delivery, and Ancillary Retail Activities Located at 23000 Connecticut Avenue, Suite 5 (Assessor Parcel No. 439-0036-119-00) Requiring Approval of Conditional Use Permit Application No. 202001006. Douglas Chloupek (Applicant); Jon Cook (Property Owner). **(PH 23-004)**

Senior Planner Blanton provided a synopsis of the staff report and PowerPoint presentation.



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Commissioner Garg asked if the proposed business would be regulated under medical use or non-medical use of cannabis. Senior Planner Blanton stated that even though the applicant would refer to customers as patients, anybody in the state would be allowed to buy products from this company. She added that the focus for advertising and for the client pool towards individuals using the products for medicinal purposes. Ms. Blanton further noted for Commissioner Garg that the City would not make distinction to limit the client pool to individuals having medical cards, emphasizing that anyone who was permitted by the State of California to purchase cannabis products could do so at the proposed facility and deferred further explanation about the business model to the applicant.

Mr. Douglas Chloupek, the project applicant, shared the following regarding his background with operating cannabis businesses: he commercially ran cannabis businesses in California for thirteen years, has a facility in Berkeley for manufacturing and researching cannabis, owned two dispensaries in San Jose, and he operates the company Juva Life in three continents which have nine cannabis companies under its umbrella that are heavily focused on medical and pharmaceutical research. Mr. Chloupek indicated that the proposed project would consist of small retail, manufacturing, delivery and distribution. He clarified that the proposed project was separate from his other entity Precision Apothecary located on Clawiter Road and Enterprise Avenue, where it is intended to do transdermal, capsule and true medical manufacturing. He underscored that the proposed microbusiness project was not a medical facility and was not limited to medical use only.

Chair Ali-Sullivan indicated that he found the medical use component confusing and asked the applicant if the target customer was a medical or recreational user. Mr. Chloupek clarified there was no differentiation in California State Law between medical adult use versus recreational adult use, noting the differences were that medical use has reduced taxation and the potential to obtain higher limits on quantity of products that could be acquired. He stated that the manufacturing would be limited to non-volatile, non-solvent driven, non-closed loop type systems such as direct delivery to consumer and small distribution to facilitate the operation of the facility.

Chair Ali-Sullivan asked if there was a reason that the medical piece was so forwardly positioned if this is not the case for the use. Mr. Chloupek responded that when the project was at its original facility, this consisted of two licenses, two different buildings, and noted that the projects were somewhat comingled for Precision Apothecary and Always On Time. The facilities have since then been relocated, noting that Always On Time is not owned by Juva Life, these were separate companies which he owned. Chair Ali-Sullivan commented that it was quite confusing with the three different corporate entities.

Chair Ali-Sullivan recalled that none of the previously approved cannabis applications have allowed for a 24-hour, 7 days a week operation and inquired how this operation would



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work. Mr. Chloupek stated the facility would not be a 24-hour, 7 days a week operation. Senior Planner Blanton noted that staff was quoting directly from the Business Plan and indicated to the applicant that if there were amendments to this, the applicant could collaborate with staff on this. Ms. Blanton noted that there were other similar cannabis facilities which the applicant did operate 24-hours, 7 days a week; however, this did not mean there would be retail facing operations during these hours but there may be cultivation and manufacturing activities happening around the clock. Ms. Blanton noted that the city had approved similarly for other manufacturing uses and other industrial facilities that operate on shifts 24 hours a day.

Chair Ali-Sullivan said the staff report indicated there was a potential for future retail services and he asked if that was an open-ended allowance. Senior Planner Blanton confirmed that per the Hayward Municipal Code, up to 10% of a microbusiness space could be used for ancillary storefront retail that is limited to products produced on-site that could be sold from this site, and it could not be products produced at other locations. She stated when the application was first received it included ancillary retail; however, the applicant had since moved back from this. Staff wanted to maintain the flexibility in case this changes in the future, indicating that if the ancillary component was decided to be added in the future as conditioned, the applicant would still have to return to the Planning Division and the Police Department to ensure that the security and operations plan is similar to other microbusiness operations.

Mr. Chloupek confirmed for Chair Ali-Sullivan that his business did have an existing allowance from the City for operations at a separate site and that operations had not begun since its approval. Mr. Chloupek explained operations had not begun because the City's process was functionally broken, the State of California's cannabis economy was functionally flawed, and the cost of products had increased substantially while the cost of the commodity had decreased by 50 percent, and that the infrastructure to build the facility had changed due to market conditions.

Chair Ali-Sullivan asked why the applicant was seeking a second application with the City. Mr. Chloupek responded that the proposed project was a different site and that he had worked for four years to go through the City's process. He commented that he was frustrated because the industry had its challenges, the city was placing onerous regulations, and noted there were plans to get the facility up and operational very quickly.

Chair Ali-Sullivan shared that during his time on the Planning Commission, three applications related to cannabis have come before the Commission, noting that none of them had begun operations. He asked staff to explain why the development of these properties had not yet occurred and whether it was due to City restrictions or applicant constraints. Senior Planner Blanton explained there were a couple microbusinesses similar



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to the proposed project that were first round applicants that were operational in Hayward, had been issued their final approvals and as well as their business licenses to operate. From staff perspective, the first round of applicants in the cannabis industry was a learning experience for the City and noted the following: the process was less streamlined at this time, there had been an update to the Hayward Code, financing for cannabis applications is different as they are unable to apply for conventional loans as cannabis is not federally allowed, there was a backlog of applications on the state level which is taking some applications six to nine months to get state approval, and added that processing future cannabis applications should go more smoothly as the processing of applications would be streamlined.

Planning Manager Lochirco shared that staff had heard a lot of frustration from the first round of applicants due to the time it was taking, he stated that when the City passed laws in 2017, it took a conservative approach on how it wanted to screen applicants as this was a new emerging industry with unknowns. He stated that the City developed regulations that modeled what other jurisdictions who had legalized cannabis had in place for medical marijuana which was allowed before recreational became legal. Following direction from the City Council, the City had a Requisition for Proposal (RFP) contest to evaluate the best applicants. When the first applicants were selected, it was intentional that none of them had site selection as the Council wanted to ensure that the City had quality applicants who understood the heavily regulated framework that had to be endured. The City screened applicants to determine if applicants had previous experience in this industry which was new. Once the first round of applicants received licenses in 2018, the businesses had to identify a viable site that was zoned correctly and that had to meet all of the regulatory needs of the application, which was a process that took time. For cannabis, because it is so heavily regulated, the process took additional time. Since then, staff has had conversations with applicants who have been awarded licenses and prospective applicants, with other jurisdictions to see what has worked, and has hired a consultant to streamline the City's process, and moving forward the local process will go quicker. Mr. Lochirco shared that the staff will soon be releasing its pre-screening eligibility for applicants that would like to operate a cannabis business in the City. He underscored that the State had changed its cannabis regulations over the years which impacted applicants.

Commissioner Goodbody asked the applicant if the focus was not on medical use customers, then whether the paragraph in the Business Plan about providing supportive services and helping customers with mental health and physical conditioning was necessary as it inferred these services would be provided on site. Mr. Chloupek responded that it was never an intention to offer those services onsite, noted that his business had experience in working with patients with varying medical capacities, which is why it was included in the Business Plan, it was an ancillary service that was offered to consult and offer the best product to clients.



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Commissioner Patterson appreciated the staff report and the applicant's presentation. She was interested in knowing the impact of the business on the other occupants located in the facility and in the neighborhood as there were ten suites in the building and feedback had been received from only one of the occupants. She asked if there had been discussions and feedback from the other suite owners of the building regarding an operation with this level of security and potential parking issues. Senior Planner Blanton indicated that the neighbors in the facility had been noticed multiple times and the only feedback received was from the neighboring cannabis business which was in support of the project. She added that per the City's Industrial Code, as long as the project is not increasing the square footage of the building, additional parking is not required. Mr. Chloupek confirmed he had not heard from any of the other tenants in the area. He commented the hundreds of illegal cannabis operators in the industrial corridor should be the problem the City is focused on.

With regards to the parking of secure delivery vehicles, Commissioner Patterson asked where these may be stationed as they would not be stationed on the public right of way. Mr. Chloupek confirmed each suite had allocated parking spaces which will be dedicated to delivery vehicles and that if additional space is needed, vehicles would be parked offsite until delivery vehicles are brought back during operational hours. Senior Planner Blanton shared that when she visited the site, her observations were that the parking lot had only one or two cars parked in it.

Commissioner Garg appreciated the applicant's explanation of the medicinal and recreational use of cannabis. She understood from staff that the applicant was no longer pursuing an ancillary retail use, but asked if there were any plans to pursue that in the future. Mr. Chloupek explained that based on the City's ordinance structure, it was almost prohibitive for a microbusiness to operate a storefront. He noted the business could only use 10% of its entitled property, and for businesses that want to have an ancillary retail they were restricted to only sell products that were manufactured onsite, which did not make it feasible. He noted the City of Hayward was the only city that had such a restrictive ordinance for retail. If the ordinance was changed, he would revisit the possibility.

Commissioner Garg asked the applicant for his assessment of the process improvements put in place by staff to expedite future permits. Mr. Chloupek said while he appreciated staff and understood that they had constraints to work within, his impression was that the city was treating cannabis like it was a radioactive product like plutonium. His experience had been that Hayward was the worst city he has worked in terms of its regulations, it had an onerous entitlement process and was functionally flawed due to the rules made by the local governing body. He did not have any desire to undergo this process again in Hayward and could not speak to the changes to the process and hoped the new process was better. He commented that other cities had an easier pathway with reduced taxation.



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Commissioner Goodbody mentioned she visited the site and spoke with the tenant in suite seven. The owner shared they had no opposition to the project.

Vice Chair Lowe indicated that she also visited the site and asked if there would be ten delivery vehicles. Mr. Chloupek clarified there may be up to ten deliveries to the site a week, noting there would be distribution deliveries entering the site similar to a grocery store receiving deliveries, and those were separate from employed delivery vehicles.

Vice Chair Lowe wanted to understand how many vehicles were connected to the business and whether a traffic study was appropriate to be conducted. Senior Planner Blanton explained a traffic study was appropriate for projects that reached a minimum of 100 peak-hour trips and noted it was determined by the City's Transportation Division that was not the case for the proposed project.

Senior Planner Blanton indicated for Vice Chair Lowe that substantial sums were a determination made by the Building Official, noting that for any use permit issued in the city applicants have up to three years to apply for a building permit or get a business license to be operational. What was evident for cannabis businesses is that they will get an entitlement approved, and within three-year window, will start the building permit process. Ms. Blanton stated that as long as a project is making progress every six months, which includes resubmitting of plans, requesting inspections of a facility, the building permit will stay active during continual progress. Once the building permit and plan check is done, the permit is considered issued, after inspections have been completed and the building is completed, the project is considered final. She noted it was rare for the Building Official to have to make that determination and a building permit may expire due to there being a lack of activity. Vice Chair Lowe commented that the use of broad terminology was concerning because it was not specific to alert the applicant on what was required.

Vice Chair Lowe asked for clarification on what was meant by the following language in the project plans which indicated that if the average weighted greenhouse gas emissions intensity is greater than the local providers, the business will provide evidence of carbon offsets or allowances to cover the excess in carbon emissions from previous license periods. Ms. Lowe asked if the applicant will not do 100% renewable energy. Ms. Blanton noted this was not a requirement of the city and allowed the applicant to respond. Mr. Chloupek responded that the language was included due to project applications being scored on how environmentally conscious it is, the proposed use did not anticipate exceeding emissions and if it did, based on the emissions standards that were set, the business would identify offsets. Vice Chair Lowe asked if the applicant would purchase electricity from the East Bay Community Energy which was 100% renewable. Mr. Chloupek responded that energy would be purchased from the standard provider and the intent presently was not to increase costs to the business while staying within regulations.



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Vice Chair Lowe referenced language in the project plans that spoke to preventing products from being attractive to children, expressing concern that the language for the branding of the products and advertising was not specific enough and left leeway for products to be named making it appealing to youth in the community. She favored the conditions being more specific and asked staff if there were thoughts on tightening the language. Planning Manager Lochirco indicated that the State had specific limitations on branding as they do not want the products to be attractive to children, there will also be a requirement for child proof containers. Senior Planner Blanton explained the conditions were drafted to not be duplicative of State Law since the City deferred to this and being mindful of having conditions that can live through any future updates to the State Law. Mr. Chloupek confirmed the State regulates branding and his company followed all State regulations. He emphasized it was the illegal cannabis operators who were selling to children.

Vice Chair Lowe asked what agency double-checked the business's self-reporting conclusions with respect to hazards. Senior Planner Blanton confirmed the City's Hazardous Materials Division performed regular inspections of cannabis businesses and required a chemical inventory of hazardous materials on the site.

With regards to its Sustainability Plan, Vice Chair Lowe asked what the target numbers were for hiring local employees and how many would be hired. Mr. Chloupek answered his company always hired locally and local hires made the best employees because they know the community. The company would have to hire from outside of the city if qualified employees could not be obtained.

There being no public comments, Vice Chair Lowe opened and closed the public hearing at 8:19 p.m.

Commissioner Bonilla Jr. expressed his appreciation to the applicant for enduring the long process and that the facility proposed was on the smaller side when compared to other cannabis facilities. He remarked the business would not be allowed to operate unless their permits were renewed, which was an annual process, and the City had the right to revoke the permits during the annual renewal process. Mr. Bonilla Jr. found the existing City regulations were comprehensive and he supported the approval of the application and made a motion to move the item. Commissioner Garg seconded the motion.

Chair Ali-Sullivan acknowledged there were significant challenges the applicant had faced in Hayward as was evidenced based on the commentary provided by the applicant, and even with those challenges the applicant was pursuing permits from the City. He shared he had questions about the business model and the sincerity of the applicant and that based on his experience, he did not recall an applicant as critical and disparaging of the city who



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still sought to operate in Hayward. In his estimation, the Conditional Use Permit Findings had not been met and he did not support the project.

Commissioner Stevens agreed with Commissioner Bonilla Jr. that the application was straightforward but found the introduction of the Business Plan to be very disingenuous. The approval was for cannabis manufacturing and retail but the Business Plan highlighted medical benefits with no actual research or documentation as proof. Commissioner Stevens supported the project but wanted to see Business Plans be more consistent with the true intent of the project.

Vice Chair Lowe agreed that the Business Plan, as presented, was disingenuous and was drafted in a way to appease the regulations for approval without the intent of following the plan. She expressed that the project proposal being considered did not feel right.

Commissioner Patterson echoed Chair Ali-Sullivan and Vice Chair Lowe's comments, noting that she had concerns about some of the items brought up about the Business Plan, and the operations including retail space and whether this would be medical or not which still seemed unclear. She could not support the project because the community deserved to have a project that provided clear objectives. She concurred that the Business Plan was disingenuous, and the comments stated by the applicant about the City made her wonder what the working relationship would be like going forward.

Commissioner Garg stated this was a land use application and it was not within the Commission's purview to re-adjudicate the City's ordinances that were passed by City Council. She would have preferred a straightforward Business Plan but highlighted the plan was submitted 4-years ago, and both State and City ordinances had changed since that time. She agreed there was a lack of clarity but suspected the delay in the process was the reason the application was unclear.

Chair Ali-Sullivan clarified his concern was not about adjudicating whether the City should or should not have cannabis operations. His concern was based on the business model and the findings for the Conditional Use Permit. Mr. Ali-Sullivan emphasized his position was not related to his feelings about cannabis projects, noting that he had previously approved three other projects in the city.

Mr. Chloupek stated entitlement and planning for projects were based on the facts of the land use, not the personal opinions or statements of the Commission. Mr. Chloupek noted his frustration comes from the process the City had imposed upon his businesses, confirmed the Business Plan had changed since the submission of the application four years ago, that the Business Plan was coupled with the larger medical-based facility, and concluded that the project met all City's requirements and met land use entitlement.



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Commissioner Bonilla Jr. interjected to provide a point of order indicating that project applicants are not heard from during the Commission's deliberation period and appreciated Mr. Chloupek's comments. He agreed with the comments regarding the confusion about the Business Plan and it being disingenuousness but stated the requirements for recreational and medical use were the same in the City. The requirements were very comprehensive and stringent, and the applicant met all of the requirements.

A motion was made by Commissioner Bonilla Jr., seconded by Commissioner Garg, to approve the staff recommendation.

The motion passed with the following roll call votes:

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

APPROVAL OF MINUTES

3. Minutes of the Planning Commission Meeting of December 8, 2022

A motion was made by Commissioner Stevens, seconded by Commissioner Bonilla Jr., to approve the meeting minutes of December 8, 2022.

The motion passed with the following roll call votes: Stevens, second Bonilla Jr.

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

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters

Planning Manager Lochirco noted that the City Clerk's Office will soon be sharing updates on how public meetings are conducted as the State of Emergency was being lifted effective



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February 28, 2023, and that information will be shared with the Commission as it becomes available. For future meetings, the items rescheduled from the first meeting in January will be heard on February 9, 2023. For the February 23, 2023, meeting, two items were scheduled including a report out of the General Plan and a tentative subdivision map for a project on Mission Boulevard.

Commissioners' Announcements, Referrals

Commissioner Stevens welcomed the new Planning Commissioners.

Commissioner Lowe thanked the city for the event held at City Hall in December recognizing volunteers.

Chair Ali-Sullivan apologized for not attending in-person and extended a warm welcome to the three new Planning Commissioners and appreciated their dedication to the city. He requested that staff provide a mechanism to update the Planning Commission with updates on approved projects.

Planning Manager Lochirco noted that staff does regular development updates quarterly on work done by the Development Services Department, this information was uploaded on the City's website reflecting current status of major projects, and that staff could explore reporting out to highlight major projects to the Planning commission as an informational item.

Commissioner Bonilla Jr. welcomed the new Planning Commissioners, noting that they have strong reputations and a deep commitment and passion to Hayward.

ADJOURNMENT

Acting Chair Lowe adjourned the meeting at 9:50 p.m.

APPROVED:

Anika Patterson, Secretary
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ATTEST:

Avinta Madhukansh-Singh
Interim Planning Commission Secretary
Office of the City Clerk



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The Planning Commission meeting was called to order at 7:03 p.m. by Acting Chair Lowe. The Planning Commission held a hybrid meeting in the Council Chambers and virtually via Zoom.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present:	COMMISSIONERS:	Ali-Sullivan, Bonilla Jr., Garg, Goodbody, Patterson, Stevens
	ACTING CHAIRPERSON:	Lowe
Absent:	COMMISSIONER:	None
	CHAIRPERSON:	None

Staff Members Present: Blanton, Lochirco, Madhukansh, Ochinero, Schmidt, Tabari, Vigilia

ELECTION OF OFFICERS

Nomination for Chair:

Commissioner Stevens nominated Commissioner Lowe for Chair. Commissioner Lowe declined the nomination.

Commissioner Lowe nominated Vice Chair Ali-Sullivan for Chair. Commissioner Bonilla Jr. seconded the motion. Vice Chair Ali-Sullivan accepted the nomination.

The motion carried with the following roll call vote:

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

Nomination for Vice-Chair:

Commissioner Bonilla Jr. nominated Commissioner Lowe for Vice-Chair; Commissioners Stevens and Ali-Sullivan seconded the motion. Commissioner Lowe accepted the nomination.



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The motion carried with the following roll call vote:

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

Nominations for Secretary:

Vice Chair Lowe nominated Commissioner Patterson for Secretary.

Chair Ali-Sullivan nominated Commissioner Bonilla Jr. for Secretary. Commissioner Bonilla Jr. declined the nomination.

Chair Ali-Sullivan nominated Commissioner Stevens for Secretary. Commissioner Stevens declined the nomination.

Vice Chair Lowe nominated Commissioner Patterson once again for Secretary. Commissioner Patterson accepted the nomination.

The motion carried with the following roll call vote:

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

PUBLIC COMMENTS

Ms. Ro Aguilar (Zoom participant) welcomed the new Planning Commissioners to the meeting, noted the topic on the agenda was complex and wondered if the new Commissioners were prepared to approve the Housing Element.

Mr. Shane Gill (Zoom participant) spoke on behalf of his company which was a local cannabis distributor in Hayward and expressed his support for the approval of the cannabis microbusiness project being considered at 23000 Connecticut Avenue, Suite 5, Hayward CA.



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In response to remarks expressed during the public comment period, Planning Manager Lochirco stated that all three of the new Planning Commissioners had received the agenda packet at the same time as the other Commissioners, and had equal opportunity to read the staff report and review the documents, were prepared to take action if the Commission decided to make a recommendation, and added that if any of the new members of the Planning Commission do not feel that they are in a position to make a recommendation for the items on the agenda, then the members could recuse themselves.

PUBLIC HEARING

Staff requested that the Planning Commission hear Item 2 before Item 1 on the agenda. There being no objections, the Planning Commission proceeded with hearing Item 2 at the meeting.

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

1. Adoption of the 2023-2031 Housing Element for the City of Hayward **(PH 23-003)**

Principal Planner Schmidt provided a synopsis of the staff report and introduced Mr. Jason Montague with Rincon Consultants who helped the City with its Housing Element update.

Commissioner Garg complimented the amount of outreach that staff had done, shared that she participated in several discussions and presentations related to the housing element, acknowledged that there was a tension in the City between housing affordability and lack of housing stock as the population has gone up, that individuals with high incomes were also having difficulty affording housing in the City, the costs of creating housing had increased, and she wanted to ensure that new construction remains attractive to developers and that it provides housing options that a variety of people can afford. With regards to labor groups, she raised the argument by labor unions that was ensuring that those working on constructions sites are paid fairly to provide higher income to pay for housing and asked whether labor standards in Hayward are stricter than surrounding areas. She requested that staff speak to these concerns.

Principal Planner Schmidt stated while the points raised were valid, such as the need to pay fair wages, she stated that the Housing Element was not the mechanism to implement this policy discussion. She underscored the role of the Housing Element was to remove constraints on the construction of housing and recommended against adding those constraints to the Housing Element so that the California Department of Housing and Community Development (HCD) would certify the document. Staff recommended the



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inclusion of softer language indicating that the City supported and was willing to meet with labor groups, and that policies addressing labor standards be addressed separately.

Commissioner Garg stated that based on her experience in serving on the Community Services Commission and what groups had to do to qualify for Community Development Block Grant funding, she stated there was tension on placing constraints on certain unit types and sizes to ensure units be affordable and attracting contractors who supported those standards. Principal Planner Schmidt concurred there were not enough large rental units within the City and that was the reason for more crowding in rental units than ownership units. Staff discussed adding points to the Notice of Funding Availability for developments that included larger units for families and identified special needs populations. Ms. Schmidt noted the Housing Element did not include requirements that projects must include a specific percentage of large units. She clarified that the Housing Element included an incentive approach rather than a more onerous regulatory approach.

Commissioner Patterson thanked staff for answering the question on Senate Bill (SB) 9 which she had posed before the meeting. She requested that staff elaborate on what was included in underutilized sites in the housing inventory as it seemed this made up a majority of the unit surplus and whether there could be an opportunity to convert to a multifamily housing unit. She also wanted to understand how this related to rehabilitation and repair projects.

Principal Planner Schmidt clarified that no properties with existing residential uses were identified as underutilized sites adding that the underutilized sites were either commercial uses or vacant buildings.

Mr. Jason Montague stated that the sites explored were both vacant and non-vacant sites, which were also known as underutilized sites. Since vacant sites don't have constraints to development, they are explored first for housing opportunities. He underscored that cities typically did not have adequate vacant land to build on to satisfy the Regional Housing Needs Allocation (RHNA). For these reasons, staff had to evaluate non-vacant sites that have high redevelopment potential. Existing uses at these non-vacant sites are reviewed to see if they align with development trends. A majority of the underutilized sites are parking, sites with low floor area ratio and low improvement land-value ratio where the land is worth more than the improvements on them. They analyzed structure age, with most of the structures being at least thirty-five years old; location of the sites which have to align with appropriate zoning and development trends in Hayward; and then through a fair housing lens. Mr. Montague shared that if a site identified in the inventory is developed with a use other than for housing or for lower density than assumed in the inventory, then the City needs to replace the site per the State Law. He noted that the findings were that Hayward did have enough sites to satisfy RHNA, and a backup list was developed with additional



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sites in the event a site doesn't develop in accordance with assumptions in the Housing Element.

Commissioner Stevens requested further details about the Senate Bill (SB) 9 process. He understood that owners of single-family homes could tear the existing structure down, subdivide the lot, and build four new units. Principal Planner Schmidt confirmed that was correct and noted if a renter lived on the lot, the renter could not be displaced for the owner to subdivide, and the property would have to sit vacant for a number of years after the tenant moved in order to allow for this. Ms. Schmidt added that individuals could not buy contiguous pieces of land and then subdivide the lots; and underscored the true intention of the legislation was to enable a property owner to turn a single-family unit into a duplex and protect against largescale investors and developers.

Commissioner Stevens understood that per the legislation, an existing established neighborhood would begin to see lots being subdivided, changing the form of the neighborhood. He expressed concern about historical character homes and essentially there being no control about what is being constructed apart from no more than two units per lot. Principal Planner Schmidt remarked the parcels had to be single-family residentially zoned, and that having an older or established neighborhood did not preclude that neighborhood from following State Law unless the homes or neighborhood are a designated historic structure or district.

Commissioner Stevens asked how the City planned to expedite the SB 9 process. Principal Planner Schmidt explained staff had an objective checklist that SB 9 projects must follow. Staff also developed a frequently asked questions document, made available in English and Spanish, and posted this on the City website. Staff had received three SB three applications so far. Planning Manager Lochirco mentioned the Planning Division was currently working on the development of Residential Design Standards and once adopted, a SB 9 project would be required to follow those standards.

Commissioner Stevens commented if the Objective Standards were rigorous then the City would regain local control over how neighborhoods were shaped. Planning Manager Lochirco confirmed the City could design a clear set of principles that could be context-sensitive for specific neighborhoods. He shared that staff would be bringing forward Objective Standards for the Commission to consider in the coming months.

Commissioner Stevens asked what outcomes were being envisioned with having discussions with the labor unions. Principal Planner Schmidt found setting aside a formal time to establish a good working relationship with partners was a good practice. She envisioned best practices could be identified from these discussions, also being informed of what other jurisdictions were doing in this area.



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Commissioner Stevens suggested the City explore funding schools to teach youth about construction jobs and supplying them with training to be able to enter the construction field. He stated if the City was interested in creating a labor pool, it should be investing in the youth. Principal Planner Schmidt emphasized that the goal of the Housing Element was to get as much good development for as many income levels as possible, without further constraining developments, and noted that funding apprenticeship programs and schools was a great idea but should not be a part of the Housing Element.

Commissioner Goodbody inquired if the labor union discussions would be on a per-project basis. Principal Planner Schmidt answered it would be on an annual basis unless they specifically request a discussion about a project.

Commissioner Bonilla Jr. asked what incentives for housing development were not included in the Housing Element and what constraints were considered that were not removed. Principal Planner Schmidt stated that the cost of development was one of the largest constraints and the City's Impact Fees were a part of this constraint. Staff explored Impact Fees and compared the City's fees to surrounding jurisdictions. The findings were that the City's fees were not relatively high, and she emphasized that the fees make the city a livable place for residents. The other constraint was the City's entitlement process, noting that the city was working towards streamlining the processes and there was no proposal to remove or eliminate the entitlement process. She indicated that in comparison to other jurisdictions, the City's entitlement process was not overly burdensome.

Commissioner Bonilla Jr. mentioned the City often provided a white glove service to help developments navigate the process and wondered if something similar could be done for the Housing Element. He inquired how the Housing Element accommodated and addressed an aging population. Principal Planner Schmidt noted the Housing Element did include incentives to expedite development by connecting with developers early in the process and helping them through the process for commercial and residential projects. With respect to an aging population, Ms. Schmidt restated that developments that accommodated groups identified as special needs would receive special incentives or points enabling them to receive additional funding. She added that universal design guidelines were being developed and the reasonable accommodations ordinance will be updated to remove constraints of a burdensome planning process that may inhibit the addition of structures like ramps.

Commissioner Bonilla Jr. acknowledged that many residents were cost-burdened by high rents and he asked how was the City going to retain affordability of rental units. Principal Planner Schmidt confirmed the only plan in the Housing Element was related to continuing implementation of the Rent Stabilization Ordinance and was not aware if any updates were planned for this Ordinance in the coming years.



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Vice Chair Lowe opened the public hearing at 9:27 p.m.

Mr. Nazario (Zoom participant) asked if the Housing Element included planning for dog parks or children's parks that go along with high density housing. Principal Planner Schmidt answered that per the Zoning Ordinance new development was required to have a certain amount of common and private open space, programming of the space was a the discretion of the developer, with staff input.

Vice Chair Lowe closed the public hearing at 9:29 p.m.

Commissioner Stevens appreciated staff's work but stated he had two areas of concern. The first was that the State of California had taken away the City's ability to form the built environment. He found it troubling that the City would be expediting SB 9 applications because those applications had the potential to change the form of a residential neighborhood. He feared that the public was not aware of those changes and will become aware as housing is torn down and new structures constructed. Mr. Stevens appreciated the Objective Standards that the City will work towards, but did not have high hopes that the City will be able to create a protocol that will be consistent with State Law, resulting in the loss of local control of development. His second concern was that he was unclear why the City felt it must meet with labor unions, especially the carpenters union. In his experience, most residential wood frame construction was built by non-union labor, adding that the marketplace was competitive, and that workers were paid very well for labor due to the limited supply for this type of workforce. He questioned that if the City was to meet with the carpenters union, it should meet with local framing contractors as well as they may have valuable input to provide. He was gravely concerned about SB 9 as the impact of this legislation will become evident towards the end Housing Element's 8-year period.

Commissioner Goodbody thanked staff for their hard work and appreciated staff's thorough answers to the Commission's questions.

Commissioner Bonilla Jr. found the Housing Element to be very comprehensive, appreciated its evolution over the past several years, he found the document to be responsive to the needs identified in the community and found the community outreach to be very robust. He encouraged staff to continue that type of outreach in the future. He expressed his excitement to see the section on fair housing and the City's will to center housing through the lens of race and equity. Mr. Bonilla Jr. supported the City having discussions with labor unions and appreciated Commissioner Stevens' comments. He indicated that discussions should be open between labor groups and the community, encouraged staff to open discussions to other trade groups should they request to meet like the carpenters union have done so, and believed the discussions would create a balance between both parties and foster creative solutions. He requested that staff provide an



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update to the Commission after those discussions take place if they impact the Housing Element.

A motion was made by Commissioner Bonilla Jr., seconded by Commissioner Patterson, to approve the staff recommendation with a revision to include contractors and other groups that employ construction laborers.

Commissioner Stevens supported the language if the City was agnostic to union versus non-union trades. He requested that staff clarify what is meant by expediting SB 9 projects. Principal Planner Schmidt explained that SB 9 project applications were a ministerial permit which bypassed discretionary review by staff. She elaborated that the expedited portion meant that still provide outreach and education about the law and will assist individuals with the application process. Planning Manager Lochirco added that the State created SB 9 legislation and determined that local discretion needed to be ministerial if projects met specific criteria and clarified that the expediting of SB 9 was that if an applicant had interest in pursuing SB 9, that staff provides materials necessary for the applicant to comply with state and local regulations.

The motion passed with the following roll call votes:

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

Item 2 was heard before Item 1.

For agenda item No. 2, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.

2. Proposed Cannabis Microbusiness with Manufacturing, Distribution, Delivery, and Ancillary Retail Activities Located at 23000 Connecticut Avenue, Suite 5 (Assessor Parcel No. 439-0036-119-00) Requiring Approval of Conditional Use Permit Application No. 202001006. Douglas Chloupek (Applicant); Jon Cook (Property Owner). **(PH 23-004)**

Senior Planner Blanton provided a synopsis of the staff report and PowerPoint presentation.



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Commissioner Garg asked if the proposed business would be regulated under medical use or non-medical use of cannabis. Senior Planner Blanton stated that even though the applicant would refer to customers as patients, anybody in the state would be allowed to buy products from this company. She added that the focus for advertising and for the client pool towards individuals using the products for medicinal purposes. Ms. Blanton further noted for Commissioner Garg that the City would not make distinction to limit the client pool to individuals having medical cards, emphasizing that anyone who was permitted by the State of California to purchase cannabis products could do so at the proposed facility and deferred further explanation about the business model to the applicant.

Mr. Douglas Chloupek, the project applicant, shared the following regarding his background with operating cannabis businesses: he commercially ran cannabis businesses in California for thirteen years, has a facility in Berkeley for manufacturing and researching cannabis, owned two dispensaries in San Jose, and he operates the company Juva Life in three continents which have nine cannabis companies under its umbrella that are heavily focused on medical and pharmaceutical research. Mr. Chloupek indicated that the proposed project would consist of small retail, manufacturing, delivery and distribution. He clarified that the proposed project was separate from his other entity Precision Apothecary located on Clawiter Road and Enterprise Avenue, where it is intended to do transdermal, capsule and true medical manufacturing. He underscored that the proposed microbusiness project was not a medical facility and was not limited to medical use only.

Chair Ali-Sullivan indicated that he found the medical use component confusing and asked the applicant if the target customer was a medical or recreational user. Mr. Chloupek clarified there was no differentiation in California State Law between medical adult use versus recreational adult use, noting the differences were that medical use has reduced taxation and the potential to obtain higher limits on quantity of products that could be acquired. He stated that the manufacturing would be limited to non-volatile, non-solvent driven, non-closed loop type systems such as direct delivery to consumer and small distribution to facilitate the operation of the facility.

Chair Ali-Sullivan asked if there was a reason that the medical piece was so forwardly positioned if this is not the case for the use. Mr. Chloupek responded that when the project was at its original facility, this consisted of two licenses, two different buildings, and noted that the projects were somewhat comingled for Precision Apothecary and Always On Time. The facilities have since then been relocated, noting that Always On Time is not owned by Juva Life, these were separate companies which he owned. Chair Ali-Sullivan commented that it was quite confusing with the three different corporate entities.

Chair Ali-Sullivan recalled that none of the previously approved cannabis applications have allowed for a 24-hour, 7 days a week operation and inquired how this operation would



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work. Mr. Chloupek stated the facility would not be a 24-hour, 7 days a week operation. Senior Planner Blanton noted that staff was quoting directly from the Business Plan and indicated to the applicant that if there were amendments to this, the applicant could collaborate with staff on this. Ms. Blanton noted that there were other similar cannabis facilities which the applicant did operate 24-hours, 7 days a week; however, this did not mean there would be retail facing operations during these hours but there may be cultivation and manufacturing activities happening around the clock. Ms. Blanton noted that the city had approved similarly for other manufacturing uses and other industrial facilities that operate on shifts 24 hours a day.

Chair Ali-Sullivan said the staff report indicated there was a potential for future retail services and he asked if that was an open-ended allowance. Senior Planner Blanton confirmed that per the Hayward Municipal Code, up to 10% of a microbusiness space could be used for ancillary storefront retail that is limited to products produced on-site that could be sold from this site, and it could not be products produced at other locations. She stated when the application was first received it included ancillary retail; however, the applicant had since moved back from this. Staff wanted to maintain the flexibility in case this changes in the future, indicating that if the ancillary component was decided to be added in the future as conditioned, the applicant would still have to return to the Planning Division and the Police Department to ensure that the security and operations plan is similar to other microbusiness operations.

Mr. Chloupek confirmed for Chair Ali-Sullivan that his business did have an existing allowance from the City for operations at a separate site and that operations had not begun since its approval. Mr. Chloupek explained operations had not begun because the City's process was functionally broken, the State of California's cannabis economy was functionally flawed, and the cost of products had increased substantially while the cost of the commodity had decreased by 50 percent, and that the infrastructure to build the facility had changed due to market conditions.

Chair Ali-Sullivan asked why the applicant was seeking a second application with the City. Mr. Chloupek responded that the proposed project was a different site and that he had worked for four years to go through the City's process. He commented that he was frustrated because the industry had its challenges, the city was placing onerous regulations, and noted there were plans to get the facility up and operational very quickly.

Chair Ali-Sullivan shared that during his time on the Planning Commission, three applications related to cannabis have come before the Commission, noting that none of them had begun operations. He asked staff to explain why the development of these properties had not yet occurred and whether it was due to City restrictions or applicant constraints. Senior Planner Blanton explained there were a couple microbusinesses similar



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to the proposed project that were first round applicants that were operational in Hayward, had been issued their final approvals and as well as their business licenses to operate. From staff perspective, the first round of applicants in the cannabis industry was a learning experience for the City and noted the following: the process was less streamlined at this time, there had been an update to the Hayward Code, financing for cannabis applications is different as they are unable to apply for conventional loans as cannabis is not federally allowed, there was a backlog of applications on the state level which is taking some applications six to nine months to get state approval, and added that processing future cannabis applications should go more smoothly as the processing of applications would be streamlined.

Planning Manager Lochirco shared that staff had heard a lot of frustration from the first round of applicants due to the time it was taking, he stated that when the City passed laws in 2017, it took a conservative approach on how it wanted to screen applicants as this was a new emerging industry with unknowns. He stated that the City developed regulations that modeled what other jurisdictions who had legalized cannabis had in place for medical marijuana which was allowed before recreational became legal. Following direction from the City Council, the City had a Requisition for Proposal (RFP) contest to evaluate the best applicants. When the first applicants were selected, it was intentional that none of them had site selection as the Council wanted to ensure that the City had quality applicants who understood the heavily regulated framework that had to be endured. The City screened applicants to determine if applicants had previous experience in this industry which was new. Once the first round of applicants received licenses in 2018, the businesses had to identify a viable site that was zoned correctly and that had to meet all of the regulatory needs of the application, which was a process that took time. For cannabis, because it is so heavily regulated, the process took additional time. Since then, staff has had conversations with applicants who have been awarded licenses and prospective applicants, with other jurisdictions to see what has worked, and has hired a consultant to streamline the City's process, and moving forward the local process will go quicker. Mr. Lochirco shared that the staff will soon be releasing its pre-screening eligibility for applicants that would like to operate a cannabis business in the City. He underscored that the State had changed its cannabis regulations over the years which impacted applicants.

Commissioner Goodbody asked the applicant if the focus was not on medical use customers, then whether the paragraph in the Business Plan about providing supportive services and helping customers with mental health and physical conditioning was necessary as it inferred these services would be provided on site. Mr. Chloupek responded that it was never an intention to offer those services onsite, noted that his business had experience in working with patients with varying medical capacities, which is why it was included in the Business Plan, it was an ancillary service that was offered to consult and offer the best product to clients.



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Commissioner Patterson appreciated the staff report and the applicant's presentation. She was interested in knowing the impact of the business on the other occupants located in the facility and in the neighborhood as there were ten suites in the building and feedback had been received from only one of the occupants. She asked if there had been discussions and feedback from the other suite owners of the building regarding an operation with this level of security and potential parking issues. Senior Planner Blanton indicated that the neighbors in the facility had been noticed multiple times and the only feedback received was from the neighboring cannabis business which was in support of the project. She added that per the City's Industrial Code, as long as the project is not increasing the square footage of the building, additional parking is not required. Mr. Chloupek confirmed he had not heard from any of the other tenants in the area. He commented the hundreds of illegal cannabis operators in the industrial corridor should be the problem the City is focused on.

With regards to the parking of secure delivery vehicles, Commissioner Patterson asked where these may be stationed as they would not be stationed on the public right of way. Mr. Chloupek confirmed each suite had allocated parking spaces which will be dedicated to delivery vehicles and that if additional space is needed, vehicles would be parked offsite until delivery vehicles are brought back during operational hours. Senior Planner Blanton shared that when she visited the site, her observations were that the parking lot had only one or two cars parked in it.

Commissioner Garg appreciated the applicant's explanation of the medicinal and recreational use of cannabis. She understood from staff that the applicant was no longer pursuing an ancillary retail use, but asked if there were any plans to pursue that in the future. Mr. Chloupek explained that based on the City's ordinance structure, it was almost prohibitive for a microbusiness to operate a storefront. He noted the business could only use 10% of its entitled property, and for businesses that want to have an ancillary retail they were restricted to only sell products that were manufactured onsite, which did not make it feasible. He noted the City of Hayward was the only city that had such a restrictive ordinance for retail. If the ordinance was changed, he would revisit the possibility.

Commissioner Garg asked the applicant for his assessment of the process improvements put in place by staff to expedite future permits. Mr. Chloupek said while he appreciated staff and understood that they had constraints to work within, his impression was that the city was treating cannabis like it was a radioactive product like plutonium. His experience had been that Hayward was the worst city he has worked in terms of its regulations, it had an onerous entitlement process and was functionally flawed due to the rules made by the local governing body. He did not have any desire to undergo this process again in Hayward and could not speak to the changes to the process and hoped the new process was better. He commented that other cities had an easier pathway with reduced taxation.



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Commissioner Goodbody mentioned she visited the site and spoke with the tenant in suite seven. The owner shared they had no opposition to the project.

Vice Chair Lowe indicated that she also visited the site and asked if there would be ten delivery vehicles. Mr. Chloupek clarified there may be up to ten deliveries to the site a week, noting there would be distribution deliveries entering the site similar to a grocery store receiving deliveries, and those were separate from employed delivery vehicles.

Vice Chair Lowe wanted to understand how many vehicles were connected to the business and whether a traffic study was appropriate to be conducted. Senior Planner Blanton explained a traffic study was appropriate for projects that reached a minimum of 100 peak-hour trips and noted it was determined by the City's Transportation Division that was not the case for the proposed project.

Senior Planner Blanton indicated for Vice Chair Lowe that substantial sums were a determination made by the Building Official, noting that for any use permit issued in the city applicants have up to three years to apply for a building permit or get a business license to be operational. What was evident for cannabis businesses is that they will get an entitlement approved, and within three-year window, will start the building permit process. Ms. Blanton stated that as long as a project is making progress every six months, which includes resubmitting of plans, requesting inspections of a facility, the building permit will stay active during continual progress. Once the building permit and plan check is done, the permit is considered issued, after inspections have been completed and the building is completed, the project is considered final. She noted it was rare for the Building Official to have to make that determination and a building permit may expire due to there being a lack of activity. Vice Chair Lowe commented that the use of broad terminology was concerning because it was not specific to alert the applicant on what was required.

Vice Chair Lowe asked for clarification on what was meant by the following language in the project plans which indicated that if the average weighted greenhouse gas emissions intensity is greater than the local providers, the business will provide evidence of carbon offsets or allowances to cover the excess in carbon emissions from previous license periods. Ms. Lowe asked if the applicant will not do 100% renewable energy. Ms. Blanton noted this was not a requirement of the city and allowed the applicant to respond. Mr. Chloupek responded that the language was included due to project applications being scored on how environmentally conscious it is, the proposed use did not anticipate exceeding emissions and if it did, based on the emissions standards that were set, the business would identify offsets. Vice Chair Lowe asked if the applicant would purchase electricity from the East Bay Community Energy which was 100% renewable. Mr. Chloupek responded that energy would be purchased from the standard provider and the intent presently was not to increase costs to the business while staying within regulations.



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Vice Chair Lowe referenced language in the project plans that spoke to preventing products from being attractive to children, expressing concern that the language for the branding of the products and advertising was not specific enough and left leeway for products to be named making it appealing to youth in the community. She favored the conditions being more specific and asked staff if there were thoughts on tightening the language. Planning Manager Lochirco indicated that the State had specific limitations on branding as they do not want the products to be attractive to children, there will also be a requirement for child proof containers. Senior Planner Blanton explained the conditions were drafted to not be duplicative of State Law since the City deferred to this and being mindful of having conditions that can live through any future updates to the State Law. Mr. Chloupek confirmed the State regulates branding and his company followed all State regulations. He emphasized it was the illegal cannabis operators who were selling to children.

Vice Chair Lowe asked what agency double-checked the business's self-reporting conclusions with respect to hazards. Senior Planner Blanton confirmed the City's Hazardous Materials Division performed regular inspections of cannabis businesses and required a chemical inventory of hazardous materials on the site.

With regards to its Sustainability Plan, Vice Chair Lowe asked what the target numbers were for hiring local employees and how many would be hired. Mr. Chloupek answered his company always hired locally and local hires made the best employees because they know the community. The company would have to hire from outside of the city if qualified employees could not be obtained.

There being no public comments, Vice Chair Lowe opened and closed the public hearing at 8:19 p.m.

Commissioner Bonilla Jr. expressed his appreciation to the applicant for enduring the long process and that the facility proposed was on the smaller side when compared to other cannabis facilities. He remarked the business would not be allowed to operate unless their permits were renewed, which was an annual process, and the City had the right to revoke the permits during the annual renewal process. Mr. Bonilla Jr. found the existing City regulations were comprehensive and he supported the approval of the application and made a motion to move the item. Commissioner Garg seconded the motion.

Chair Ali-Sullivan acknowledged there were significant challenges the applicant had faced in Hayward as was evidenced based on the commentary provided by the applicant, and even with those challenges the applicant was pursuing permits from the City. He shared he had questions about the business model and the sincerity of the applicant and that based on his experience, he did not recall an applicant as critical and disparaging of the city who



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still sought to operate in Hayward. In his estimation, the Conditional Use Permit Findings had not been met and he did not support the project.

Commissioner Stevens agreed with Commissioner Bonilla Jr. that the application was straightforward but found the introduction of the Business Plan to be very disingenuous. The approval was for cannabis manufacturing and retail but the Business Plan highlighted medical benefits with no actual research or documentation as proof. Commissioner Stevens supported the project but wanted to see Business Plans be more consistent with the true intent of the project.

Vice Chair Lowe agreed that the Business Plan, as presented, was disingenuous and was drafted in a way to appease the regulations for approval without the intent of following the plan. She expressed that the project proposal being considered did not feel right.

Commissioner Patterson echoed Chair Ali-Sullivan and Vice Chair Lowe's comments, noting that she had concerns about some of the items brought up about the Business Plan, and the operations including retail space and whether this would be medical or not which still seemed unclear. She could not support the project because the community deserved to have a project that provided clear objectives. She concurred that the Business Plan was disingenuous, and the comments stated by the applicant about the City made her wonder what the working relationship would be like going forward.

Commissioner Garg stated this was a land use application and it was not within the Commission's purview to re-adjudicate the City's ordinances that were passed by City Council. She would have preferred a straightforward Business Plan but highlighted the plan was submitted 4-years ago, and both State and City ordinances had changed since that time. She agreed there was a lack of clarity but suspected the delay in the process was the reason the application was unclear.

Chair Ali-Sullivan clarified his concern was not about adjudicating whether the City should or should not have cannabis operations. His concern was based on the business model and the findings for the Conditional Use Permit. Mr. Ali-Sullivan emphasized his position was not related to his feelings about cannabis projects, noting that he had previously approved three other projects in the city.

Mr. Chloupek stated entitlement and planning for projects were based on the facts of the land use, not the personal opinions or statements of the Commission. Mr. Chloupek noted his frustration comes from the process the City had imposed upon his businesses, confirmed the Business Plan had changed since the submission of the application four years ago, that the Business Plan was coupled with the larger medical-based facility, and concluded that the project met all City's requirements and met land use entitlement.



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Commissioner Bonilla Jr. interjected to provide a point of order indicating that project applicants are not heard from during the Commission's deliberation period and appreciated Mr. Chloupek's comments. He agreed with the comments regarding the confusion about the Business Plan and it being disingenuousness but stated the requirements for recreational and medical use were the same in the City. The requirements were very comprehensive and stringent, and the applicant met all of the requirements.

A motion was made by Commissioner Bonilla Jr., seconded by Commissioner Garg, to approve the staff recommendation.

The motion passed with the following roll call votes:

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

APPROVAL OF MINUTES

3. Minutes of the Planning Commission Meeting of December 8, 2022

A motion was made by Commissioner Stevens, seconded by Commissioner Bonilla Jr., to approve the meeting minutes of December 8, 2022.

The motion passed with the following roll call votes: Stevens, second Bonilla Jr.

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

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters

Planning Manager Lochirco noted that the City Clerk's Office will soon be sharing updates on how public meetings are conducted as the State of Emergency was being lifted effective



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February 28, 2023, and that information will be shared with the Commission as it becomes available. For future meetings, the items rescheduled from the first meeting in January will be heard on February 9, 2023. For the February 23, 2023, meeting, two items were scheduled including a report out of the General Plan and a tentative subdivision map for a project on Mission Boulevard.

Commissioners' Announcements, Referrals

Commissioner Stevens welcomed the new Planning Commissioners.

Commissioner Lowe thanked the city for the event held at City Hall in December recognizing volunteers.

Chair Ali-Sullivan apologized for not attending in-person and extended a warm welcome to the three new Planning Commissioners and appreciated their dedication to the city. He requested that staff provide a mechanism to update the Planning Commission with updates on approved projects.

Planning Manager Lochirco noted that staff does regular development updates quarterly on work done by the Development Services Department, this information was uploaded on the City's website reflecting current status of major projects, and that staff could explore reporting out to highlight major projects to the Planning commission as an informational item.

Commissioner Bonilla Jr. welcomed the new Planning Commissioners, noting that they have strong reputations and a deep commitment and passion to Hayward.

ADJOURNMENT

Acting Chair Lowe adjourned the meeting at 9:50 p.m.

APPROVED:

A handwritten signature in cursive script, reading "Anika Patterson", is written over a horizontal line.

Anika Patterson, Secretary
Planning Commission



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ATTEST:

A handwritten signature in black ink, appearing to read "AM Singh", is written over a horizontal line.

Avinta Madhukansh-Singh
Interim Planning Commission Secretary
Office of the City Clerk