

**CITY OF HAYWARD PLANNING COMMISSION  
CONDITIONAL USE PERMIT APPLICATION NO. UP-23-0021  
PHENOS HAYWARD – 21463 FOOTHILL BOULEVARD  
DRAFT FINDINGS FOR APPROVAL**

Findings for Conditional Use Permits – Pursuant to Hayward Municipal Code (HMC) Section 10-1.3225, the decision-making body may approve or conditionally approve a Conditional Use Permit if it is able to make all the following findings:

**A. The proposed use is desirable for the public convenience or welfare;**

The proposed use is desirable for the public convenience and welfare in that it would result in the establishment of a legal retail outlet for cannabis-based products in a large tenant space in a shopping center located on one of the City’s main commercial thoroughfares that has remained vacant since the previous retail tenant moved out. Cannabis retail sales are a significant contributor to the City’s sales tax base and legal medicinal cannabis-based products can provide relief for people suffering from pains and various ailments safely.

**B. The proposed use will not impair the character and integrity of the zoning district and surrounding area;**

The proposed use would occupy the anchoring tenant space in a shopping center that has been vacant for nearly two years. Furthermore, establishment of the proposed dispensary could provide spillover economic benefits to nearby businesses from its patrons. As conditioned, the applicant will be required to adhere to several operational conditions of approval and implement numerous safety and security measures crafted to mitigate any negative impacts and curtail any possible illegal activity that could have an adverse effect on public safety and welfare, as well as the surrounding businesses.

**C. The proposed use will not be detrimental to the public health, safety or general welfare.**

The proposed project, as conditioned, will not be detrimental to the public health, safety, or general welfare in that establishment will be subject to the regulations and requirements prescribed by the State Department of Cannabis Control (DCC) for a retail dispensary, as well as all fire, building/life safety codes, as applicable. In addition, the conditions of approval will require the applicant to control cannabis odors so that they undetectable outside the premises, and implement the following safety/security measures to the satisfaction of the Hayward Police Department: 1) have two professionally licensed security guards on the premises during all business hours to monitor the main entrance and back of house; 2) utilize computerized identification scanners on all customers who enter the establishment to check identifications and ensure that no underage patrons enter the establishment; 3) install a professionally-monitored security alarm system for the establishment and commercial-grade locks on all windows and doors; and 4) prohibit individuals from loitering or ingesting purchased products around the premises. Finally, the applicant will be required to

operate a closed-circuit television (CCTV) surveillance camera system within and around the perimeter of the establishment 24 hours a day and make the video footage available to the Police Department upon request. Violations of any of the conditions of approval or the restrictions of the DCC or the City of Hayward may result in the revocation of the business license and this Conditional Use Permit at the expense of the applicant.

**D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.**

The proposed use is in harmony with the applicable City policies and the intent and purpose of the zoning district involved in that the subject site is located within the General Commercial (CG) zoning district and is designated as Commercial/High Density Residential (CHDR) in the *Hayward 2040 General Plan*. The CG zoning district allows commercial cannabis retail dispensaries subject to approval of a Conditional Use Permit. The CHDR General Plan land use designation applies to properties along the City's major commercial thoroughfares and prescribes policies which are intended to ensure the provision of a wide variety of retail goods and professional services for the City's residents and workforce. Allowed uses under the CHDR land use designation include retail shops, restaurants and commercial services as well as professional offices and higher density residential uses. The proposed use will add a new specialized retail establishment for adults who choose to purchase legal cannabis products for personal use, consistent with the following goals and policies of the *Hayward 2040 General Plan*:

- Land Use Policy LU-2.16 – Uses to Attract the Creative Class. The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward, including: restaurants and cafes; art studios and galleries; and entertainment and cultural venues.
- Land Use Policy LU-5.1 – Mix of Uses and Activities. The City shall encourage a mix of retail, service, dining, recreation, entertainment, and cultural uses and activities in regional and community centers to meet a range of neighborhood and citywide needs.
- Economic Development Goal ED-1: Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for residents.
- Economic Development Goal ED-1.4: The City shall establish business attraction efforts that focus on small and medium-sized businesses with emerging and growing business sectors.
- Community Safety CS-1.12 – On-Site Security. The City shall require conditions of approval related to the provision of on-site security and safety measures for bars, nightclubs, live entertainment businesses, and related uses. Conditions shall promote a healthy balance of public safety and nightlife vibrancy, and may include surveillance cameras, crowd management practices, and on-site security staff.

Additionally, as conditioned, the proposed use will also be required to operate in strict accordance with various safety and security measures prescribed by the Hayward

Police Department to minimize any negative impacts to adjacent properties or uses, and deter criminal activity associated with the business, including theft, loitering and underage purchasing/consumption.

Findings for Commercial Cannabis Businesses – Pursuant to Hayward Municipal Code (HMC) Section 10-1.3612, the decision-making body may approve or conditionally approve a Conditional Use Permit for a new commercial cannabis retail dispensary if it is able to make all the following findings:

**A. 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.**

The subject tenant space which the retail dispensary will occupy was previously occupied by a Walgreens drugstore, the anchor tenant space for a medium-sized neighborhood shopping center also containing a donut shop, dental office and martial arts studio that offers classes for students of all ages. The shopping center is situated along Foothill Boulevard, a major commercial thoroughfare that offers a wide variety of commercial and service uses, including Lincoln Landing, a large mixed-use development, and a major shopping center anchored by a Safeway supermarket, motels, and several restaurants, shops and professional offices. A retail cannabis dispensary would be a compatible use with the other commercial and service uses located along the boulevard, and conditions of approval have been included requiring robust security measures designed to deter criminal activity that could adversely impact the adjacent businesses and residential uses.

**B. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation.**

Conditions of approval have been included that will require the dispensary operator to store and distribute its products and dispense waste securely in order to prevent theft, diversion, and public nuisances. Odors and exhaust will not be applicable to the business since no cultivation or manufacturing activities will be conducted on the site.

**C. The cannabis operation is designed to be safe, secure, sustainable and aesthetically compatible with the surrounding area.**

The proposed use would occupy an existing tenant space that has been vacant for the last two years, thereby supporting retail activity in Hayward which could have spillover economic benefits for the surrounding businesses from its customers. The dispensary will be required to comply with several robust security-related conditions of approval intended to deter break-ins and other illegal activity at the premises that could jeopardize public safety and the security of the neighboring businesses in the shopping center and nearby residences.

**D. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.**

A set of robust operational conditions of approval and security requirements crafted by the Hayward Police Department will be imposed upon the proposed use which are designed to help deter criminal activity and minimize the burden on everyday police services. These conditions and operational requirements are similar to those placed on other recently-approved cannabis businesses and, as such, will help ensure that this particular dispensary does not place a disproportionate burden on public safety services compared to other similar cannabis-based uses.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS:

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities, in that it involves minor alterations to the interior and exterior of an existing commercial building that will not result in any expansion of the building's floor area or the shopping center in which the business will be located.