



DATE: November 17, 2020

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Commercial Cannabis Retail Dispensary with Ancillary Retail Delivery:
Approve a Conditional Use Permit for a Commercial Cannabis Retail Dispensary with Ancillary Retail Delivery Service within an Existing Commercial Building located at 22701 Foothill Boulevard and 1055 C Street (Assessor Parcel Nos. 428-0066-058-01 and 428-0066-056-00) Application No. 201906312. Rajiv Pottabathni, Jiva Life LLC (Applicant); Ryan Bridge LLC (Property Owner)

RECOMMENDATION

That Council adopts a resolution (Attachment II) to approve the Conditional Use Permit application for the proposed commercial cannabis retail dispensary with ancillary retail delivery services, based on the analysis set forth in this report and the required Findings, and subject to the Conditions of Approval.

SUMMARY

The applicant, Jiva Life (“JIVA”), is seeking approval of a Conditional Use Permit and a reduction of the 600-foot sensitivity buffer to establish a commercial cannabis retail dispensary with ancillary retail delivery services within a vacant commercial building located at 22701 Foothill Boulevard (former Art’s Crab Shak/Hayward Fishery). The proposed use would provide cannabis and cannabis-related products to the members of the public that are 21 years of age and older for recreational use, and 18 years of age and older for medical use, as allowed by the State. The proposed project includes a security plan, odor control plan, and improvements to the commercial building and the project site.

BACKGROUND

In 2015, the State of California enacted a comprehensive regulatory framework (AB 243, AB 266, SB 643) for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. The legislation was collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA).

On November 8, 2016, the voters of the state adopted Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized adult cannabis use, possession and cultivation for non-medicinal purposes, and created a regulatory framework for non-medicinal cannabis businesses. The intent of MCRSA and AUMA was to establish a comprehensive regulatory system for cultivation, production and sale of cannabis and cannabis products.

On June 15, 2017, the State enacted Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated provisions of MCRSA into the regulatory framework of the AUMA, creating a unified regulatory system for medicinal and adult use cannabis. MAUCRSA specifically authorized local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and one or more types of businesses licensed pursuant to MAUCRSA.

On October 30, 2017¹ and November 28, 2017², respectively, the City Council enacted regulatory and land use ordinances authorizing cannabis businesses within the City of Hayward subject to compliance with local and state regulations. At their October meeting, the Council also established a request for proposals process by which the City would select commercial cannabis businesses. The process involved four stages to help differentiate applicants who meet the City's desired set of qualifications. These stages include:

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

The RFP process commenced on December 8, 2017, with applications due on January 12, 2018. At that time, the City received 77 total applications for commercial cannabis companies. Four of these applications did not meet the background check requirements of the City's cannabis program; however, 73 applications were then sent to a neutral, third party reviewer hired by the City to evaluate and score the proposals. Following an independent review by the outside consultants and interviews by key City staff, the City Manager recommended to City Council the award of commercial cannabis licenses to eleven commercial operators for land use activities that include cultivation, manufacturing, distribution, testing labs, delivery and retail. Once selected, applicants had six months to file their land use applications. The applicant, Jiva Life, was one of the three companies selected for a commercial cannabis retail dispensary permit.

On March 19, 2019³, the City Council adopted Ordinance Nos. 19-06 and 19-07, reducing the overconcentration buffer between retail dispensaries from 1,000 feet to 500 feet; and,

¹ October 30, 2017 City Council Minutes
<https://hayward.legistar.com/MeetingDetail.aspx?ID=570110&GUID=1F62F795-56FA-4667-9BD1-E5FDA22CB8C5&Options=info&Search=>

² November 28, 2017 City Council Minutes
<https://hayward.legistar.com/MeetingDetail.aspx?ID=573134&GUID=C82D348A-0412-4741-854C-23697F2AE444&Options=info&Search=>

³ March 19, 2017 City Council Minutes

provided Planning Commission the ability to waive or reduce the 600-foot buffer between commercial cannabis uses and sensitive uses, subject to special findings. The regulations were intended to decrease distance requirements in the Downtown area where lots are smaller and uses are closer to each other by design. Although the proposed project meets the 500-foot overconcentration buffer, the project site is in proximity of sensitive land uses and as such, additional findings are required to be made as part of the Conditional Use Permit.

Council Economic Development Committee. On February 3, 2020, the Council Economic Development Committee (CEDC)⁴ conducted a conceptual project review of the application to provide preliminary feedback on the selected location, site improvements, and its proximity to sensitive land uses. Staff requested policy feedback from the CEDC whether the proposed site was an appropriate location given its high visibility and prominence along an arterial street through Downtown Hayward and its proximity to sensitive land uses. The applicant and property owner presented a brief presentation, and there was one (1) comment from the public on the project from Kim Huggett, the President/CEO of the Hayward Chamber of Commerce.

Per the Meeting Minutes⁵, Council Member Salinas shared some concerns with the concentration of up to four cannabis dispensaries within or near the Downtown Hayward area including Garden of Eden (located in unincorporated Alameda County). Council Member Mendall suggested that the applicant explore more sustainability measures on-site and stated that the proposed site was a good location for a cannabis business. Mayor Halliday indicated that her primary concerns were related to circulation, traffic, and parking, and commented that the existing building was an eyesore. In addition, the Mayor stated she was glad the building would be improved and said the proposed use fit this location.

Planning Commission Hearing. On October 8, 2020, the Planning Commission⁶ held a public hearing and voted 6:1 to recommend that the City Council approve the proposed project with the incorporation of three new Conditions of Approval requiring the applicant to: 1) volunteer 20 hours with the Keep Hayward Clean and Green Task Force; 2) participate in either the Adopt a Parking Lot or the Adopt a Block program and 3) incorporate a public art component on the new building. Two members of the public spoke during the meeting. The first was a Hayward resident who expressed concerns about the need to have controls for alcohol in the Downtown area, and that the City is not able to control who visits downtown. The resident claimed there was trash from Cookies (a retail dispensary in downtown) and a placement of a dispensary would encourage usage around youth and have negative impacts on City parking garages and downtown area. The second speaker was Kim Huggett, President of the Hayward Chamber of Commerce, who spoke in favor of the dispensary and the operator. Mr. Huggett stated that he is pleased with the Cookies operations, and that traffic has not become an issue,

<https://hayward.legistar.com/DepartmentDetail.aspx?ID=30850&GUID=ABB40C93-B4A0-406D-809B-03936402537F&Mode=MainBody>

⁴CEDC Meeting Staff Report and Attachments, February 3, 2020:

<https://hayward.legistar.com/LegislationDetail.aspx?ID=4317884&GUID=4981B1F5-BDC9-4A83-B9B2-E1A5FBC0FAB3&Options=&Search=>

⁵ CEDC February 3, 2020 Meeting Minutes: <https://hayward.legistar.com/View.ashx?M=E3&ID=752549&GUID=55B8F6DC-4EB5-4A69-9DB3-ADD4E3C2B809>

⁶ October 8, 2020 Planning Commission Meeting: <https://hayward.legistar.com/MeetingDetail.aspx?ID=806169&GUID=114048D4-73FF-4E1F-9758-CD7A7D7C25DC&Options=info&Search=>

and the safety measures they have put into place are pleasing. Minutes of the Planning Commission hearing have been included as Attachment V.

DISCUSSION

Existing Conditions. The entire project site includes two separate, abutting parcels located at 22701 Foothill Boulevard (0.21-acres) and 1055 C Street (0.24-acres). The Foothill Boulevard property is a triangular parcel situated at the southwestern corner of Foothill Boulevard and C Street and consists of two existing commercial buildings: a vacant two-story commercial building (former Hayward Fishery), and a partially-occupied 2,500 square-foot single-story commercial building, which currently includes a hair salon. The C Street property is a rectangular vacant parcel that maintains two-street frontages, each with a point of access, and is intended to accommodate the site's off-street parking. The former Hayward Fishery building was originally constructed in 1910 per the Alameda County Assessor Commercial Building records; however, pursuant to a Historical Resource Evaluation prepared, the building does not retain any historical significance due to the amount of extensive alterations to the building exterior since its original construction.

Surrounding land uses and structures include the Municipal Lot #3 parking garage to the north, an existing commercial building to the west, the Foothill Boulevard right-of-way to the south, and a mix of commercial uses, residential homes, and Portuguese Centennial Park/Fraternal Hall to the east of the project site.

Proposed Project. The proposed project includes the significant remodel and occupation of the former Hayward Fishery building to accommodate a commercial cannabis retail dispensary with ancillary retail delivery services at 22701 Foothill Boulevard. The proposed retail dispensary would sell and deliver cannabis related products such as edibles, oils, and concentrates for both recreational and medical use to patrons of required legal age and operate between the hours of 9 a.m. to 9 p.m., seven days a week. If approved, the hours for delivery service would run concurrently with the dispensary hours of operation.

Currently, the existing building is approximately 3,496 square-feet in total floor area and the project plans indicate that the dilapidated portions along the rear and front of the building (e.g. enclosed patio area) will be demolished for a new total building area of 2,536 square-feet. As shown on the existing and proposed floor plans (see Sheets A200 and A201 of architectural plans), the existing second floor portion of the building will be abandoned and will be maintained as a non-habitable attic space and the ground floor will be utilized for the commercial cannabis dispensary operation. Most of the ground floor will be open to the public for retail floor area, which will include an online pick-up area, service bar for point-of-sale transactions, display areas, and dedicated medical counter area. The back-of-house operations shall be accessed by authorized staff only and will include rooms for shipping and receiving, delivery and online order assembly, secured product storage, an employee breakroom, and a management office. The general public entrance will be located on the southern elevation of the building from a newly created paseo between the two existing commercial buildings that provides access from the site's parking lot to the east and Foothill Boulevard to the west. Upon

entering the facility, there will be an identification and security station for customer check-in and verification of legal age by staff to enter the facility.

As mentioned previously, the building will undergo a significant renovation that includes an exterior remodel to create a more contemporary, modern aesthetic that will enhance the prominent downtown corner along a significant arterial street. The design will remove the existing rotting patio structure fronting Foothill Boulevard and install new floor-to-ceiling storefront windows along that frontage with a light frosted film that will provide screening of the merchandise and indoor activities from the public right-of-way. A new metal awning projection will be installed along the sides and front of the building to accent the contemporary flat-roof design and cement-fiber siding will be incorporated into the building design to contrast against the new paint of the building. As a standard Condition of Approval, all final exterior colors, finishes and materials for the building shall be approved by the Planning Division prior to building permit issuance. In addition, the removal of the enclosed patio area creates an opportunity for a new landscaped buffer from the building corner to the sidewalk. A copy of the architectural project plans is included as Attachment III to this staff report along with a copy of the proposed business/operations plan as Attachment IV.

Parking and Loading. Pursuant to Chapter 6 of the Development Code, Division 2.2.070(f), nonresidential uses shall provide a minimum of 2 spaces for every 1,000 square-feet above the first 5,000 square-feet of commercial floor area, with a maximum parking standard of 125% of the minimum⁷. Therefore, the entire project site will require a minimum of two (2) parking spaces and a maximum of three (3) spaces. However, the site's parking lot at 1055 C Street currently contains a legal-nonconforming quantity of twenty (20) parking spaces that the applicant will maintain for use of patrons for both commercial buildings on-site. The project site also has access to on-street parking and is immediately adjacent to the Municipal Lot #3 parking garage, which provides customers up to four hours of free parking. Further, the project site will install 2 bicycle racks for short- and long-term storage with capacity up to 4 bicycles.

The applicant has proposed to adjust the current parking lot configuration from angled parking and one-way from C Street to Foothill Boulevard to standard 90-degree parking and two-way traffic for safer circulation for patrons. The applicant has also included striping for two stalls to park delivery vehicles when they are not in service or pending fulfillment, which will also serve as a dedicated area for distribution operations. Staff has included several conditions of approval that indicate at no times shall the delivery vehicles be stationed on public right-of-way (Condition # 7); and to prohibit delivery and delivery retail vehicles stationed on-site overnight (Condition# 9).

Local Hiring and Training. Per the applicant's business plan, Jiva Life has committed to prioritizing the hiring of local residents. Specifically, the business would like to hire 18 Hayward employees, including 4 managerial salaried positions and 14 general wage employees. These positions include a general manager, assistant manager, and inventory coordinator at the managerial level and neighborhood liaisons, administrative assistants,

⁷ Downtown Main Street Division 2.2.070(f)
<https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf>

hospitality and operations associates, and delivery operations associates as general employee positions. The applicant anticipates an increase in staffing to 25 employees by Year 2 and 31 total employees by Year 3.

Prior to beginning work, all employees would be required to complete a five-module training course. Once employed, employees would be required to complete the two-week mandatory training program covering the following: safety and health orientation, cannabis product and inventory education, Jiva hospitality standards, regulatory compliance, and best practices, and accompanied shifts.

Security Plan. The applicant submitted a detailed security plan to ensure public and product safety. According to the security plan, a minimum of two security specialists would be on site during the hours of operation. One security guard would be stationed at the main entrance to check identification cards for all individuals entering the establishment to ensure that they are 21 years or older (and 18 years or older with a medical cannabis card). The second security guard would walk the premise to deter loitering or consumption on site or within the adjacent municipal parking lot.

Other proposed security measures include 360 view cameras located within the interior and exterior of the building, glass break detectors, panic button, etc. The site would also have an alarm system, motion detection lighting, and standard operating procedures which address shipping, receiving, transactions, product storage, and inventory procedurals. All proposed security measures have been reviewed and deemed appropriate by the Hayward Police Department.

Odor Control Plan. Pursuant to the odor control plan submitted by the applicant, the proposed dispensary would incorporate fans and a carbon filter system, reducing the possibility of detectable cannabis odor. Furthermore, per State regulations, Jiva would only receive cannabis products in final package form, meaning the product would be bagged and sealed at a separate location. No cannabis products sold at the dispensary would be exposed to open air thereby reducing the possibility of detectable cannabis odor. No live plants are proposed to be stored or sold at this facility.

Pursuant to the Conditions of Approval, the proposed fans and filtration system must be included in the building permit application submittal. If approved, the applicant has committed to visually inspect all fans and filters each week to ensure proper functionality. The applicant would also replace all carbon filters on a quarterly basis or as needed. Additionally, the applicant would be required to maintain records of repairs and replacement for at least three years, to be made available to local or state authorities upon request.

Community Benefits. As part of the RFP review and selection criteria, the applicant's planned community benefits included the development of the Tri-City (Hayward-Union City Fremont) ACE (Association for Cannabis Education) to facilitate a comprehensive outreach program that educates the local community on the risk associated with the misuse of cannabis products. Staff has included a condition of approval requiring the applicant provide specific

details of their Community Benefits program and to coordinate implementation of the Community Benefits program with City staff within six months if approved (Condition # 12).

Hayward 2040 General Plan. The project site is designated City Center – Retail and Office Commercial (CC-ROC) in the *Hayward 2040 General Plan*⁸. Allowable uses include retail, dining and service uses, entertainment and recreational uses and office and residential uses above ground floor commercial uses. As a retail use, commercial cannabis dispensaries would be consistent with the allowable uses in the CC-ROC land use designation.

The following General Plan Policies apply to the subject site, and to the establishment of such businesses in Hayward:

- Land Use Policy LU-2.1, Downtown Arts and Entertainment. The City shall encourage private-sector investment in Downtown to transform it into a safe, vibrant, and prosperous arts and entertainment district that offers enhanced shopping, dining, recreational, and cultural experiences and events for residents, families, college students, and visitors.
- 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.
- Economic Development Policy ED-1.4. The City shall establish business attraction efforts that focus on small and medium-sized businesses within emerging and growing business sectors.
- Economic Development Goal ED-2. Cultivate a culture of entrepreneurship to encourage and support local business start-ups.

Further discussion of the consistency between the proposed use and policies related to Downtown retail is included in the Staff Analysis section below and in Attachment II, Findings.

Downtown Specific Plan (DTSP). The proposed cannabis dispensary and retail delivery business would be established in the Downtown Southern Gateway Neighborhood Area. Per the DTSP, the *Southern Gateway Neighborhood Area* is the formal entrance into Downtown from the rest of the City. The vision is for that area to be transformed into a new center of activity for Downtown Hayward and an attractive area for new development, businesses, and residences, while creating a landmark gateway for Downtown visitors arriving from South Hayward and beyond. The following Downtown Specific Plan policies apply to the subject site, and to the establishment of such businesses in Hayward:

- Policy Land Use 3 - Opportunity Sites: Encourage the development and improvement of opportunity sites that have the potential to attract developer interest in the Downtown and generate more economic activity.

⁸ Hayward 2040 General Plan
<https://www.hayward2040generalplan.com/>

- Policy Community Design 2 – Coordinate Public and Private Investments: Coordinate public and private investment to improve the quality and appearance of new and existing structures and streetscapes.

Zoning Ordinance. The project site is located within the Downtown Main Street (DT-MS) zone and is subject to the requirements set forward by the Downtown Specific Plan(DTSP), the Hayward 2040 General Plan, as well as the adopted Cannabis land use ordinance, and the regulatory framework for Commercial Cannabis Businesses⁹.

Pursuant to Chapter 6 of the Development Code, Division 2.3 (Use Table) of the DTSP, Commercial Cannabis Retail Dispensaries are allowed in the DT-MS Zone subject to Conditional Use Permit. Additionally, Section 10-1.3603(B)¹⁰ of the Hayward Municipal Code (HMC) requires all commercial cannabis businesses operating within the City of Hayward be subject to a 600-foot minimum setback from youth centers, sensitive land uses, and similar areas dedicated toward children activities. The required 600-foot setback may be reduced as part of the issuance of a Conditional Use Permit if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business. In addition to the general findings in the City’s Zoning Ordinance, the project is subject to four additional cannabis findings pursuant to Section 10-1.3609 of the HMC:

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

Further analysis related to the cannabis findings is included in Staff Analysis below and in Attachment II of this staff report.

Mandatory Buffers. Pursuant to HMC Section 10-1.3607(c)(1), to avoid overconcentration of commercial cannabis retail dispensaries, such business shall be a minimum of 500 feet from any other such business. The proposed location satisfies this minimum distance requirement from the entitled cannabis dispensaries approved along B Street: Cookies being 639-feet away and Aunt Honey is 735-feet away.

⁹ Hayward Commercial Cannabis Businesses Ordinance
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU

¹⁰ Hayward Municipal code Section 10-1.3603 (Commercial Cannabis Business)
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART17_OOR_S10-1.3600CA_S10-1.3603COCABU

Sensitive Uses. Pursuant to HMC Section 10-1.3603(B), commercial cannabis businesses are subject to a minimum 600-foot minimum setback from sensitive land uses, including schools (grades K through 12), day care centers, youth/recreation centers, designated open space areas, and parks which contain a children's playground. For this site, the applicant has requested an alternate distance requirement. The proposed location, if approved, would be situated within the 600-foot radius of four parcels with sensitive land uses including: the Kumon Learning Center located at 22628 Foothill Boulevard (± 440 feet away), Team Brewer Karate Fitness located at 22683 Main Street (± 443 feet away), High Scores Arcade located at 1051 B Street (± 450 feet away), and the Children's Park at Giuliani Plaza (± 466 feet away). Per the HMC, the distance is measured from the closest boundary line of the property on which the Commercial Cannabis Business is located to the closest boundary line of the property on which the sensitive land use is located. Further analysis and discussion of the reduction of distance between the proposed use and nearby sensitive uses is included in Staff Analysis below and in Attachment II.

Commercial Cannabis Permits. An applicant is required to obtain approval of a Commercial Cannabis Business Permit by the City to assure that all regulatory requirements are met. The applicant has satisfied this task.

The applicant must also obtain the necessary land use entitlements, which must be consistent with the Zoning Ordinance standards, which are the subject of this application. Following entitlement, the applicant will be required to obtain a cannabis license from the State. Failure to obtain the State license would be grounds for revoking the City's permit.

Commercial Cannabis Permits issued by the City are valid for one year and must be renewed annually following the completion of a mandatory safety inspection and demonstrated compliance with all local and State regulations, including any conditions of approval adopted as part of this Conditional Use Permit.

Staff Analysis. Based on the applicant's proposal, staff believes that the City Council can make the required Findings to approve the Conditional Use Permit to allow for the establishment of a commercial cannabis retail dispensary and retail delivery at the proposed site, including a reduction of the sensitive land use buffer, subject to conditions of approval as outlined below. Retail uses, such as a cannabis retail dispensary, are consistent with the CC-ROC land use and Downtown Core designations.

Staff believes that establishment of a cannabis retail dispensary and retail delivery at 22701 Foothill Boulevard would be beneficial in that the site has been vacant for years. The building's state of disrepair has resulted in a disproportionate impact on the surrounding neighborhood and signals a lack of investment in the area. The proposed site improvements as well as the establishment of a new, unique retail use in the vacant building would improve the appearance of the building and activate that location and hopefully, translating to positive impact on the adjacent properties and Downtown neighborhood. Establishment of a cannabis retailer near Downtown Hayward would bring retail consumers to not only shop at this establishment, but also patronize surrounding businesses and restaurants, which would further contribute to the sense of activation of the City's commercial core.

This is the last of three proposed cannabis retail dispensaries anticipated in the Downtown area. The first retail dispensary approved in the City of Hayward is Cookies (formerly Hayward Station), located at 1004 B Street, and the second retail location approved is Aunty Honeys located at 1147 B Street.

Characterized by a commercial core along B Street, the City's Downtown area has multiple small lots with buildings built to the street edge. By design, the businesses within Downtown are near each other making it difficult to maintain minimum distances between cannabis businesses and other uses that may be considered sensitive. However, attractive downtowns are often created and rooted in the mixing of uses that appeal to people of all ages, desires, and in the excitement of those uses and individuals connecting in the public realm. As previously noted, there are four sensitive uses within 600 feet of the project site, including: 1) The Kumon Learning Center, an after-school tutoring center for children 3-5 in age; 2) Team Brewer Karate Fitness, a karate fitness club and studio with youth clientele; 3) High Scores Arcade, an arcade with youth clientele; and 4) the Children's Park at Giuliani Plaza, a parks and recreational facility for youth. It is important to note that the HMC requires that buffers be measured from property line to property line instead of the sensitive land use to the proposed commercial cannabis business. In this case, the perimeter of the actual Children's Park at Giuliani Plaza boundary is greater than 600-feet away from the proposed retail dispensary; however, the property on which the children's park exists is within 600-feet.

Per HMC Section 10-1.3603(B), the deciding authority may waive the minimum distance requirements provided that public convenience and necessity would be served by an alternative distance and provided adequate safety controls are in place to assure public health and safety. As noted above, an alternative distance requirement would be necessary because of the layout and nature of the Downtown area, and to allow a variety of uses near each other. As conditioned, staff believes that the on-site security guards, the numerous cameras at the entrance, and the significant site improvements and building renovation would assure public health and safety. In addition to the consultant review of the business plan, the Hayward Police Department, Code Enforcement Division, and Fire Department have reviewed the project proposal with the Planning Division staff, ensuring the use would operate in a safe manner. Conditions of Approval are included to ensure that the proposed use and operations of the cannabis business would provide a safe and secure environment for the surrounding neighborhood and mitigate potential impacts to adjacent properties (Conditions of Approval 5 through 26).

Per the Conditions of Approval and by Ordinance, cannabis permits shall be renewed annually providing the City an opportunity to revoke a permit if it is determined not compatible upon approval, or if the applicant does not adhere to the City's requirements. Thus, the applicant has an interest in complying with the Conditions of Approval, the approved business plan, security plan, odor minimization measures, and maintaining a safe establishment.

Environmental Review. The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1), Existing Facilities, in that the proposed use would occupy an existing commercial structure that was designed to

accommodate retail uses. Additionally, per the historic evaluation prepared by Richard Patenaude, AICP, the site is not considered historic nor contains any historic significance. Thereby, the proposed project does not require additional review for historic significance in accordance with the California Environmental Quality Act (CEQA).

ECONOMIC IMPACT

The proposed project will result in revitalization and activation of a currently vacant and underutilized property located in the Downtown Main Street zone. Establishment of a cannabis retail dispensary in this location would provide a regional draw for customers who would likely patronize local surrounding businesses, resulting in increases in sales tax revenues. Additionally, the business would provide between 13 to 18 new jobs, and efforts would be made to hire local Hayward residents, resulting in a projected \$500,000 in payroll to employees.

FISCAL IMPACT

The proposed project will include significant investment in an existing, vacant commercial space that would generate revenues related to provision of building permits for tenant improvements, annual renewal of the cannabis permit, and sales tax revenues. Cannabis businesses are required to pay a local seven percent tax rate on gross receipts. According to the projection plan and presentation prepared by the applicant, the projected three-year revenue for the business was estimated at approximately \$10 million in sales. These are estimates provided by the applicant and may or may not represent accurate projected sales revenue. Should these projections be accurate, and revenue on that amount collected, this would generate approximately \$700,000 in cannabis tax revenues over the same time period. While there would likely be some impact on public services, the proposed project includes a robust security plan, which should reduce the need for public services. Further, annual renewal of the cannabis permit would allow the City to determine if the business results in a negative or disproportionate impact to City services and to adjust conditions for renewal accordingly.

STRATEGIC ROADMAP

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap. This agenda item supports the Strategic Priority of Grow the Economy, Specifically, this item relates to the implementation of the following project(s):

- Project 2b: Engage property owners and encourage activation of vacant sites.

The proposed project will remodel, occupy, and activate an existing commercial building on prominent key corner of Downtown Hayward that has been vacant for years and will bring in high tax-revenue generating land use. This aligns with the critical focus of this goal to attract and retain businesses, stimulate a vibrant economy, provide high paying jobs, and ensure a strong business community.

SUSTAINABILITY FEATURES

The proposed project will include the utilization of an existing building for adaptive reuse as well as be designed and constructed to meet all applicable California Building Code and

CalGreen Standards, which require a minimal level of energy efficiency, conservation, material recycling, and air quality, for new construction and rehabilitation. In addition, the new landscaping areas and irrigation system will be compliant with Bay Area-Friendly Water Efficient Landscape Ordinance, which requires the use of drought tolerant planting with water-efficient irrigation systems.

PUBLIC CONTACT

On October 8, 2019, an initial Notice of Application Receipt for the project application was sent to 98 recipients for property owners, residents, and businesses within a 300-foot radius of the project site.

Following the Notice of Receipt of Application, the Planning Division received three forms of correspondence from a nearby Downtown business owner, a Hayward resident, and a representative of the Portuguese Fraternal Society of America Council No. 5/36 (located at 1105 C Street). These members of the community expressed concerns related to potential loitering and unpermitted public cannabis use by the business's patrons, the proximity of the proposed commercial cannabis retail operation near the Portuguese Centennial Park/Fraternal Hall located across the street, and the potential exposure of cannabis to children, adolescents and seniors.

On September 25, 2020, a Notice of Public Hearing for the Planning Commission meeting was sent to property owners, residents, and businesses within 300-feet of the project site and published in The Daily Review newspaper. Following the Planning Commission hearing, on November 6, 2020, a Notice of Public Hearing for the City Council public hearing was posted at City Hall and circulated to all property owners, businesses, residents and interested parties within a 300-foot radius of the project site as well as published within The Daily Review newspaper as a Legal Ad. No additional public feedback has been received since the Notice was sent as of the date this staff report was written.

NEXT STEPS

If the Conditional Use Permit is approved by the City Council, the applicant will apply for a State cannabis license, and may submit a building permit application for tenant improvements while the State is processing the cannabis permit. Following completion of tenant improvements and issuance of a State cannabis license, the use may be established.

Prepared by: Marcus Martinez, Associate Planner

Recommended by: Laura Simpson, Development Services Director

Approved by:



Kelly McAdoo, City Manager