



**DATE:** July 6, 2021

**TO:** Mayor and City Council

**FROM:** Assistant City Manager/Development Services Director

**SUBJECT:** Commercial Cannabis Program: Introduce Two Ordinances Related to Text Amendments to Chapter 6, Article 14 (Commercial Cannabis Businesses) and Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code for the Regulation of Personal and Commercial Cannabis (Application No. 202102446) and Adopt Two Resolutions Supporting the Proposed Text Amendments and Approving a Revision to the 2022 Master Fee Schedule for Administration and Enforcement of the Commercial Cannabis Businesses in the City of Hayward

## **RECOMMENDATION**

That the Council adopts the attached resolutions supporting the proposed Text Amendments to the Hayward Municipal Code (Attachment II) and the proposed revisions to the 2022 Master Fee Schedule for the administration and enforcement of the Commercial Cannabis program (Attachment VI) and introduces the following ordinances related to cannabis:

1. Zoning Text Amendments to Chapter 10, Planning, Zoning, and Subdivisions, of the Hayward Municipal Code regulating Personal and Commercial Cannabis Land Uses (Attachment III); and
2. Business Ordinance Amendments to Article 14 to Chapter 6 of the Hayward Municipal Code regulating Commercial Cannabis Businesses (Attachment IV).

## **SUMMARY**

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

Over the past year, City staff and ICF, the City's consultant, have been working to identify new opportunities and recommendations to improve the current cannabis program to ensure long term success, including an evaluation of what has worked well and what could be improved, taking stock of changes in the broader industry and state regulatory system,

and learning from effective and innovative practices from other jurisdictions. Staff believes the proposed amendments reflect the feedback provided by various stakeholders and by the Council at its previous December 2020 work session, and recommends that the Council make the required findings to approve the amendments, as proposed. Once adopted, staff anticipates a new application cycle for commercial cannabis operators will open in early Fall 2021.

## **BACKGROUND**

In December 2019, Council directed staff, supported by its consultants at ICF, to conduct a review of experiences to date with the City's commercial cannabis program and develop recommendations for updating key elements of the program and the two related City ordinances. This work plan included five main components:

- Task 1** Conduct Background Review
- Task 2** Refine Processes for Licensing and Permitting
- Task 3** Strengthen Systems for Auditing and Compliance
- Task 4** Assess Organizational Requirements and Update Fee Schedule
- Task 5** Update Regulatory Ordinance and Land Use Ordinance

ICF conducted a review of the City's current cannabis program, as well as relevant local and statewide factors that might inform any proposed changes to Hayward's program. The review by ICF summarized these findings and consolidated the feedback received from existing cannabis licensees and key City staff into six categories, which are identified below:

- Refine Business Licensing [Request for Proposal (RFP), Application, & Review] Processes
- Improve Land-Use Entitlement Processes
- Strengthen Auditing, Inspection, and Compliance Processes
- Enhance Measures to Curtail Illegal Operations
- Strengthen Organizational Capacities & Update Fee Schedule
- Revise Commercial Cannabis Ordinance & Land-Use Ordinance

On December 8, 2020<sup>1</sup>, the Council held a work session to provide feedback on the recommendations being proposed to the City's cannabis licensing and permitting processes. The Council supported many of the recommendations proposed and staff has worked with ICF and other stakeholders to finalize the new regulations and operational guidelines, which requires amendments to the Hayward Municipal Code regulating personal use and commercial cannabis businesses in the City. A summary of the feedback and policy direction provided by the Council is included as Attachment VIII.

*Planning Commission.* On June 10, 2021, the Planning Commission held a public hearing and reviewed the proposed Text Amendments proposed by staff. While the Commissioners expressed support for most of the Amendments proposed, several Commissioners expressed concerns with the retail component of microbusinesses and supported maintaining the existing limitation on the type of retail products that could be sold within

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<sup>1</sup> City Council Work Session Minutes:  
<https://hayward.legistar.com/View.ashx?M=E3&ID=816115&GUID=4238E494-0DA5-4E9A-A413-71220794E0CE>

those retail storefronts for microbusinesses. The Commission also recommended that the background checks required as part of the Preliminary Determination of Eligibility and Screening be revised to provide more flexibility for equity applicants that had a prior criminal conviction and have since completed rehabilitation. The Commission voted 6:1 to recommend Council approve the proposed Text Amendments with those two revisions. In response to Commission's motion, staff from the Planning Division and City Attorney's Office drafted some revised language that could replace the original language proposed by staff, if supported by Council. The Planning Commission recommendations with revised Ordinance revisions are included as Attachment V.

## DISCUSSION

Since 2019, City staff and ICF have been working to identify possible procedural and regulatory improvements to the City's commercial cannabis program. While much of the work has been focused on evaluating the current application and licensing process and identifying new opportunities to consolidate and streamline development review, many of the program components remain the same. Below is a summary of the proposed Amendments to the City's Business Ordinance<sup>2</sup> (Chapter 6) and Land Use Ordinance<sup>3</sup>(Chapter 10), which reflect best practices from other cannabis programs in the State:

### Proposed Business Ordinance Amendments

As part of the business regulatory ordinance adopted in 2017, the City enacted guidelines and operational criteria for how commercial cannabis operators can apply for and renew a Commercial Cannabis Permit in the City of Hayward. Following significant stakeholder feedback and per direction received from Council at their work session in December 2020, staff is proposed several updates to Chapter 6 (Business, Professions and Trades) to streamline the application, review and selection process for cannabis operators and create a process for applicants to amend or modify their existing Permit. A summary of the proposed business regulatory amendments is detailed below and reflected in the draft Ordinance (Attachment V).

*Streamlined Licensing and Application Review.* The proposed Amendments to Chapter 6, Article 14 (Commercial Cannabis Businesses) will clarify and update the regulatory framework on how commercial cannabis businesses should operate in the City and will establish processes and protocols for licensing, auditing, and annual renewals.

The proposed Amendments will streamline the previous RFP selection and review process with an updated process that includes three main components, with the latter two running concurrently: (1) an initial pre-screening process to determine applicant eligibility; (2) the land use permit process, focusing primarily on site-specific requirements; and (3) a concurrent business operating permit process, focusing on broader operational and regulatory compliance. The updated licensing process replaces the existing RFP process with a more regular and predictable program that includes bi-annual application cycles to allow interested parties an opportunity to apply for a Commercial Cannabis Permit and submit land use applications on a more frequent and metered basis. This approach would

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<sup>2</sup> Commercial Cannabis Businesses:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH6BUPRTR\\_ART14COCABU](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU)

<sup>3</sup> Zoning Ordinance:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU)

balance limited staff resources yet allow cannabis applicants two opportunities per year to submit a proposal for review. Staff has summarized the streamlined process below:

1. Better Utilizes City Resources. The new pre-application screening process provides a preliminary determination of eligibility before the applicant and City begin the time- and resource-intensive process of reviewing detailed application materials and business plans by immediately weeding out applicants who (a) do not have a proposed location that meets the zoning requirement; (b) do not have proof of site control for the proposed location; (c) do not pass the background check requirements; or (d) do not meet minimum requirements for sound business operation. As part of the updated process, applicants will now be required to have a site secured prior to the submittal of the pre-application or business plan.
2. Increases administrative efficiency and decreases the overall time it takes applicants to become operational.
  - a. *Removes duplication:* Many licensees expressed frustration that they had to submit the same materials to different divisions/staff throughout the process. The new concurrent process clearly outlines responsibility and ensures that there is no duplication between material submittal requirements for the business license permit and the land use permit. Additionally, the proposed process removes duplicative requirements that are sufficiently covered by the state regulations.
  - b. *Reduces complexity:* Many licensees felt that Hayward's entitlement process was overly complex, cumbersome, and costly compared to other cities. The proposed update simplifies the application requirements and clearly outlines approval criteria for each stage of the process.
  - c. *Improves coordination and information sharing between City staff:* Concurrent permitting processes will allow City staff to utilize the most recent information from applicants to inform their decision making and improve consistency and efficiency.
3. Maintains the rigor of the existing RFP process. While the existing RFP process is proposed to be replaced, the pre-screening will continue to require background checks, a high-level review of business proposals to ensure applicants understand the regulatory framework around cannabis operations, and in-person interviews. The updated licensing process will also ensure that cannabis businesses will work collaboratively with City staff and members of the public to highlight several other components of the business plan, including community objectives related to social or racial equity; labor, wage and employment practices; and any community benefits being proposed, which will remain as an optional plan component.

Updated Evaluation Criteria. The updated evaluation criteria will continue to include most of the original evaluation criteria that was supported by Council as part of the original RFP process in 2017, but also provides more detailed guidance on the disclosure of local hire, labor and employment practices, and requires applicants provide a business and marketing plan that will be reviewed and approved by the city. The proposed criteria also provide applicants flexibility in the submittal of a community benefits plan, which was later replaced with an increased cannabis sales tax intended to support various community programs. The updated evaluation criteria will include the following:

- Business Structure: Provide a description of the Commercial Cannabis Business organizational status and provide proof of status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be necessary. This shall include a list of all owners/entities that have an interest of 5% or greater in the business.
- Local Ownership and Control: A description of the extent to which the business will be locally managed and/or if the principal owners/employees reside in Hayward or in Alameda County.
- Business Plan: Applicants should provide a more detailed description of the project narrative, including the proposed business model, expertise of owners and staff, and a plan for implementation, which includes a schedule of anticipated first-year startup activities and capitalization.
- Community Benefit: As an optional component, applicants can include a Community Benefit plan that highlights the proposed activities that would benefit the City and its residents. The Plan could include neighborhood-specific benefits, health education and prevention approaches, quantification of economic benefits, and broader examples of community outreach.
- Labor and Employment Practices: Applicants should identify the proposed labor and employment practices for the business. Proposals should include a discussion of the overall hiring plan, a certification of a labor peace agreement in place or the applicant's intention to negotiate one, the extent of the applicant's commitment to local hiring, and a guarantee that the applicant will pay a living wage, will not discriminate, and will provide compensation and opportunities for continuing education to its employees.

Updated Audit, Inspection and Enforcement. The proposed Amendments will establish a more explicit and robust system for cannabis auditing, inspection, and compliance reporting to ensure that licensees are complying with relevant state/local regulations and following through on their stated intentions from their Permit applications. The updated system would address both revenue reporting and a range of operational issues (e.g., new employee/workers background checks and clearances, emergency access, parking, waste disposal, security, lighting, storage of chemicals, product storage, etc.). The City has drafted integrated inspection checklists and processes to ensure coverage of all key issues while improving coordination across all relevant City departments. The updated compliance system will incorporate a range of penalties and incentives - including fees and potential Permit revocation - to help ensure compliance and enable corrective actions.

Expansion or Modification of Existing Cannabis Uses. Aside from retail dispensaries, which currently have a cap of three, there have been several cannabis operators who have expressed interest in expanding their business to include other cannabis activities that were not previously approved. Under the current regulatory framework, applicants must submit separate business proposals for each activity and be evaluated/scored on each activity as part of the review and selection process. For operators who have already secured a Commercial Cannabis Permit from the City and are now looking to expand, there is currently no framework established that allows these operators an ability to expand their activities outside of the RFP process. As such, applicants are somewhat limited in their ability to expand in Hayward and those that choose to expand are subject to a time consuming and resource intensive process. Staff has added provisions to the regulatory Ordinance to address this issue and provide applicants with an option to expand or modify

their Commercial Cannabis Permit without being required to go through the pre-screening determination of eligibility.

## **Proposed Zoning Text Amendments and Land Use Updates**

As part of the original land use Ordinance adopted in 2017, the City took action to limit areas where commercial cannabis operators could locate with a majority of retail area focused on Downtown with the remaining activities concentrated within the Industrial areas of Hayward. Following significant stakeholder feedback and per direction received from Council at their work session in December 2020, staff is proposing several updates to the Zoning Ordinance and proposed land use table to clarify zones where each activity is permitted. A summary of the proposed zoning text amendments and land use updates are summarized below and included in the draft Ordinance (Attachment III) and a summary of the proposed land use table and related zoning maps are included as Attachment VII.

*General Regulations.* While many of the general regulations that apply to all cannabis businesses are proposed to remain, the proposed Text Amendments would update inventory and tracking protocols, clarify processes related to transfers of ownership and establish employee identification requirements and protocols for all employees working in cannabis businesses throughout the City. Additionally, staff is proposing applicants provide a Neighborhood Compatibility Plan and provide a local Point of Contact that can address neighborhood concerns and mitigate any nuisances or impacts that are typically associated with normal cannabis operations, such as noise and odors.

*Mandatory Buffer from Sensitive Land Uses.* As part of the Ordinance update, staff is proposing to maintain the existing 600-foot buffer that was previously established from sensitive land uses, as described in California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children's playground(s) or similar area dedicated towards child activities. The required 600-foot setback may be reduced as part of the issuance of a Conditional Use Permit from the Planning Commission if it is found that the public convenience and necessity will be served by an alternate distance requirement and that alternative measures to assure public health and safety are in place with respect to a commercial cannabis business. To date, the only cannabis applicants to request a reduction of the mandatory 600-foot buffer are the two retail dispensaries proposed in Downtown. Both requests were approved by the Council as part of their consideration of the Conditional Use Permit.

*Transfers of Ownership:* In addition to the updates in the auditing and compliance process, several applicants have experienced financial and regulatory challenges in establishing or expanding their cannabis operation due to changes in State regulations and shifting demand because of an emerging cannabis industry. As a result, many of the City's previously approved applicants have inquired about the possibility of selling or transferring ownership to other entities. Since adoption of the regulatory ordinance in 2017, the City has allowed cannabis operators the ability to transfer a minority share of ownership (less than 50%) to another entity if the majority ownership group remains the same and if the minority ownership group successfully passes a background check and completes a New Owner Attestation Form. While some transfers of ownership do not result in operational or branding changes, staff has added text in the amended Ordinance to ensure that applicants will need to obtain approval from the City if transfers of ownership

result in branding, marketing, or operational changes that were not previously disclosed or evaluated by the City.

*Cannabis Retail Dispensaries (Storefront).* Retail activities associated with cannabis businesses currently are grouped into three categories: Storefront Retail Dispensaries; Non-Storefront Retail Deliveries; and Ancillary Retail (Storefront and Non-Storefront) for Microbusinesses. For the purposes of clarification, staff has highlighted the two cannabis activities that include storefront retail activities, retail dispensaries and retail associated with microbusinesses, and has provided additional analysis for each activity below.

Retail dispensaries, which are currently limited to three, are primarily allowed in Downtown Hayward as well as conditionally permitted on scattered parcels throughout the City that are zoned General Commercial. While all three dispensaries have been approved for locations in Downtown, at least one of these operators has had issues securing a site, despite obtaining Council approval of the Use Permit. While much of the regulatory framework tied to storefront dispensaries are proposed to remain, staff is recommending that the zoning for areas to accommodate storefront retail dispensaries be expanded to include the IP, Industrial Park zoning district. The Industrial Park zoning district was amended in 2019 to allow for retail uses and staff believes is better suited to accommodate a storefront retail dispensary than other parts of Hayward, including some portions of Downtown Hayward that were reclassified following the adoption of the Downtown Specific Plan and designate multi-family residential as the primary use. As proposed, storefront retail dispensaries would continue to be allowed in several Commercial districts and would also be allowed in the IP, Industrial Park zoning district, subject to the issuance of a Conditional Use Permit.

*Cannabis Microbusiness and Ancillary Retail (Storefront or Non-storefront).* Cannabis microbusinesses, which require a Type 12 license with the State, do allow licensees to engage in multiple activities under one license type, which include cultivation of cannabis on an area less than 10,000 square feet, be a licensed distributor, include Level 1 manufacturer, and/or contain a retail component (either storefront or non-storefront delivery). To qualify for a microbusiness license with the State, a licensee must engage in at least three (3) of the four (4) commercial cannabis activities listed. Although the land use regulations provide microbusinesses the ability to maintain a small storefront retail operation on-site as an ancillary use, only products that are manufactured or cultivated on-site can be sold in the retail space and the total area dedicated towards that on-site retail is limited to no more than 10 percent of the first-floor area of the building. Given feedback from the cannabis industry and to provide more options for retail activities related to microbusiness operators, staff had proposed to eliminate the provision that limits the type of products that can be sold on-site, but given the concerns raised by the Planning Commission related to the retail component, staff supports maintaining the sales restriction as well as maintaining the overall size limitation for storefront retail activities to ensure that the microbusiness activities do not result in additional retail dispensaries, which are currently capped at three. For non-storefront retail activities for microbusinesses, staff is not proposing to limit the size of the retail component, consistent with other non-storefront activities associated with other uses. As currently proposed, all microbusiness activities would be permitted in all Industrially zoned districts, subject to the issuance of a Conditional Use Permit.



*Cannabis Delivery and Non-Storefront Retail.* Staff has received multiple inquiries from delivery operators who want to expand operations to include non-storefront retail. While the City currently allows non-storefront retail as part of a commercial cannabis delivery operation, staff has added clarifying language in the proposed Amendments to address this activity, including requirements for operators to maintain a delivery log and manifest, consistent with State requirements, and establishing standards for all delivery vehicles associated with the business. As proposed, all Commercial Cannabis Delivery uses, including non-storefront retail, are permitted in select Commercial and Industrial zoned districts, subject to the issuance of an Administrative Use Permit.

*Cannabis Manufacturing.* There are two primary types of cannabis manufacturing activities designated by the State: Level 1 and Level 2. The principal distinction between the two levels is that Level 1 involves the use of non-volatile solvents or no solvents during the manufacturing process, while Level 2 primarily involves the use of volatile solvents. Traditionally, Level 2 manufacturing tends to have a greater potential for public safety issues, such as increased risk of explosions or fire; however, several communities throughout the State have allowed both types of manufacturing activities so long as enhanced safety and operational protocols are incorporated.

While the use of volatile materials for manufacturing does pose an increased safety risk, the overall risk to the public remains extremely low and the proposed Level 2 use is very similar to other manufacturing or industrial uses that currently use hazardous materials as part of their normal manufacturing operations. Since adoption of the original cannabis regulations, new equipment and technologies have emerged that create a more regulated, safer environment for cannabis manufacturing and extraction. Additionally, staff has added an operational requirement that states the applicants may be required to provide a technical report to evaluate fire protection and determine the acceptability of equipment, extraction operations, or other processes as well as the storage/use of hazardous materials, if requested by the Fire Department.

The proposed Text Amendments will add Cannabis Manufacturing that predominately utilize volatile substances as part of the manufacturing and extraction process and is proposing that this land use be allowed only in the IG, General Industrial district, subject to the issuance of a Conditional Use Permit. Staff is also proposing to permit smaller manufacturing operations which are less than 5,000 square feet and utilize non-volatile substances the ability to operate in all Industrially zoned districts, subject to the issuance of an Administrative Use Permit. Larger manufacturing operations that are 5,000 square feet or larger would continue to be allowed in all Industrially zoned districts, subject to the issuance of a Conditional Use Permit.

*Cannabis Distribution.* Like cannabis delivery operations, the State requires cannabis distribution operators maintain a distribution log and manifest that supports their track and trace program and establishes protocols for safe distribution of cannabis and cannabis related products between licenses cannabis operators. Staff is not proposing significant changes to the way in which cannabis distribution businesses can operate but has added more detailed guidance for cannabis distributors as part of the proposed Amendments. Like delivery, cannabis distribution uses are allowed in all Industrially zoned districts, subject to the issuance of an Administrative Use Permit.



Cannabis Testing Labs. Testing laboratories, which function to ensure that the products manufactured and sold to consumers meet minimum safety standards, is one example of an operation that has grown in response to the cannabis industry. The City's only approved cannabis testing lab, Harrens Lab, opened in 2019 and while this company does provide State compliance testing for cannabis, they also provide testing for several non-cannabis products, such as food additives, pesticides, and veterinary drugs. To better align with State regulations and provide additional guidance for operators, staff is proposing minor Amendments and clarifications for testing labs, including a provision that allows testing labs to operate temporarily while State certification is underway.

### **Proposed Master Fee Schedule Updates**

As part of the program updates, staff is recommending the City's Master Fee Schedule be updated to reflect the new review and selection process as well as ensure that the program fees are fair and reasonable for those operators that are operating legally within the City. Staff is also recommending that substantial financial penalties be assessed to property owners who use or lease tenant space to illegal grow operators and/or for those retail and delivery operators who illegally sell cannabis products to minors. These penalties are intended to act as a deterrent and help provide cost recovery for the City's Police Department and Code Enforcement Division.

Consistent with Council feedback at their December 2020 work session, staff is proposing a tiered fee structure that requires applicants cover the initial review, screening, and licensing process but is adjusted upon permit renewal to cover costs associated with public life/safety and compliance inspections. As part of the updated fee schedule, staff anticipates that the on-going use of outside consultants to screen initial applications, as well as provide annual auditing services to verify compliance, will still be necessary to minimize impacts to existing staff resources as well as help the City administer a successful cannabis program. Staff will evaluate the proposed fee structure and updated licensing and auditing requirements over the next couple of years to determine whether or not the City is achieving the goal for full cost recovery and will report back to Council annually as part of a regular program update. If approved by Council, these new fees would apply to all existing applicants upon annual renewal, as well as apply to any new operators that apply in upcoming application cycles. The recommended Master Fee updates are reflected in Exhibit A to the draft Resolution (Attachment VII).

Hayward 2040 General Plan. Staff believes the proposed Amendments are consistent with the goals and policies of the *Hayward 2040 General Plan* in that the amendments will direct commercial cannabis businesses to appropriate commercial and industrial districts designated to support such uses and provide an updated regulatory framework for how these businesses should operate to maintain public health, safety, and general welfare. The proposed Amendments are internally consistent with other applicable provisions of Chapter 6 and Chapter 10 of the Hayward Municipal Code in that the entirety of the Code will apply to cannabis operators and clarify cannabis land use activities and will identify where these uses are allowed. The proposed Amendments are consistent with the following policies and actions of the *Hayward 2040 General Plan*:

- *LU-5.2 Flexible Land Use Regulations:* The City shall maintain flexible land use regulations that allow the establishment of economically productive uses in regional and community centers.

- *LU-5.6 Adaptive Reuse, Renovation or Redevelopment:* The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.
- *LU-6.1 Land Uses:* The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.
- *ED-1.6 Advances and Specialized Manufacturing:* The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.
- *ED-1.11 Local Serving Retail:* The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.
- *ED-3.2 Fast Growing Industries:* The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.
- *ED-6.2 Land Use Certainty:* The City shall strive to enhance land use certainty for businesses by identifying and removing unnecessary regulatory barriers that discourage private-sector investment.
- *HLQ-4.1 Adequate Health Care Facilities:* The City shall encourage the development and maintenance of a full range of health care facilities, including hospitals, acute care facilities, neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.
- *HQL-10.6 Parks as Buffers:* The City shall consider the use of parks and recreational corridor as buffers between incompatible land uses.

Ordinance Amendment Process. Per Section 10-1.3430<sup>4</sup>, the City Council shall hold a public hearing on all text amendments, reclassifications, and pre-zonings. The Council may approve, modify, or deny a text amendment, reclassification, or pre-zoning subject to the following findings:

- Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;
- The proposed change is in conformance with all applicable, officially adopted policies and plans;
- Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and

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<sup>4</sup> City Council Procedures, Text Amendments:  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.3400AM\\_S10-1.3430CICOPR](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3400AM_S10-1.3430CICOPR)

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

Staff believes the Council can make the findings to support the proposed Text Amendments and has included more detailed analysis in Attachment II.

Environmental Review: The proposed Text Amendments are exempt from environmental review under Section 15061(b)(3) of the CEQA Guidelines, as they constitute minor amendments to the Zoning Code necessary for consistency with the Municipal Code and state law, and that any potential project enabled under the amendments will be subject to review under CEQA. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. MAUCRSA (Business and Professions Code section 26055(h), also provides an exemption for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity provided that the project-level discretionary review includes applicable environmental review pursuant to CEQA. While the City adopted the original cannabis regulatory and land use Ordinances in 2017, the proposed text amendments will not result in additional land use activities or environmental impacts that were not previous anticipated following the certification of the *Hayward 2040 General Plan* EIR.

## **ECONOMIC IMPACT**

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

## **FISCAL IMPACT**

Staff anticipates that a significant cost from cannabis uses would be associated with the administration of land use and regulatory ordinances, depending on the number and type of businesses Council chooses to allow. Staff would be required to process applications, prepare reports to the Planning Commission and City Council, review business plans, obtain background investigation results for proposed owners and employees, and interact with the State's cannabis regulators. Staff would also be involved in auditing financial records to determine if the City is accurately receiving funds resulting from the application of Measure EE. These staff functions would cover multiple departments and several fulltime equivalent higher-level classifications, at the outset of operations in Hayward and subsequently to assure ongoing compliance. Some or possibly all the administrative costs could be covered by City licensing fees approved as part of the updated Master Fee Schedule reflected in Exhibit A, but it would take at least two fiscal years of operations to identify true administrative costs resulting from these program updates.

In March 2018, the Council adopted a new tax rate for all commercial cannabis businesses in the City, which was intended to aid in the alleviation of the City of Hayward's ongoing General Fund operating deficit and would be used for any valid municipal purpose, including police and fire services, paramedic services, youth and anti-gang programs, education, disaster preparedness, economic development, street repairs and maintenance, graffiti removal, and code enforcement. At the time, staff estimated revenue between \$1 and \$3 million annually depending on the tax rate applied, number of businesses, how the tax is applied, and which types of operations the tax will apply to. To date, the City has received approximately \$444,861 in sales tax revenue from all commercial cannabis businesses since FY2020.

## **STRATEGIC ROADMAP**

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap:

1. Preserve, Protect & Produce Housing
2. Grow the Economy
3. Combat Climate Change
4. Improve Infrastructure
5. Improve Organizational Health
6. Support Quality of Life

This agenda item supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following project(s):

*Project 6: Update and Implement a Revised Cannabis Ordinance to Incorporate Best Practices to Better Support Cannabis Businesses*

## **PUBLIC CONTACT**

Following the start of this project, staff conducted the following public outreach:

- In April 2020, City staff and ICF conducted interviews with a selection of current licensees to obtain feedback on their experience with trying to establish a cannabis business in Hayward and offer suggestions for improving collaboration with the City. Feedback from these stakeholder interviews helped with the development of the revised cannabis program.
- On November 27, 2020, a Notice of Public Hearing for the Council work session was posted at City Hall and a legal ad was published within *The Daily Review* with the staff report and attachments uploaded to the City's cannabis webpage, which provided members of the public and interested stakeholders with status updates and meeting information on the City's cannabis program. In addition, the public notice was sent to nearly 100 additional stakeholders on the interested parties list.
- On December 8, 2020<sup>5</sup>, the Council held a work session to provide feedback on the recommendations being proposed to the City's cannabis licensing and permitting

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<sup>5</sup> City Council Work Session Minutes:  
<https://hayward.legistar.com/View.ashx?M=E3&ID=816115&GUID=4238E494-0DA5-4E9A-A413-71220794E0CE>

processes. The Council supported many of the recommendations proposed and staff has been working with ICF and other stakeholders to finalize the new regulations and operational guidelines, which requires amendments to the Hayward Municipal Code regulating personal use and commercial cannabis businesses in the City. A summary of the feedback and policy direction provided by the Council is included as Attachment VIII.

- On May 20, 2021, the City held a Public Community Meeting<sup>6</sup> via Zoom to obtain feedback and provide an update to cannabis applicants and stakeholders on the revised cannabis permit process. The meeting notice was sent to nearly 234 interested stakeholders and the agenda and presentation were also posted to the City's website. A total of 25 stakeholders attended the meeting and asked questions about the updated Permit process.
- On May 28, 2021, a Notice of Public Hearing for the Planning Commission was posted at City Hall and circulated to 234 businesses, residents and interested stakeholders (including task forces and community groups listed above) as well as published within *The Daily Review* newspaper as a Legal Ad. One member of the public spoke during the public comment period and expressed concerns with the broad allowance of retail sales being proposed for microbusinesses. He expressed concerns that these operations could turn into additional retail dispensaries without additional restrictions.

## NEXT STEPS

If the Council introduces the attached ordinances this evening, they will be brought back for adoption during a regular meeting scheduled for July 20, 2021. The text amendment to the zoning ordinance and the land use regulations will be effective upon adoption. The regulatory ordinance will be effective 30 days after adoption.

*Prepared by:*                 Jeremy Lochirco, Acting Planning Manager  
                                      Sara Buizer, Acting Deputy Director of Development Services

*Recommended by:*     Jennifer Ott, Assistant City Manager/Development Services Director

*Approved by:*



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Kelly McAdoo, City Manager

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<sup>6</sup> Public Community Meeting and Presentation:  
<https://www.hayward-ca.gov/your-government/programs/commercial-cannabis-permit-program>