

**SPECIAL CITY COUNCIL MEETING
TUESDAY, DECEMBER 8, 2020**

**DOCUMENTS RECEIVED
AFTER PUBLISHED AGENDA**

eCOMMENTS RECEIVED

Public Comment

eComments received for December 8, 2020 Hayward City Council Meeting:

Item	Name	Comment	Position
6. CONS 20-596 Adopt a Resolution Authorizing the City Manager to Accept and Execute a Funding Agreement with the Bay Area Air Quality Management District for the 2020 Vehicle Trip Reduction Grant Program and Appropriate Funds	Steven Dunbar	Wonderful work. Awesome job getting the grant.	Support

PUBLIC COMMENTS

Non-Agenda Items

From: Zachariah Oquenda >

Sent: Tuesday, December 8, 2020 12:52 PM

To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>

Subject: Public Comment - Access to Housing for People with Criminal Records - December 8, 2020

Dear Mayor and Council Members,

I write to raise an issue not itemized on the agenda. I intend to speak on this issue in Public Comment at the beginning of the meeting. I've attached a letter and another relevant resource to the email. I've included the contents of the letter in the body of this email for your convenience.

On November 19, 2020, the LA Times reported on the [proliferation](#) of Crime Free Multi-Housing Programs ("Programs") and the [disparate impact](#) of these Programs on Black and Brown renters in California. Crime Free Multi-Housing Programs emerged as a tool for landlords and property owners to maintain so-called "crime free" neighborhoods.

Under the Programs, law enforcement provides free training and resources to help property owners and managers create tools to exclude or evict people deemed a nuisance, dangerous, or threatening.

Some of the tools are fairly innocuous including training on premise liability and fire safety. However, these Programs tend to center around practices for screening applicants and requiring "Nuisance Eviction Provisions" and "Crime-Free Lease Addendums," which grant landlords unchecked discretion to exclude and evict people at will for any perceived nuisance or criminal activity whether on or off the premises. That's a lot of power; in my view, it's too much power.

The LA Times found that in communities across California, Black and Brown tenants were far more likely than White tenants to be [excluded or evicted](#) from housing due to these so-called "crime free" housing programs. The core reasons for the racial disparity are twofold. First, these Programs tend to be concentrated in neighborhoods where more people of color live, leading to more enforcement in those areas against the very people the provisions claim to intend to protect. This private enforcement just adds to the momentum of gentrification and displacement. Second, the history of racist policies driving mass incarceration that disproportionately criminalized people of color make those same people the targets for exclusion and eviction by landlords.

Examining the history of housing practices, it is not hard to understand why these policies produce racist outcomes. I raise this issue with the Council because the Hayward Police Department has a Crime Free Multi-Housing Program. On the Hayward [website](#), our HPD's Program includes training on "resident screening" and "rental agreements." I have submitted Public Records Act requests with the City to obtain all materials related to this Program. I do not know whether the eviction data for Hayward residents in complexes with these Programs would align with the LA Times findings in other cities, but I believe it is worth investigating.

As a demonstration of why I am concerned about Hayward's program, I offer excerpts from my own lease agreement. (See attached.) I'm a renter in City Centre Apartments, run by a large corporate landlord, Essex. City Centre has completed HPD's Program and received HPD's certification as a so-called "crime free" complex right here in Downtown Hayward. I can assure you, however, our complex is not "crime free." As the Council may remember my mentioning over three years ago, I was robbed at gunpoint at the gate to my apartment following a Tuesday night Council meeting. I'm not the only one in the complex who has been a victim of violent crime. Also, car break-ins are a weekly occurrence, and package theft and other property crimes are on the rise, as they are everywhere. "Crime free" does not remove crime, it focuses on people associated with, or previously arrested or convicted for, criminal activity. Because of the history of racist policies criminalizing people of color mentioned above, the outcome of this Program tends to be the exclusion and displacement of people of color.

I want to be clear that I'm under no illusion that this Program is intended to prevent all crime; this Program may contribute to reducing crime on the margins, but I haven't seen data to confirm that.

I do not intend this comment as an indictment on the City. As I said, I do not know how this Program is being enforced by property owners in Hayward. What I do know is that from the information available, and the likeness of Hayward's Program to the same Programs in other cities we know to have produced racist outcomes, I am worried that our City may be supporting a program that has unintended racist outcomes. It is out of this concern that I raise the issue.

Per the City's commitment to equity, inclusion, and anti-racism, I know the Council and city staff are currently evaluating city policies to eliminate and reverse racist policies and practices. I believe this Program warrants such an evaluation.

I request that the Mayor and Council consider the following **proposed actions**:

1. Consider the evaluation of the Crime Free Multi-Housing Program as an item for referral to the agenda at a future public meeting. As a community we must be transparent in our efforts to evaluate policies and practices for racist outcomes, and demonstrate a commitment to own our mistakes, as a community, and remedy those mistakes. We must seek the truth, and if the truth as we find it requires, we must strive for reconciliation.
2. Consider including access to housing for people with criminal records in our goals under the Housing Element. Right now, a goal of the Housing Element is to "Promote equal housing opportunities for all persons," which includes providing "support services and programs that eliminate housing discrimination." People with arrest and conviction histories are people too. And they face tremendous discrimination in housing, including potentially by this very Crime Free Multi-Housing Program. In fact, [more than 20% of Californians have a criminal record](#) that create life-time barriers to housing and employment. I'd venture to guess that the portion of Hayward residents with criminal records isn't all that different. We all deserve a fair chance to access housing.

I appreciate your time and consideration.

Sincerely,

Zachariah Oquenda, JD, MPP
Commissioner, Community Services Commission
Member, Community Advisory Panel to the Chief of Police

utilities, earthquake, or any other cause not directly caused by fraud, willful injury or violation of law (negligent or intentional).

(b) Resident understands and agrees that Landlord will not have any liability for loss or damage to Resident's personal property except to the extent caused by Landlord's negligence, intentional wrongful action or violation of law. Resident agrees that the Agreement will not terminate and Landlord will not be liable for any interruption with services or accommodations to Resident caused by casualty, strike, riot, orders, acts of public authorities, acts of third parties, or any other cause beyond Landlord's control.

(c) Resident agrees to hold harmless, protect, indemnify, and defend Landlord from and against any claims arising out of or relating to the use, occupancy or maintenance of the Premises by Resident, except to the extent caused by Landlord's gross negligence, intentional wrongful action or violation of law. Resident agrees Landlord shall have the right to appoint defense counsel, at Resident's expense, in the event of any such claim against Landlord. Any insurance obtained by Resident or Landlord will not limit Resident's liability, and Resident will be responsible for the payment of any deductible if there is a covered loss, protect, indemnify and defend Resident from liability for matters Resident proves to be caused by Landlord's gross negligence, intentional wrongful action or violation of law.

25. SUBORDINATION: This Lease and all rights of Resident arising hereunder are expressly agreed to be subject and subordinate in all respects to the lien of any present or future mortgages which are or may be placed upon the Property by Landlord or assigns of Landlord and to all other rights acquired by the holder of any such mortgage(s). Resident agrees that Landlord may elect in its sole discretion upon Landlord's written notice of same to Resident to make this Lease superior to the lien of any such mortgage. As used herein, the term "mortgage" shall include deeds of trust or any similar security interest. Resident agrees to attorn to any lender or other party who may acquire the Property through foreclosure or deed-in-lieu thereof provided that such lender or other party agrees, whether prior to or subsequent to such foreclosure or acquisition of the Property through deed-in-lieu thereof: (a) to recognize Resident as the tenant under this Lease, and (b) not to disturb Resident's continued occupancy of the Premises prior to expiration of the term of this Lease unless Resident is in breach thereof. Resident agrees to sign any documents reasonably requested by Landlord in connection with this paragraph, including subordination agreements and estoppel certificates.

26. SUCCESSORS IN INTEREST: If the Property is sold or the ownership interest is otherwise transferred, the successor in interest of Landlord shall be deemed the assignee of all rights arising hereunder, and shall be entitled to enforce the provisions of this Lease as necessary against Resident. Nothing in this provision shall be construed as conflicting or superseding the foregoing "SUBORDINATION" clause or as requiring a continuation of the tenancy in the event of a foreclosure or other involuntary transfer of ownership.

27. COMPLIANCE WITH APPLICABLE LAWS: Resident agrees not to use or permit the Premises to be used for any purpose which violates local, state or federal law, or engage in any illegal acts in or upon the Premises or upon the grounds of the Community. Resident further agrees to defend Landlord against any claims arising from, or relating to, and reimburse and indemnify Landlord for all claims, loss, damage, fines and penalties alleged against or incurred by Landlord as a result of, Resident's alleged or actual violation of any statute, ordinance, regulation or other governmental restriction.

28. COMPLIANCE WITH COMMUNITY HANDBOOK: Resident acknowledges receipt of a copy of the Community Handbook ("Handbook"), which Handbook are incorporated into and made a part of this Lease. Resident agrees to abide by said Handbook in all respects. Any Handbook may be changed on thirty (30) days notice, and Resident agrees to abide by any such changes. Failure to comply with the Handbook shall be deemed a breach of this Lease.

29. NO SOLICITING: Solicitation is prohibited in the Community. If Resident is contacted by a solicitor, even if that person resides at the Community, please contact Landlord immediately. Except as prohibited by applicable law, soliciting of any kind by Resident, Resident's guests or Resident's invitees is a material violation of this Agreement.

30. CONDUCT OF RESIDENT:

(a) Resident agrees not to harass, annoy, or endanger any other Resident, neighbor or other person, or create or maintain a nuisance, or disturb the peace or solitude or quiet enjoyment of any other Resident, neighbor or other person, or commit waste in or about the Premises.

(b) Resident agrees not to harass, verbally abuse, denigrate, endanger or otherwise disrespect Landlord's

employees, agents and/or contractors or interfere with the operations of the Property or the work of Landlord's employees or agents.

- (c) Certain acts are contrary to the safety, well-being, peace, and enjoyment of the other Residents of the Property. These include, but are not limited to, the use, possession or sale of illegal drugs or controlled substances and the exhibiting of firearms or ammunition on the Property. Such acts are prohibited.
- (d) Resident agrees not to deface or damage any part of the Premises or the Community or permit the same to be done or keep any flammable or explosive materials or any substance considered dangerous, hazardous or toxic under any governmental law or regulation in the Premises.
- (e) Resident agrees not to do or permit anything to be done in the Premises that Landlord deems hazardous or which will cause a cancellation of or an increase in the premiums for any insurance for the Community.
- (f) Resident is responsible for the conduct of his/her/their guests or invitees while they are on the Property as well as all household members (including minors). A Resident conducting any of the activities set forth in this section, or who allows his or her guests, invitees or household members (including minors) to conduct any of the activities set forth in this Section shall be in violation of this Agreement, and said activity shall be grounds for Landlord's termination of Resident's tenancy with a three-day notice to quit.

31. ANIMALS: No animals are permitted on the Property or the Premises without the prior written consent of the Landlord. Any such consent may be revoked at any time, with or without cause, by giving three (3) days written notice. Except to the extent written permission is given, pets may not be brought upon the Property or the Premises, whether such pets belong to Resident or to any other person. The presence of any pets for which written permission has not been given or which, if given, is not currently in force, even if such pets are "just visiting", shall be deemed a material breach of this Lease and shall be cause for the service of a three (3) day notice to perform covenants and conditions or quit. If, in accordance with the provisions of this paragraph a pet is permitted, Resident must execute an Animal Addendum prior to any pet being allowed in the Premises or on the Property. If Resident has a pet without the written consent of Landlord in addition to all other remedies of Landlord, Resident agrees to pay within three (3) days of written demand therefore any and all carpet cleaning charges, fumigation costs and any and all damages caused by unauthorized pets, even if such charges should exceed the amount of any and all deposits held by Landlord. Accommodation Animals are not considered pets, but written permission must be granted and an Accommodation Animal Addendum executed before an accommodation animal is brought onto the Premises. A disabled individual who requires an animal in order to be able to use and enjoy the Premises or the Property should contact the Landlord before bringing the animal onto the Premises and request an accommodation to this lease provision. All accommodation requests will be processed in accordance with applicable laws.

32. LIQUID-FILLED FURNITURE AND AQUARIUMS: Waterbeds and other liquid-filled furniture are allowed only under the regulations of California Civil Code Section 1940.5, which requires proper insurance coverage for waterbeds. A certificate of insurance evidencing waterbed coverage must be provided to Landlord prior to Resident bringing any liquid-filled furniture into the Premises. Resident must provide Landlord with at least twenty-four (24) hours' written notice prior to the installation, removal or movement of any liquid-filled furniture and Landlord has the right to be present at the time of such installation, removal or movement. Installation, movement and removal must be done in accordance with standards set by the manufacturer, retailer or state law, whichever provides the highest degree of safety. No aquariums over 10 gallons are permitted without prior written consent of Landlord. If Resident installs any liquid-filled furniture, Landlord has the right to increase the Security Deposit by an amount to be determined in the written authorization, which in no event shall be more than one-half of one month's rent.

33. SMOKING:

- (a) Resident must comply with all applicable laws and House Rules regarding smoking on the Premises. Landlord may change its smoking policies at any time after providing Resident with thirty (30) days written notice. Landlord is not required to advise Resident of any changes in the law with respect to smoking on the Property. Resident is responsible for complying with all laws relating to smoking and thirty days' notice is not required if a policy change is implemented to comply with a new law or ordinance.
- (b) To the extent smoking is allowed anywhere on the Property, Residents who smoke, or allow smoking by their invitees or guests, must ensure the smoke does not disturb the quiet enjoyment of other Residents. Secondhand tobacco smoke may seep and drift through open doors, windows, and ventilation ducts, which may constitute a disturbance to those Residents who do not smoke, particularly those with health and

allergy-related sensitivities. Pursuant to other provisions of this Agreement, Resident agrees not to harass, annoy, or endanger any other Resident or person, or create or maintain a nuisance, or disturb the peace or solitude of any other Resident. Resident is responsible for the conduct of guests or invitees while they are on the Property. Violation of this provision may result in the immediate termination of Resident's tenancy as provided herein and by law.

- (c) Landlord does not provide or guarantee a smoke-free environment and smoking may be permitted in individual units and possibly in some outdoor common areas, except where prohibited by law. As such, nothing herein shall be deemed a guarantee of any kind that Resident will not be exposed to tobacco smoke while on the Property and Landlord expressly denies any such assertion.
- (d) The smoking provisions of this Agreement may be amended by or superseded by an addendum to this Agreement.
- (e) If the Property is governed by a local ordinance which requires lease provisions different than what is provided in this Section, that ordinance controls, but only to the extent required by applicable law and then only so long as the provision of the applicable law is not repealed or held invalid by a court of competent jurisdiction. The Parties agree to execute any addendum relating to smoking which may be required by law after the execution of this Agreement.

34. SMOKE DETECTORS: Resident acknowledges that the Premises are equipped with an operable smoke detector(s). Resident agrees to not interfere with the presence or operability of such smoke detectors and to report immediately to Landlord, in writing, any defects in the condition of any smoke detectors. Resident further agrees that, if the smoke detector(s) is/are battery operated, pursuant to California Civil Code Section 1942.1, as part of the consideration of the rental, Resident assumes responsibility to: (a) ensure the battery is in operating condition at all times; and (b) replace the battery as needed. Under no circumstances shall Resident remove the battery of a smoke detector without immediately replacing the battery with a new one.

35. FIRE SPRINKLER(S): If the Premises is equipped with fire sprinklers, Resident agrees not to interfere with their operation in any way. The following actions are prohibited: throwing items at the sprinklers, hanging items on the sprinklers, painting the sprinklers, blocking areas around sprinklers and tapping into or otherwise blocking water lines to sprinklers. Resident shall immediately report to Landlord any broken or damaged sprinklers in the Premises,

36. CARBON-MONOXIDE DEVICE(S): If a carbon-monoxide device has been installed within the Premises, Resident acknowledges that the carbon-monoxide device was operable at the time Resident took possession of the Premises. Resident is responsible for notifying Landlord if Resident becomes aware of an inoperable or deficient carbon-monoxide device within the Premises. Landlord shall correct any reported deficiencies or inoperabilities in the carbon-monoxide device. Resident agrees to not interfere with the presence or operability of any carbon-monoxide device. Resident further agrees that, if the carbon-monoxide device(s) is battery operated, pursuant to California Civil Code Section 1942.1, as part of the consideration of the rental, Resident assumes responsibility to: (a) ensure the battery is in operating condition at all times; and (b) replace the battery as needed. Under no circumstances shall Resident remove the battery of a carbon-monoxide device without immediately replacing the battery with a new one.

37. EMINENT DOMAIN OR CONDEMNATION: Should the Premises or the land on which the Premises are located, or any part thereof, or any portion of the Community, be condemned or taken for public use, then, in that event, upon any order for possession or judgment of condemnation, this Lease, at the option of Landlord, shall be voidable, and Resident's right to occupancy shall terminate. Landlord shall be entitled to receive any and all just compensation offered or awarded, and Resident shall not be entitled to receive any amount of any settlement or award of compensation arising out of any such eminent domain or condemnation.

38. SIGNIFICANT DAMAGE TO OR DESTRUCTION OF PREMISES:

- (a) If the Premises or Property are damaged by fire, flood or other casualty, necessitating repairs that require Resident to vacate the Premises for any length of time, in the sole and absolute discretion of Landlord, Landlord shall have the option either (1) to repair the damage or otherwise restore the Premises, with this Agreement continuing in full force and effect, or (2) give notice to Resident, at any time after such damage occurs or repairs become necessary, terminating this Agreement as of a date to be specified in such notice. Landlord shall not be required to repair any damage by fire or other cause or to make any repairs of any property installed in the Premises by Resident.

- (b) If Landlord elects to terminate, Resident's tenancy shall terminate on the date specified by Landlord, and all interest of the Resident in the Premises shall terminate. If Landlord elects to repair the damage and/or make the significant repairs and continue this Agreement, the "DUTY TO COOPERATE" and "SIGNIFICANT REPAIRS" provisions of this Agreement shall apply. Under no circumstance shall Landlord have any obligation to pay lodging costs or other expenses to Resident, except as shall be required by law or ordinance.

39. SIGNIFICANT REPAIRS:

- (a) If the Premises requires significant renovations, improvements or repairs (such as, by way of example only and not by way of any limitation, tenting for termites, treating for pests or other vermin, replacing plumbing or electrical wiring, repairing fire damage, etc.) which require Resident to vacate the Premises for any length of time, Resident must vacate the Premises as needed and otherwise cooperate with Landlord in its efforts to perform the work. To the extent possible, Landlord shall give Resident written notice of the need to vacate the Premises, which notice shall include Landlord's best estimation of the length of time Landlord anticipates Resident will need to be absent from the Premises.
- (b) If the work or repairs are required because of the conduct of Resident or the conduct of Resident's household, invitees or guests (such as misuse of plumbing, causing a fire, etc.), then Landlord shall be relieved of any obligation to provide or pay for alternative accommodations and Resident shall remain responsible for both rent and the cost of alternative lodging during the time when Resident must vacate the Premises for any work to be completed. Resident shall be fully liable for all loss and/or destruction, whether partial or whole, caused by Resident or any of Resident's invitees or guests.

40. DUTY TO COOPERATE: Failure to vacate or return to the Premises or otherwise cooperate with Landlord's efforts to conduct repairs, renovations or other improvements at the Property is a material breach of this Lease and grounds for termination of this Agreement.

41. ENVIRONMENTAL INDEMNIFICATION: As additional consideration for Landlord entering into this Lease, Resident, for themselves, their heirs, successors, assignees, guests, invitees and all others claiming by, through or under Resident, or who may live in, occupy, use or reside in the Premises, hereby agrees to indemnify, defend, protect and hold harmless the Landlord and/or its agents, partners, officers, directors, employees, or shareholders ("Landlord Affiliates") against and from any and all actions, causes of action, claims, demands, liabilities, losses, damages and expenses of whatsoever kind, including, but not limited to, attorney's fees and costs and court costs at both the trial and appellate levels, that any or all of the Landlord Affiliates may at any time sustain or incur by reason of any and all claims asserted against them to the extent that such claims allege, arise out of or are based upon any hazardous or potentially health affecting substances brought, or allowed to be brought, into the Premises and/or the Property by Resident or any guest(s), invitees(s) or other person(s) living in, occupying, using or residing in the Premises.

42. VEHICLES: Resident agrees to register all vehicles with the management and comply with the Community Handbook and Handbook Provisions, addenda to this Lease and all posted signs related to vehicles and parking on the Property.

43. RECREATIONAL FACILITIES:

- (a) Resident recognizes that the Property may have facilities, areas and amenities that may be hazardous for persons not complying with the Rules, posted signs or the provisions of this Lease or who are unable to understand or appreciate the risks associated with such facilities, areas or amenities due to age or capacity. Such facilities, areas and amenities may include but are not limited to: (a) swimming pools and/or spas with or without supervision or lifeguard; (b) fountains and/or ponds; (c) open balconies or verandas; (d) recreation room and office; (e) sprinklers and other landscape maintenance devices; (f) sidewalks and walkways; (g) stairways and/or elevators; (h) parking lots; and (i) tanning beds. Resident assumes all risk associated with use of any facilities or amenities in the Premises or at the Community by Resident, Resident's household members (including minors) and Resident's invitees or guests.
- (b) By entering this Lease, Resident, authorized occupants and guests must execute an Activities Participation and Recreational Facility Use Agreement, Waiver of Rights and General Lease before using any recreational facilities available at the Community. Use of recreational facilities is subject to the terms set forth in that Agreement and applicable provisions in the Community Handbook as well as posted signs and Landlord's instructions.

44. CRIMINAL CONDUCT PROHIBITED:

- (a) Resident and Resident's Occupants whether on or off of the property; and Resident and Resident's Occupant's guests and invitees, are prohibited from:
- (i) Engaging in any criminal activity, including drug-related criminal activity, on or off the Property. Drug related criminal activity shall mean the illegal manufacture, sale, distribution, use, possession and possession with intent to manufacture, sell, distribute, or use of an illegal or controlled substance (as defined in Section 102 of the Controlled Substance Act [21 U.S.C. 802], which includes marijuana).
 - (ii) Engaging in any act intended to facilitate criminal activity or permitting the dwelling unit to be used for criminal activity.
 - (iii) Engaging in the unlawful manufacturing, selling, using (being under the influence of), storing, keeping or giving of an illegal or controlled substance as defined in Health and Safety Code 11350, 11351, 11377, 11378, 11550, and 11379.6, at any locations, whether on or off the dwelling unit premises.
 - (iv) Engaging in any illegal activity, including, but not limited to: prostitution as defined in Penal Code 647(b); criminal street gang activity as defined in Penal Code 186.22 et seq.; threatening or intimidating as prohibited in Penal Code 422; assault and battery as prohibited in Penal Code 240/242; including but not limited to the unlawful discharge of a firearm as prohibited in Penal Code 245; burglary as prohibited in Penal Code 459; possession of stolen property as prohibited by Penal Code 496; sexual offenses as prohibited in Penal Code 269 and 288, on or off the dwelling unit premises, or
 - (v) Violation of law, regulation or ordinance that jeopardizes the health, safety or welfare of Landlord, its agents or other residents, or involving imminent or actual serious property damage.
- (b) VIOLATION OF ANY OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR IMMEDIATE TERMINATION OF RESIDENT'S TENANCY. A single violation of any of the provisions of this Section may be deemed a serious, material and irreparable violation of the Lease. It is understood and agreed that a single violation shall be good cause for immediate termination of the Lease. Landlord may, in its sole discretion, determine whether a violation has occurred and need not (a) await any court or law enforcement determination before determining to terminate Resident's tenancy under this Section.
- (c) Resident hereby authorizes property management/owner to use police generated reports against Resident for any such violation as reliable direct evidence, and/or as business records as a hearsay exception, in all eviction hearings.
- (d) Resident also agrees to be responsible for the actions of Resident's occupants, Resident's guests and invitees, and Resident's occupant's guests and invitees, regardless of whether Resident knew or should have known about any such actions. A guest or invitee shall be anyone who Resident or Resident's occupant gives access to or allows on the premises or in the rental unit.

45. SAFETY CONCERNS:

- (a) Landlord makes no representations or guarantees to Resident concerning the security of the Premises or the Community, including, but not limited to individual units, common areas and mail areas. Landlord is under no obligation to Resident to provide any security measure or take any action not required by statute. The presence of courtesy patrols, patrol cars, access gates, surveillance cameras or other deterrents do not guarantee that crime can or will be prevented. All such systems are subject to personnel absenteeism, human error, mechanical malfunctions and tampering. Resident is responsible for planning and taking action with respect to the safety of Resident and their property as if such systems and deterrents did not exist.
- (b) Landlord does not accept any responsibility or liability for any lost, stolen, damaged, or unordered deliveries and Resident agrees to hold Landlord and Landlord's agents harmless from any loss or damage to any of Resident's packages, letters or deliveries.
- (c) Landlord may install surveillance cameras in some of the common areas of the Property. These cameras may or may not be monitored and the footage recorded by these cameras may or may not be kept by Landlord for any length of time. Landlord may remove such cameras, or install additional cameras, at any time without notice to Resident. Recordings made by surveillance equipment, if any, are the sole and exclusive property of Landlord and shall not be provided to Resident. Landlord may provide such

ITEM #10 WS 20-049

**Commercial Cannabis Program Work
Session: Review and Provide Feedback
on Recommended Process and Policy
Updates to the City's Commercial
Cannabis Program (Report from
Development Service Director Simpson)**

PUBLIC COMMENTS

From: Cliff Nichols
Sent: Tuesday, December 8, 2020 4:04 PM
To: Jeremy Lochirco <Jeremy.Lochirco@hayward-ca.gov>
Cc: Doug Chloupek; Neil Ruditsky
Subject: 12/8 City Council Agenda Item 10

Please find attached a letter detailing some suggested changes to the current Hayward Cannabis Ordinance.

We hope to continue to work with you to improve Hayward's entire cannabis industry and Hayward as a whole.

Additionally, after reviewing staff and ICF recommendations, we are in strong support of all the excerpts copied below as they relate to the licensing procedures. All excerpts come from the Agenda Item Attachment 11 Background Memo document referenced in Tuesday meeting's agenda.

- Page 7: There has been no direct relationship found between the quality of written applications submitted and the quality of the proposer/applicant team. Applicants sometimes hire outside consultants to write robust plan documents but don't actually have needed skills and knowledge. Thus, interviews may be a better tool for selecting qualified licensees.
- Page 7: Don't have scoring threshold for written applications to determine who gets interviewed; instead, interview all applicants that meet minimum requirements.
- Page 7: Defer to state licensing requirements wherever possible
- Page 14: ICF found that, for many communities, having applicants secure a physical site is the first step in the application process. The City of Sacramento, CA (population ~508,000) requires applicants to first obtain a Conditional Use Permit (CUP) for the property, before applying for a Business Operating Permit for the business operation itself. The CUP process, which also includes a public hearing, is primarily used to confirm zoning eligibility, however it also speeds the application process and saves the city money by ensuring that only very serious applicants move forward with the process. Another benefit of requiring a physical location upfront is that it allows city staff to vet the location for community density concerns and other location specific issues early in the application process.

Thanks,

Cliff Nichols

Executive Assistant and Marketing



To Whom it may concern,

I write to you today, ahead of the City of Hayward's planned work session on Commercial Cannabis regulations, to highlight some areas of the ordinance that need attention. I detail these areas below and provide recommendations. I make these recommendations in support of many of the findings from ICF and with the intent of better aligning Hayward's ordinance with the State's regulations.

Microbusinesses and Storefront Retail:

Microbusinesses in Hayward are currently only allowed an ancillary storefront retail use (see Sec. 10-1.3605 and Sec. 10-1.3606). This limits the microbusiness to only selling products they produce. As I understand it, the intent behind this regulation was an attempt to limit the amount of traffic that would be going into the industrial zones where cannabis microbusinesses are allowed to operate. However, a menu with fewer options doesn't always translate into less traffic. To illustrate this think about the menus of In-and-Out Burger and Burger King. In-and-Out has a total of 6 menu options and they are much busier than a Burger King which has over 80 menu items. Additionally under the current ordinance a customer at a Juva retail store would have very limited options to purchase in person, but they can order from a full menu on their cell phone or on a tablet at our store and have the product delivered to them.

Recommendation: Follow state law and allow cannabis microbusiness to sell all products allowed by state law.

Value Limits on Delivery Vehicle Inventory

Currently there is no part of the ordinance regulating inventory value in delivery cars. However, as a condition of approval all cannabis businesses performing deliveries to consumers are limited to an inventory not to exceed \$3,000. We believe this was taken from the State's previous regulation that has since been modified to allow for up to \$5000, with some minor conditions. The limitation of inventory means more trips to and from the licensed facility which increases traffic around the facility. It also limits the amount of business a non-storefront retailer can do in a day.

Recommendation: Follow state law and add a section to the ordinance that establishes inventory limits that are in alignment with the states regulations of \$5000.

Retail Hours of Operation:

Currently, retail hours of operation are dictated and approved by the Planning Commission (see Sec.6-14.15.a.5 and Sec. 10-1.3607.D.4). While the Planning Commission has been fair to all retail license holders within Hayward, limiting all to the operating hours of 9:00 am to 9:00 pm, this doesn't allow Hayward retailers to operate on a fair and level playing field with licensed retailers outside of Hayward, let alone the Black Market. State regulations require licensed retailers to close at 10:00 pm. If a Hayward resident needs to purchase cannabis after 9:00 pm they have two options: order from a licensed storefront retailer or non-storefront (delivery) retailer outside of Hayward or order from the Black Market, where they don't charge tax and aren't required to test their products for safety. Either way, the city of



Hayward loses those tax dollars. It's hard enough to compete with the Black Market as is, but further limiting the legal industry's ability to operate doesn't benefit the City or the population. I suggest modifying the City's ordinance to allow retailers to operate in accordance with state law.

Recommendation: Follow state law and allow cannabis retailers to stay open until 10:00 pm.

Cannabis Paraphernalia:

Sec. 10-1.3607.D.7 states that "No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit." The way this portion of the ordinance is written prevents a retailer from selling some of the necessary tools consumers require to use the products sold by the retailer. For instance, a customer who purchases cannabis from a retailer might need a lighter or a customer who purchases a vapor cartridge might need a battery to operate it. As written, unless the retailer explicitly has permission in their Conditional Use Permit to sell these items, they cannot provide the customer the basic necessities to use the products they sell. It is an industry standard for cannabis retailers to sell basic paraphernalia like (but not limited to) grinders, rolling papers, vaporizers, and lighters in order to best serve the needs and desires of the customers.

Recommendation: Follow state law and remove this portion of the ordinance in its entirety.

Delivery Only Cannabis Storage:

Sec. 10-1.3607.F.6 states "Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site." This portion of the ordinance eliminates a delivery only retailer from possessing an inventory, because they can't legally store the product anywhere.

Recommendation: Follow state law and update this section to allow for secure onsite cannabis storage for delivery businesses.

If you have any questions please feel free to reach out. Thank you for your consideration.

Sincerely,

Doug Chloupek
CEO, Juva Life Inc.

From: Kim Huggett
Sent: Thursday, December 3, 2020 11:30 AM
To: List-Mayor-Council
Cc: Kelly McAdoo; Miriam Lens; Jeremy Lochirco; Paul Nguyen
Subject: Commercial Cannabis Review Tuesday
Attachments: City Council Letter . Cannabis Downtown.pdf

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Members of the Hayward City Council,

Since the staff report with a commercial cannabis program update for your meeting of Dec. 8 has not yet been posted, I thought I would anticipate some of the related issues, based on the council's discussion on cannabis issues last Tuesday night. My observations are also based on my experience working virtually every weekday (and most weekends) at the corner of B and Main streets for the last 10 years (and two months.)

I have attached a copy of my letter to you of June 14, 2019 regarding Hayward Station / Cookies, and I think the points regarding cannabis sales downtown are still valid. Principally, the blocks extending from the intersection of B and Main streets have been designed (by past city councils) for adult-related businesses. There are 21 alcohol-related businesses within two blocks of my office, and a card club within three. Downtown is not a route to or from any school. The few youth-related businesses that are downtown (karate, dance, tutoring) have participants with an accompanying parent.

The development of the Sector 19 laser tag (closed, for now) and Craft Eatery in the Hayward Area Historical Society building is a welcome one, and we look forward to welcoming families back there in a pandemic recovery. Chalk it Up, destroyed by fire, was not a family-oriented business. The loss of High Scores Arcade was due to a landlord issue.

Cookies, across the street from my office, has been run with efficiency and security, without long lines. True, its customers don't tend to linger downtown to make purchases at other stores, but that can be as a result of the pandemic. A better measure will be when restaurants and cafes again open regularly for lunch, can stay open late, and the theatres reopen. And I highly recommend the live music every weekend at The Bistro on Main Street.

Finally, I encourage you to consider allowing development of the third dispensary somewhere in Hayward not restricted by the boundary lines of "downtown." Through no fault of her own, the one dispensary applicant who is a Hayward resident and the only woman-owned business, has had problems with acquiring her desired location. Surely there are other areas in Hayward that could accommodate this business, and she has even identified locations where the property owners are agreeable. In fact, the city has already approved another business that incorporates cultivation, manufacturing, distribution "and ancillary storefront retail," for a business off Clawiter Road.

Thank you for your consideration and service to the citizens of Hayward.

Sincerely,

Kim Huggett, IOM
President & CEO
Hayward Chamber of Commerce
www.hayward.org



June 14, 2019

Members of the Hayward City Council,

I write to you to correct some statements about downtown Hayward that were made during the city council's discussion on Hayward Station. If city staff has been directed to create "findings for denial" that are based on the idea that there are schoolchildren at B and Main streets, they'll have no data because it simply is not true.

I was particularly surprised by the city council's vote because last summer council members accepted the staff and consultant report that not only was Hayward Station the No. 1 qualifier for a dispensary, but expressed pleasure that the old bank building could finally be developed. Both the council and the planning commission, which voted 6-0 in support, knew last summer that the old bank building would be the location for Hayward Station because they had already signed a lease.

SCHOOLCHILDREN DO NOT POPULATE DOWNTOWN

I have worked at the corner of B and Main streets for nearly nine years. I'm also there frequently on the weekends at my office at 22561 Main St. I walk the downtown every workday, do my banking there, have my business and personal lunches there, confer with chamber business members, and make innumerable trips to city hall for meetings with staff and to attend more than 280 city council meetings (and many planning commission sessions) since September 2010. Schoolchildren simply are not a presence downtown. None of the downtown streets are on the way to or from school, certainly not Hayward High, Bret Harte Intermediate, or Burbank Elementary.

And schoolchildren certainly don't hang out in an area created by this city council and your predecessors to attract adults.

OUR CITY COUNCILS HAVE CREATED A DOWNTOWN OF BARS

Within one block of the old bank building at B and Main streets (and my office) there are five bars (Turf Club, Funky Monkey, Stein Room, Dirty Bird, The Bistro), another on the way (990 Lounge), as well as a wine shop on the way for the first floor of the former Green Shutter Hotel. If you want to go two blocks from that intersection, there are bars at PLaYT, Buffalo Bills, Brews & Brats, the Russell City Distillery, and Doc's Wine Shop. In restaurants within two blocks, alcohol is sold at Sapporo, Kin Café, Hinata (formerly Kokyo), Rock-It Burger, Los Compadres and Metro Taquero as well as all three Italian restaurants. That is 21 alcohol-serving establishments within two blocks of an intersection that was purported to be a gathering place for schoolchildren. These businesses are worthy contributors to our economy, run with professional standards, and are subject to scrutiny by code enforcement officials, the ABC and Hayward police. However, why would they be permitted there by your city council and previous ones if schoolchildren truly had the run of the neighborhood? The reason is that the presence of schoolchildren is **not** pervasive in downtown Hayward, especially at B and Main streets.

THE 'TUTORING CENTER'

I believe this business will be evicted from the establishment adjacent Eden Jewelry and Pawn. In any case, these students all arrive directly from the BART station and return in that direction right after "classes." Students at the karate studio at C Street and Main are accompanied by parents who wait during their sessions and park in the adjacent municipal lot.

THE B AND MAIN STREET SECURITY INTERSECTION / CAMERAS ON EVERY CORNER

B and Main streets could become the most video-recorded intersection in Hayward. There are multiple exterior cameras on my building and the L'Amour Shop next door. There are cameras protecting ATM users at US Bank at B and Main, and exterior cameras put up by Structure Properties around the B Street Apartments (former Green Shutter). There will be multiple exterior cameras at the 990 Lounge, and Hayward Station will have cameras in the parking lot adjacent the building to the north, along the Main and B streets sidewalks and over windows (which will not be displaying products). **All four corners** at B and Main would then have businesses with exterior cameras on the street. Hayward police often come to my office to look at replays on my video screens to try and resolve incidents that happen downtown at night. Hayward Station's cameras would give them many more options.

Sometime Thursday, yesterday, two persons defecated against the wall in what would be Hayward Stations' parking lot. Cameras would allow security to address that ongoing issue.

THE REAL DANGER DOWNTOWN

For the past dozen years The Green Shutter Hotel has been a source of vermin, vandals and vagrants. You can ask Hayward PD about this veritable dumping ground for the Department of Corrections. By my nine-years of observation, it has been the single biggest detriment to the development of downtown. From 2010 to 2017 fire engines would make the one-block drive, sometimes two or three times a week, from the station at Main and C streets to deal with overdose victims, and police dealt with everything from drug-dealing to naked people coming out onto the street. Structure Properties has done a fine job of renovating the apartment complex to become an attraction to adults who want to live in apartments and mainly rely on mass transit.

Look at the plans for Hayward Station. They call for renovation of a building that has been as much an eyesore as The Green Shutter and empty for decades at the very same intersection. The architectural concepts are beautiful and the city will have control over that look because of the use permit process.

MANDATING RETAIL

Just by saying that we want a retail store selling something different from cannabis at B and Main streets will not make it happen, and has not for 40 years. Retail does not work that way in the 21st Century. That was learned from mandating retail stores on the ground level at the senior apartments at 808 A Street, only to find that even the experts at Colliers couldn't find a single retailer after a year and a half of trying. That's why it is now office space.

FINALLY

We have an investor willing to develop a legal business at this blighted building, make major tenant improvements, generate revenue estimated at \$6.5 million a year (and the resulting sales tax and "community benefit" infusion"), hire locally, with their own parking lot, and with consumers who the research says generally spend an average of seven minutes making a purchase and then leaving.

The property owner has been collecting signatures from local businesses in support of the project, and any of them could tell you the same story I have laid out here. You can even add conditions that protect the CUP or come up with some other mechanism so that we don't, once again, deter a business from investing in Hayward.

Feel free to contact me any time to discuss this correspondence. I also invite you to join me on a visit to this part of downtown Hayward to meet some of the business folk and tour the area.

Sincerely,



Kim Huggett
President & CEO

cc: Kelly McAdoo, Jennifer Ott, Leigha Schmidt

ITEM #13 LB 20-060

**Temporary Hayward Navigation Center Hotel Annex Project: Adopt a Resolution Authorizing the City Manager to Take Emergency Actions Consistent with the City of Hayward's Shelter Crisis Declaration to Implement the Temporary Hayward Navigation Center Hotel Annex Project to House Vulnerable Homeless Individuals by Allocating \$1.21 Million in Existing Funds, Appropriating and Allocating Up to \$90,000 in Anticipated State Grant Funds, and Entering into Relevant Agreements
(Report from Deputy City Manager Ott)**

PUBLIC COMMENTS

From: Collin Thormoto
Sent: Tuesday, December 8, 2020 1:37 PM
To: List-Mayor-Council
Subject: Support of LB-20-060

CAUTION:This is an external email. Do not click on links or open attachments unless you know the content is safe.

Dear Mayor and City Councilmembers,

I hope you are well. I wanted to reach out in support of LB-20-060, which seeks to allocate \$1.2 million dollars in existing funds to expand the Hayward Navigation Center into the Navigation Center Hotel Annex. From reading the Staff Report on the subject, it seems like a very worthwhile use of funds, especially considering the overwhelming success that the Navigation Center has had so far.

I understand why the different hotels in the running for the contract are unnamed in the report, my only hope is that one of them is centrally located and near public transit of some kind. This will hopefully alleviate some of the issues with the current Navigation Center. I understand why the location was chosen, but I still think being located in the industrial part of town is problematic from an environmental, equity, and social justice standpoint.

Considering that homelessness is overwhelmingly the issue at the forefront of people's minds in the City, I hope that this Resolution passes so that we can continue the successes already begun with the Navigation Center.

My only other comment is that the Staff Report lists out some of the overwhelmingly positive results of the Transit Center so far, and I hope that the City finds a way to showcase these successes for the many Hayward residents who aren't going to dig into a Staff Report on a Council Agenda to find it. :)

All the best,
Collin Thormoto
Citizen of Hayward