

HAYWARD CITY COUNCIL

RESOLUTION NO. 20-\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR A CANNABIS RETAIL DISPENSARY WITH ANCILLARY RETAIL DELIVERY AT 22701 FOOTHILL BOULEVARD AND 1055 C STREET; RAJIV POTTABATHNI, JIVA LLC (APPLICANT); RYAN BRIDGE LLC (PROPERTY OWNER).

WHEREAS, Rajiv Pottabathni, on behalf of Jiva (“Jiva HWD LLC”), submitted Conditional Use Permit No. 201906312, to establish a cannabis retail dispensary with ancillary retail delivery at 22701 Foothill Boulevard and 1055 C Street, Assessor Parcel Numbers (APN) 428-0066-058-01 and 428-0066-056-00; and

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

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

WHEREAS, on June 15, 2017, the State enacted Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated provisions of MCRSA into the regulatory framework of the AUMA, thereby creating a unified regulatory scheme for medicinal and adult use cannabis. MAUCRSA specifically authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to MAUCRSA; and

WHEREAS, on October 30, 2017 and November 28, 2017, the City Council enacted regulatory and land use Ordinance Nos. 17-13 and 17-15, respectively, authorizing cannabis businesses within the City of Hayward subject to compliance with local and state laws; and

WHEREAS, on October 30, 2017, the City Council adopted Resolution No. 17-158, imposing a limit of three cannabis retail dispensaries within the City of Hayward. The proposed dispensary would be the second to be established within the city limits; and

WHEREAS, on March 20, 2018, the City Council adopted Ordinance No. 18-03, establishing a commercial cannabis tax for all products associated with medical or adult use of cannabis; and

WHEREAS, between December 2017 and January 2018, the City conducted a Request for Proposals (RFP) process and received 77 applications to establish commercial cannabis companies with the City, and issued commercial cannabis permits to eleven companies, one of which was the applicant; and

WHEREAS, on March 19, 2019, the City Council adopted Ordinance Nos. 19-06 and 19-07, reducing the overconcentration buffer between retail dispensaries from 1,000 feet to 500 feet; and, authority to waive or reduce the 600-foot buffer between commercial cannabis uses and sensitive uses, subject to special findings; and

WHEREAS, on September 25, 2020, notice of the Planning Commission public hearing was mailed to all property owners and residents within 300 feet of the project site as well as those who requested such notice; and was published in The Daily Review; and

WHEREAS, on October 8, 2020, the Planning Commission held a duly noticed public hearing on the proposed project and voted 6:1 to recommend that the City Council approve the project; and

WHEREAS, on November 6, 2020, notice of the City Council public hearing regarding the project was mailed to all property owners and residents within 300 feet of the project site as well as those who requested such notice; and was published in The Daily Review; and

WHEREAS, on November 17, 2020, the City Council held a public hearing and accepted public testimony on the proposed project.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the following findings:

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

- A. The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1), Existing Facilities, in that the proposed use would occupy an existing commercial structure that was designed to accommodate retail uses. As proposed and conditioned, the proposed use will not result in any significant effects related to traffic, noise, air quality and water quality.
- Per the memo prepared by Richard Patenaude AICP, the site is not historic or of historic significance. Thereby, the proposed project does not require additional review for historic significance in accordance with the California Environmental Quality Act (CEQA).

**CONDITIONAL USE PERMIT**

Pursuant to Hayward Municipal Code Section 10-1.3200, The Planning Commission or other approving authority may approve or conditionally approve an application when all the following findings are made:

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

The proposed retail cannabis dispensary would be desirable for the public convenience and welfare in that it would result in establishment of a cannabis retail delivery and cannabis retail dispensary in a vacant and underutilized commercial building within the Downtown Main Street (DT-MS) Zone. Cannabis retail sales are an increasing retail category that could contribute positively to the sales tax base in Hayward and attract a regional clientele to the area. There are relatively few locations that provide boutique cannabis and cannabis related products in the immediate area. Establishment of a cannabis dispensary and retail delivery within the DT-MS Zone would bring retail consumers to not only shop at this proposed establishment, but also patronize surrounding businesses and restaurants, leading to a sense of activation of the commercial core, thus benefitting the City and neighborhood.

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

The proposed commercial cannabis dispensary and retail delivery would occupy an existing building that has been vacant and underutilized for years. The subject building's lack of basic maintenance and investment of the site has resulted in a negative visual impact on the surrounding neighborhood. Occupancy of the vacant structure and proposed façade and site improvements would signal increased investment in the DT-MS Zone. Further, establishment of a new, unique retail use in the vacant building would activate the site possibly resulting in increased pedestrian traffic and patrons. Leading to more eyes on the streets and to a positive impact on the adjacent properties and the Downtown neighborhood.

To ensure that the proposed use would not impair the character and integrity of the applicable zoning district, the proposed dispensary would have an intake area fronting B Street to function as a buffer between public right of way and the cannabis retail display area.

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

The proposed cannabis retail and delivery retail use would not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, would operate within the permit requirements and regulations established by State, County and local laws. The applicant has provided an Odor Mitigation Plan to ensure that cannabis odors cannot be detected outside of the building, and a detailed Security Plan that includes installation of security cameras inside and outside of the building; positioning of security guards at all entrance; use of ID scanners to verify patron age; robust commercial locks on all points of ingress and egress and alarm system; compliance with a State-mandated track and trace program to prevent diversion of cannabis; a records retention program; and identification of a local contact to handle all safety and security issues. Additionally, all retail delivery vehicles would have a State-mandated GPS tracking system, video and voice recording cameras, and no distinguishable signage shall be allowed on the delivery vehicles.

The applicant's Business and Security Plan was reviewed and evaluated by an independent consultant and determined to include procedures and protocols to ensure public safety. Additionally, the applicant and all employees associated with the business are subject to an extensive background check by the Hayward Police Department.

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

Per Chapter 6 of the Downtown Specific Plan, Division 2.3, retail uses, such as a cannabis retail dispensary and retail deliver, are conditionally allowed uses in the DT-MS Zone. The proposed use would contribute positively to the tax base and could attract a regional clientele to the Downtown area meeting Economic Development Goals and Policies. However, the City's General Plan also calls for retail shopfront displays. In this case, due to the sensitivity of the product being retailed, the location would have a transparent front façade, but the frontage will not display cannabis or cannabis products, still activating the street in similar fashion as a shopfront display. Ensuring compliance with the following General Plan Goals and Policies:

- Land Use Policy LU-2.1, Downtown Arts and Entertainment. The City shall encourage private-sector investment in Downtown to transform it into a safe, vibrant, and prosperous arts and entertainment district that offers enhanced shopping, dining, recreational, and cultural experiences and events for residents, families, college students, and visitors.
- Land Use Policy LU-2.2, Downtown Activities and Functions. The City shall maintain the Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions.
- Land Use Policy LU-2.3, Downtown Pedestrian Environment. The City shall strive to create a safe, comfortable, and enjoyable pedestrian environment in the Downtown to encourage walking, sidewalk dining, window shopping, and social interaction.

- Land Use Policy LU-2.4, Downtown Retail Frontages. The City shall require retail frontages and storefront entrances on new and renovated buildings within the “retail core” of Downtown Hayward, which includes properties along B Street between Watkins Street and Foothill Boulevard, and Main Street between A Street and C Street. This policy does not apply to historic building originally designed without retail frontage or storefronts.
- Land Use Policy LU-2.16, Uses to Attract the Creative Class. The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward.
- Economic Development Goal ED-1. Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for local residents.
- Economic Development Policy ED-1.4. The City shall establish business attraction efforts that focus on small and medium-sized businesses within emerging and growing business sectors.
- Economic Development Goal ED-2. Cultivate a culture of entrepreneurship to encourage and support local business start-ups.

### **CANNABIS ORDINANCE**

In addition to the required findings contained in Section 10-1.3125 (Conditional Use Permit), every land use application requiring discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

- 1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted;**

The proposed commercial cannabis dispensary would not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, would operate within the permit requirements established by the State and by the City. Per the City’s Land Use requirements, retail cannabis dispensaries in conjunction with retail delivery are only geographically allowed in the Downtown areas, by way of a Conditional Use Permit.

Establishment of a cannabis retailer in a building located in the Downtown area would bring retail consumers to not only shop at this proposed establishment, but also patronize surrounding businesses and restaurants. Further contributing to the City’s tax base, and there would be more eyes on the street, leading to an increase sense of activation.

By design, the structures and businesses within the Downtown area are near each other and may result in location of sensitive uses within the minimum distance buffers. However, as described in the accompanying staff report, and in the finding related to alternative distances below. The proposed project would incorporate a robust Safety and Security Plan. Including but not limited to on-site security guards, cameras, security lighting, employee background checks, Conditions of Approval related to loitering and nuisances, and a reception area fronting the building to function as a buffer between public right of way and the retail display area. Thus, assuring public health and safety within the vicinity of the subject site.

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

Physical and operational safeguards are in place to ensure this cannabis retail delivery and retail dispensary operate at the proposed location without impacts to other properties. The proposed project includes an Odor Mitigation Plan, a robust Security Plan including but not limited to installation of cameras inside and outside of the building, provision for on-site security guards, ID scanners, and employee background checks among other safety and security measures.

As part of the initial RFP process, the applicant's business plan for was reviewed and scored by an independent, outside consultant who determined this operator would meet the City's objectives related to best practices for the cannabis industry. Furthermore, per the proposed Conditions of Approval and by Ordinance, cannabis permits shall be renewed annually. Providing the City, a yearly opportunity to reevaluate the proposed business, and ensure compliance with the approved business plan, the conditions of approval, and all pertinent City regulations.

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

The proposed cannabis delivery and retail dispensary would occupy an existing building that has been vacant for years. The subject building's lack of basic maintenance and investment has resulted in a divested building at a prominent corner in Downtown and along a major arterial through Hayward along Foothill Boulevard. Occupancy of the vacant structure along with the façade and site improvements would signal increased investment in the Downtown area. Further, establishing a new, unique retail use in the vacant building would activate the area likely increasing pedestrian circulation and patrons to the area. Having a positive impact on the adjacent properties and Downtown neighborhood.

To ensure that the proposed use is designed to be aesthetically compatible with the surrounding area, specific conditions of approval would require that the building maintain a buffer between the public right of way and the cannabis retail area. In addition, the applicant would demolish the old and rotted portions of the building, repaint the building, add storefront windows facing the street frontage with a contemporary design approach incorporating a new metal awning, add security cameras, and security lighting to ensure safety and aesthetic compatibility with the surrounding area.

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

As proposed, the applicant would lease a currently vacant commercial space in the Downtown area that would undergo a significant remodel. As conditioned, the proposed use would not place a burden on public services disproportionate to other commercial uses in the Downtown area. As conditioned, the applicant is required to adhere to the comprehensive Security and Safety Plan and conditions of approval, which prohibit loitering and on-site consumption. In addition, the applicant is subject to annual safety inspections, financial audits and conditions of approval review. Requiring inspection of the proposed cannabis retail use by the City's Code Enforcement Division, Police Department and Fire Department, as part of the cannabis permit renewal. Further, as conditioned, any excessive calls for service, including nuisance and code violations, may result in the revocation of the approval.

**5. The required 600-foot setback for sensitive uses may be reduced 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 the commercial cannabis business.**

Per the City's land use regulations, retail cannabis dispensaries are only allowed within the Downtown Area limits by way of a Conditional Use Permit. However, due to eclectic land uses currently located in the Hayward Downtown area, meeting the required 600-foot buffer from sensitive uses would be nearly impossible. Specifically, the proposed site would be within the 600-foot radius of four parcels with sensitive land uses including: the Kumon Learning Center located at 22628 Foothill Boulevard ( $\pm 440$  feet away), Team Brewer Karate Fitness located at 22683 Main Street ( $\pm 443$  feet away), High Scores Arcade located at 1051 B Street ( $\pm 450$  feet away), and the Children's Park at Giuliani Plaza ( $\pm 466$  feet away).

By design, the structures and businesses within Downtown are in close proximity to each other making it difficult to maintain minimum distances between cannabis businesses and sensitive uses. Allowing flexibility in the minimum distance requirement between the subject business and the nearby sensitive uses would be warranted in this instance to ensure that the subject building, which has been vacant and dilapidated for years, will be cleaned up, improved and activated. Leading to positive impacts by attracting a local and regional clientele who would visit Jiva and patronize surrounding businesses. As conditioned, staff believes that the alternative measures outlined in the Safety and Security Plan and the design measures to obscure views of the cannabis and cannabis products would assure public health and safety.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby adopts Conditional Use Permit Application 201906312, subject to the attached conditions of approval (Exhibit A).

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2020

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



**EXHIBIT A**

**CONDITIONAL USE PERMIT APPLICATION NO. 201906312** – Establishment of a cannabis retail dispensary and ancillary retail delivery located at 22701 Foothill Boulevard and 1055 C Street (Assessor Parcel Nos. 428-0066-058-01 and 428-0066-056-00), Requiring Approval of Conditional Use Permit Application No. 201906312. Rajiv Pottabathni, Jiva HWD LLC (Applicant); Ryan Bridge LLC (Property Owner).

**GENERAL**

1. The applicant shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
2. The applicant, property owner or designated representative shall allow the City's staff to access the property for site inspection(s) to confirm all approved conditions have been completed and are being maintained in compliance with all adopted city, state and federal laws.
3. Failure to comply with any of the conditions set forth in this approval, or as subsequently amended in writing by the City and agreed to by the applicant, may result in failure to obtain a building final and/or a Certificate of Occupancy until full compliance is reached. The City's requirement for full compliance may require minor corrections and/or complete demolition of a non-compliant improvement regardless of costs incurred where the project does not comply with design requirements and approvals that the applicant agreed to when permits were pulled to construct the project. The applicant acknowledges that the conditions set forth in this approval are not intended to supersede any obligations imposed pursuant to Chapter 6, Article 14 of the Hayward Municipal Code related to commercial cannabis permits, as it may be amended from time to time.
4. All outstanding fees owed to the City, including permit charges and staff time spent processing or associated with the development review of this application shall be paid in full prior to any consideration of a request for approval extensions and/or the issuance of a building permit.

**Cannabis Dispensary Use & Operations**

5. The applicant and/or business operator shall be required to volunteer 20 hours with the Keep Hayward Clean and Green Task Force and shall participate in either the "Adopt a Parking Lot" or "Adopt a Block" programs. Proof of volunteer completion and participation of the adoption programs shall be provided to the Planning Division with one year of the start date of the business operation.
6. The applicant shall take all reasonable steps to discourage and correct conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding a permitted facility. Such conditions include but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti. Graffiti must be removed from property and parking lots under the control of the permittee within 72 hours of discovery.

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7. The cannabis retail dispensary and retail delivery business may operate per the hours allowed by the State, 9 a.m. and 9 p.m. daily.
8. The retail delivery vehicle shall not be stationed or loaded for delivery on public right of way.
9. During the business hours of operation, all retail delivery vehicles shall be stationed on site, in the designated parking area shown on the approved set of plans on file with the Planning Division, date stamped September 10, 2020.
10. After normal business hours, there shall be no delivery vehicles or retail delivery vehicles parked on-site overnight.
11. All loading and unloading of delivery vehicles or retail delivery vehicles shall be done to the rear of the building as shown on the approved set of plans on file with the Planning Division, date stamped September 10, 2020.
12. The cannabis dispensary shall operate according to these conditions of approval and the business plan date stamped September 10, 2020.included as part of the use permit application, including the hours of operation, intensity of use and mode/character of the proposed dispensary operation. Any future change or modification of the operational plan and/or any expansion of the approved use may require the submittal of a new use permit application and commercial cannabis permit and shall be subject to additional review and approval by the City prior to any change, modification or expansion.
13. The applicant shall provide a detailed Community Benefits program and coordinate the implementation of the proposed Community Benefits program with City staff within six months from use permit approval. The applicant will be subject to annual review and verification on the implementation of the approved Community Benefits program prior to permit renewal.
14. Permittees shall employ only persons at least 21 years of age at any permitted facility within the City of Hayward. Employee records shall be kept and maintained, and proof of age shall be provided to the City upon request.
15. Permittees shall have an on-site manager at each permitted facility within the City of Hayward who is responsible for overall operation during times that employees are conducting operations and shall provide the City with contact information for all such persons, including telephone number and email address. Permittees shall also provide the City with the name and contact information including phone number of at least one manager that can be reached 24-hours a day.
16. The proposed cannabis use shall operate in a manner to prevent possible diversion of cannabis and shall promptly comply with any track and trace program established by the State.
17. No outdoor storage or uses are permitted. All cannabis related activities are to be conducted indoors.

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18. The applicant shall notify the City if it intends to transfer ownership or operational control of a Commercial Cannabis Business. The transferee shall be responsible for complying with all applicable local and state licensing requirements. Any conditions imposed upon the transferor by the original use permit shall be binding upon any subsequent transferees. Any transfer of ownership or operational control of a Commercial Cannabis Business which results in a lapse of normal operations for a period of six months or more shall be required to obtain a new use permit and/or commercial cannabis permit, consistent with Hayward Municipal Code Sections [10-1.3170](#) or [10-1.3270](#), as applicable.
19. Cannabis or cannabis products, whether for medicinal or adult recreational use, shall only be sold to individuals authorized by state law to purchase such cannabis or cannabis products.
20. No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a permitted Commercial Cannabis Business.
21. Subject to Section 10-1.3607 of the Hayward Municipal Code, consumption or ingestion of cannabis or cannabis products on the premises of a permittee, including outdoor areas and parking lots, is prohibited.

Security

22. The proposed cannabis use shall provide adequate security on the premises, including any on-site security, lighting and alarms, to ensure the public safety and the safety of persons within the facility and to protect the premises from theft. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:
  - a. *Security Cameras.* Security surveillance IP video cameras shall be installed at the public and vendor entrances, in the parking lot and throughout the building in accordance with the Security Room Diagram provided in the Conditional Use Permit Application. All cameras shall be maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall always remain active and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for ninety (90) days.
  - b. *Building Security.* All points of ingress and egress to the proposed use shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks. All heating, ventilating, air-conditioning and service openings shall be secured with steel bars and/or metal grating.

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- c. *Security Guards.* The applicant shall provide at least two uniformed security guard licensed by the State of California. The security guards shall be stationed at each entrance when in use. The security guard(s) shall maintain order therein and prevent any activity which would interfere with the quiet enjoyment of their property by nearby resident(s). Said personnel shall carry his/her Guard Card on their person at all times and present it to any Peace Officer upon demand. Said personnel shall be clothed in such a manner as to be readily identifiable. Additional guards may be required at the discretion of the Chief of Police.
- d. *ID Scanners.* Security guards shall use an ID scanner to verify authenticity of IDs for all patrons who enter the business.
- e. *Alarm System.* A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. The applicant shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records.
- f. *Secure Storage and Waste.* Commercial Cannabis products and associated product distribution and dispensing waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance. Cannabis products shall be secured in a safe and/or vault room with proper locking and security mechanisms.
- g. *Transportation.* The proposed use shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Cannabis products and currency, in accordance with local and state law. None of the vehicles associated with commercial use shall have markings or advertising that indicates the presence of cannabis on-site.
- h. *Emergency Access.* Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.
- i. *Background Checks.* All employees, including construct security guards, working in conjunction with the cannabis retail and delivery uses shall be subject to background/LiveScan checks. Additionally, all employees shall furnish the Hayward Police Department a state or federal registered Identification Card, upon request.
- j. *Inspections.* During regular business hours, the building premises shall be accessible, upon request, to an identified Hayward Police Department, Building Division or Code Enforcement employee for random and/or unannounced inspections.

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- k. *Records Retention.* A licensed retailer must maintain financial records, personnel records, training records, contracts, permits, security records, destruction records, data entered into track-and-trace, and an accurate record of all sales for seven years. All records must be made available to the Hayward Police Department upon request
- l. *Local Contact.* Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.

*Odor Control*

- 23. No cannabis odors shall be detectable outside of the facility. The applicant shall incorporate and maintain adequate on-site odor control measures such that the odors resulting from cannabis stored and sold on-site cannot be readily detected from outside of the structure in which the Business operates or from other non-cannabis businesses adjoining the Commercial Cannabis Business.
- 24. The building permit applicant shall include duct work, filters and other recommendations included in the Odor Mitigation Plan and shall be certified by a professional engineer or industrial hygienist. The Odor Mitigation Plan submittal shall include the following:
  - a. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;
  - b. Staff training procedures; and
  - c. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.

*Commercial Cannabis Permit*

- 25. The applicant shall obtain and maintain a valid Commercial Cannabis Permit from the City, including any other applicable State and local permits. Commercial Cannabis Permit applications and renewals are subject to the requirements of HMC Section 6-14.15. **Commercial Cannabis Permits are valid for a period of one year from the date that the permittee received land use approval and shall be renewed annually.** The permit is invalid if the term has expired and the annual fee, as established in the City of Hayward Master Fee schedule, has not been timely paid in full. Non-payment will result in a violation penalty fee in accordance with the Master Fee Schedule for Cannabis uses. Additionally, the City may invalidate or suspend a Commercial Cannabis Permit for excessive calls for service or nuisance citations.

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26. The proposed commercial cannabis use shall not commence operations until the Business can demonstrate compliance with all necessary state and local licenses (dual licensing) and agency permits. Failure to demonstrate dual licensing in accordance with the Hayward Municipal Code shall be grounds for revocation of a City approved permit. Revocation of a local permit and/or a state license shall terminate the ability of the Commercial Cannabis Business to operate until a new permit and/or state license is obtained.
27. The applicant shall maintain books, records, accounts, public safety calls for service, and all data and information relevant to its operations of the commercial cannabis use, including the implementation of the proposed community benefits component, and allow the City access to such records for purposes of conducting an audit or examination to determine compliance with the Hayward Municipal Code, and other local regulations, including compliance with local tax obligations. Prior to the applicant's commercial cannabis permit renewal each year, the applicant shall provide these records to the City for review to verify compliance.

*Delivery Operations*

28. No cannabis or cannabis product shall be delivered to individuals who are under 21 years of age.
29. The delivery driver shall not deliver cannabis to an individual who is visibly intoxicated at the time of delivery
30. The delivery driver shall not deliver cannabis to an individual if there is reason to believe the cannabis will be diverted to a person under 21 years of age, or a person who is not a qualified medical marijuana patient
31. All money received by the delivery driver shall be promptly stored in the delivery vehicle's secure container
32. Upon returning to the business location, the delivery driver and a manager shall reconcile the delivery manifest, delivery log, remaining inventory, and all money received
33. Prior to the close of business for the day, the manager shall ensure that all delivery information is entered into the applicant's records
34. Prior to engaging in delivery operations, and at any time during normal business hours, each delivery vehicle shall be inspected and approved by the Chief of Police
35. Each delivery vehicle shall not have any identification or markings relating to cannabis
36. Each delivery vehicle shall be equipped with a secure container
37. Each delivery vehicle shall be equipped with a dual-facing video camera and recording system affixed to the vehicle and positioned in such a way as to capture the driver/interior of the vehicle, as well as the front outside of the vehicle

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38. All cannabis transactions between the driver and the customer shall be recorded via a body worn camera. Notification shall be made to the customer prior to the transaction advising all sales of cannabis are video and audio recorded.
39. Video recordings from each delivery vehicle recording system shall be retained for 90 days
40. The delivery vehicle video and recording system must be of adequate quality, color rendition, resolution, and position to allow the ready identification of any individual driving the delivery vehicle, approaching the delivery vehicle, or occupying the passenger compartment of the delivery vehicle
41. Delivery vehicle video recordings shall be made available and accessible to the Chief of Police and any other city official charged with enforcing the provisions of this Code immediately upon request for review and copying
42. The delivery vehicle shall be equipped with a GPS tracking system with the following minimum capabilities:
  - a. Live remote monitoring of the delivery vehicle from when it leaves the collective to when it returns to the collective and is no longer in service as a delivery vehicle,
  - b. Live updates at no greater than ten (10) second intervals
  - c. Storing historical GPS data for at least 90 days
  - d. A cell phone does not meet the GPS tracking system requirement;
  - e. Access to both live and historical GPS tracking system data shall be provided to the Chief of Police;
43. The applicant shall obtain and maintain for each delivery vehicle and driver all of the insurance requirements as may be presently or in the future required by any financial responsibility laws of the State of California regarding Commercial Car Insurance;
44. Should the insurance coverage for any particular driver or vehicle be revoked or cancelled, such driver or vehicle shall be taken out of service immediately.

**Interior and Exterior Building Design**

45. The applicant and/or business operator shall be required to incorporate a public art component on the new building or on the project site. Installation and/or completion of said public art component shall occur prior to issuance of a building final or certificate of occupancy, whichever comes first. Approval of the proposed public art shall be reviewed and approved by the Planning Division prior to installation and/or commencement.
46. The building colors and materials shown on the building permit plans shall match those shown on the plans and renderings, except as modified in these conditions of approval. Any revision to the approved colors and materials shall be reviewed and approved by the Planning Division prior to the issuance of a building permit.

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47. Storefront windows shall be kept clear and free of all interior or exterior obstructions including but not limited to display cases, curtains, black out windows, and other methods of obscuring light and views into the building.
48. Interior fixtures and structures including but not limited to interior cornice shall not block windows and shall not be placed in a manner to be visible from the sidewalk or entries. Interior fixtures shall be sized and/or placed in a manner to ensure that cannabis is not visible from the public right-of-way.
49. Windows shall not be blacked out or covered with interior shutters or curtains in a manner to block views into the tenant space.
50. All vents gutters, downspouts, flashings, electrical conduits, and other utilitarian fixtures shall be painted to match the color of the adjacent material unless specifically designed as an architectural element.
51. All lighting fixtures affixed to the building shall incorporate a shield to allow for downward illumination. No spillover lighting to adjacent properties is permitted and all exterior lighting on walls, shall be recessed/shielded to minimize visual impacts.
52. All exterior and rooftop mechanical equipment shall be screened. Mechanical and rooftop equipment shall include, but is not limited to, electrical panels, pull boxes, air conditioning units, gas meters, and other equipment. All rooftop screening and mechanical equipment shall be shown on the project plans and be subject to final review and approval by City staff prior to the issuance of an occupancy permit.
53. Any above-ground structures that may be required to provide utilities for the project shall be compatible as to location, form, design, exterior materials, and noise generation. The applicant shall obtain staff approval prior to issuance of any permits.

**Signage**

54. No signs are approved with this project. Any signs placed on-site or off-site shall be reviewed and approved by the Planning Division and a separate Sign Permit application shall be required, consistent with Hayward Municipal Code Sign Ordinance requirements.

**Expiration & Revocation**

55. This Use Permit approval is void 36 months after the effective date of approval unless:
  - a. Prior to the expiration of the 36-month period, a building permit application has been submitted and accepted for processing by the Building Official or a time extension of the approval has been granted by the Planning Director.



**EXHIBIT A**

- b. If a building permit is issued for construction of improvements authorized by the use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance on the conditional use permit approval. A request for an extension must be submitted in writing to the Planning Division at least 30 days prior to the above date.
  - c. Business operations have commenced in accordance with all applicable conditions of approval.
  - d. If this conditionally/administratively permitted use cease operation for a period of more than six consecutive months, it shall be deemed to be discontinued, and the use permit establishing said use shall become null and void. Reestablishment of said use shall only be permitted upon obtaining a new use permit.
56. The Planning Commission may require modification, discontinuance or revocation of this Conditional Use Permit if its determined that the use is operated or maintained in a manner that it:
- a. Adversely affects the health, peace or safety of persons living or working in the surrounding area;
  - b. Contributes to a public nuisance; or
  - c. Has resulted in excessive nuisance activities including disturbances of the peace, illegal drug activity, diversion of commercial cannabis or commercial cannabis products, public intoxication, smoking in public, harassment of passerby, littering, or obstruction of any street, sidewalk or public way; or
  - d. Violates any provision of the Hayward Municipal Code or condition imposed by a City issued permit, or violates any provision of any other local, state, regulation, or order, including those of state law or violates any condition imposed by permits or licenses issued in compliance with those laws.

**CODE ENFORCEMENT DIVISION**

57. To the extent permissible by law, the City Manager and designees, and Code Enforcement shall have the right to enter and inspect during reasonable hours of operation all areas of the Commercial Cannabis establishment for the purposes of ensuring compliance with all pertinent Cannabis regulations and requirements. If the Cannabis permit holder or agents refuse to grant permission to enter, inspect and investigate, the City may seek an inspection warrant pursuant to the California Code of Civil Procedures.

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58. Every owner of real property within the City is required to manage the property in a manner so as not to violate the provisions of the Cannabis Ordinance and/or any State and Municipal regulations. The property owner remains ultimately liable for all penalties and fees as a result of violation of any of the requirements for the Commercial Cannabis operation thereof regardless of any contract or tenant agreement or other third parties.
59. Prior to the issuance of the annual Commercial Cannabis Permit and occupancy, the applicant shall provide a comprehensive flow chart or diagram that illustrates the product location at each phase of the business operation, from start to finish and up to the release to the consumer.
60. The Commercial Cannabis establishment shall maintain, and visibly post valid copies all required State, Local, and Municipal permits, including but not limited to the State of California Cannabis Bureau license, Hayward Cannabis Permit, Hayward business license, and other pertinent permit and licenses according to the specific cannabis use.
61. Permittees shall correct all nuisance conditions, including but not limited to smoking, noise disturbance, loitering, littering, and graffiti in parking areas, sidewalks, alleys and areas surrounding the permitted facility.
62. Violation of the conditions of approval, the City of Hayward Municipal Code, and/or local and state cannabis requirements and regulations is declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in the municipal code for abatement of nuisance conditions, including but not limited to Chapter 5, Article 7 and Chapter 1, Article 7 of the Hayward Municipal Code.
63. All Commercial Cannabis Business premises shall be accessible during regular business hours, upon request, to an identified Hayward Police Department or Code Enforcement employee for random and/or unannounced inspections. Verified cannabis violations will result in penalty fee in accordance with the adopted Master Fee Schedule for Cannabis uses. The City may suspend or revoke the Commercial Cannabis Permit for excessive calls for service or nuisance conditions.

**BUILDING DIVISION**

64. The project will require a building permit application and the associated plan review process. During the building permit review stage, detailed comments will be provided.
65. For the building permit submittal drawings, a lighting plan and T-24 energy report shall be included in the set.

**PUBLIC WORKS ENGINEERING AND TRANSPORTATION**

66. City's Encroachment Permit shall be secured for any work proposed in the public sidewalk or parking lot.

**EXHIBIT A**

67. Applicant shall submit on-site and off-site outdoor lighting and photometric analysis plan in conjunction with the building permit submittal. The photometric site lighting plan shall include fixtures, mounting heights, light wattage and that demonstrates adequate site and off-site lighting without excessive glare, off-site impacts or “hot spots.” All lighting shall be reviewed and approved by the City Engineer, Planning Division and Hayward Police Department prior to issuance of building permits.

**UTILITIES AND ENVIRONMENTAL SERVICES**

68. Complete the attached Wastewater Discharge Survey and include with plans for the building permit application.
69. Water Services. The property has an existing ¾” domestic water meter (account # 13268). Based on the preliminary proposed floor plans, this water meter may be sufficient for the proposed improvements.
70. Sanitary Sewer Services. The property has an existing commercial sanitary sewer connection with a “grandfathered” sewer capacity of 210 gallons per day of domestic-strength wastewater discharge. Additional sewer capacity may need to be purchased to additional accommodate wastewater discharge from the proposed business.
71. Irrigation Water Services. If the property will have over 500 square feet of irrigated landscapes, a separate irrigation water meter will be required.
72. Backflow Devices. All domestic and irrigation services must have a reduced-pressure (RP) backflow prevention assemblies per City of Hayward Standard Detail 202 (SD-202). Backflow prevention assemblies shall be at least the size of the water meter or the water line on the property, whichever is larger.

**SOLID WASTE**

73. All trash enclosures must adhere to all the basic design guidelines provided in Section 3 of the City's Standard Design Requirements for Collection & Storage of Trash, Recyclables and Organics for Commercial Projects. All trash enclosures shall be adequately screened from view, utilizing a decorative wood or masonry wall or combination thereof and incorporate a roof, and doors which are compatible with the design of the primary building on site. The building permit submittal shall include a detailed set of plans that show the design details of the enclosures, including the location of all bins and label each bin with the capacity (ex: three cubic yards, four cubic yards, etc.) as well as the type of waste trash, recyclables, organics).
74. The owner or property manager shall be responsible for litter-free maintenance of the property and shall remove any litter on or within 50 feet of the property daily to ensure that the property and its street frontage remain clear of any abandoned debris or trash per Municipal Code Sec.11-5.22.
75. All trash bins must be removed from public right of way within four hours after collection.

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76. Any waste, recycles, or organics not serviced by the City must be disposed of by the applicant as deemed necessary or as require by the City of Hayward.
77. Construction & Demolition Debris: The City requires that construction and demolition debris be recycled per certain ordinance requirements. Submittal of the Debris Recycling Statement will be required at the time of your building permit. The form can also be found at <http://www.hayward-ca.gov/services/city-services/construction-and-demolition-debris-disposal>. You may also visit Hayward's [Green Halo webpage](#) and create a waste management plan instead of filling in the Debris Recycling Statement.

**TRANSPORTATION**

78. Applicant shall submit an on-site and off-site (fronting City ROW) Photometric Plan. Refer to Hayward's Standard Plans Sheet SD-120 for roadway lighting criteria, link: [www.hayward-ca.gov/documents/hayward-standard-details](http://www.hayward-ca.gov/documents/hayward-standard-details) which shall be reviewed and approved by Public Works-Transportation prior to issuance of Building Permits.
79. Applicant shall submit an on-site and off-site (fronting City ROW) Signing and Striping Plan. Refer to Caltrans' latest Standard Plans Sheet A90A for more information on marking compliant disabled parking stalls. Signing & Striping Plan shall be submitted to and reviewed/approved by Public Works-Transportation prior to issuance of Building Permits.
80. Applicant shall submit a Turning Analysis using the largest vehicle expected on-site (typically a delivery vehicle) using AutoTurn software. Turning Analysis shall not depict vehicles backing into Foothill Blvd. Turning Analysis shall be submitted to and reviewed/approved by Public Works-Transportation prior to issuance of Building Permits.

**LANDSCAPE**

81. Prior to issuance of building permit, detailed landscape and irrigation improvement plans prepared by a licensed landscape architect shall be approved by the City and submitted concurrently with the building plan check review process. The plans shall comply with the City's Water Efficient Landscape Ordinance (California Building Code Title 23) and all relevant Municipal Codes. The landscape plan shall be prepared on a surveyed map, and shall identify all existing tree species, locations and trunk diameter size measured at fifty-four inches from the ground. The landscape plan shall identify the status of existing trees for preservation and removal and identify proposed trees from the existing.
82. All existing landscape in the public right-of-way shall be protected during entire construction period. Any damaged trees, shrubs, groundcovers, or irrigation system shall be replaced and repaired at the developer's expense and shall be inspected and accepted by the City.

**EXHIBIT A**

83. Downtown Specific Plan Chapter 6, Section 3,2,020.B. 16 tree planting shall be required for gross site area acre minus building coverage. The parking lot is 0.25 acre; therefore, four 15-gallon parking shade trees shall be provided within the parking area providing uniform shade to parking spaces.
84. The driveway curb from Foothill Boulevard to first 90-degree standard parking space against the building shall be contiguous to form an endcap.
85. Water efficient and weather-based irrigation system in compliance with Bay-Friendly Water Efficient Landscape Ordinance shall be provided for existing and proposed landscape.
86. Prior to the issuance of Certificate of Occupancy, all landscape and irrigation shall be completed in accordance with the approved plan and accepted by the City Landscape Architect. Before requesting an inspection from the City Landscape Architect, the project landscape architect shall inspect and accept landscape improvements and shall complete Appendix C. Certificate of Completion in the City's Bay-Friendly Water Efficient Landscape Ordinance. The completed Certificate of Completion Part 1 through Part 7 or applicable parts shall be faxed/e-mailed/turn in prior to requesting an inspection from the City Landscape Architect.
87. Landscaping shall be maintained in a healthy, weed-free condition at all times and shall maintain irrigation system to function as designed to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which contribute pollution to the Bay. The owner's representative shall inspect the landscaping monthly and any dead or dying plants (plants that exhibit over 30% dieback) shall be replaced within ten days of the inspection. Three inches deep mulch should be maintained in all planting areas. Mulch shall be organic recycled chipped wood in the shades of Dark Brown Color, and the depth shall be maintained at three inches deep. All nursery stakes shall be removed during tree installation and staking poles shall be removed when the tree is established or when the trunk diameter of the tree is equal or larger to the diameter of the staking pole. All trees planted as a part of the development as shown on the approved landscape plans shall be "Protected" and shall be subjected to Tree Preservation Ordinance. Tree removal and pruning shall require a tree pruning or removal permit prior to removal by City Landscape Architect. Any damaged or removed trees without a permit shall be replaced in accordance with Tree Preservation Ordinance or as determined by City Landscape Architect within the timeframe established by the City and pursuant to the Municipal Code. Routine shearing and hedging of shrubs and perennials shall not be permitted. All plants shall retain natural size and shape. Irrigation system shall be tested periodically to maintain uniform distribution of irrigation water; irrigation controller shall be programmed seasonally; irrigation system should be shut-off during winter season; and the whole irrigation system should be flushed and cleaned when the system gets turn on in the spring.

**EXHIBIT A****HAYWARD FIRE DEPARTMENT**General:

88. Building Permits and approvals will be required for the construction/ alterations of the building to the City of Hayward Building Department. All building alterations shall be approved prior to the installation of proposed fire protection systems.

Access:

89. Address and premise identification approved numbers shall be placed on all buildings in such a position as to be plainly visible and legible from the road or street fronting the property. Dimensions of address numbers or letters on the front of the buildings shall be approved by the fire department.

Water Supply:

90. A fire flow shall be provided in accordance with the 2019 California Fire Code Table B105.1 based on the construction type and building area when building exceeding 3,600 square feet. A fire flow reduction of up to 50 percent is allowed when the building is provided with automatic sprinkler system in accordance with NFPA 13. The resulting fire flow shall not be less than 1,500gpm. (Provide waterflow information with the submittal of building permits)
91. The minimum number of fire hydrants shall be provided in accordance with the Hayward Fire Code Ordinance and the California Fire Code (CFC). The average spacing between hydrants is 300 feet. Any portion of the building or facility shall be within 400 feet of a fire hydrant. Spacing and locations of fire hydrants shall be subject to review and approval by the Hayward Fire Department. (Note hydrant locations with subsequent submittals)

Fire Protection:

92. Duct smoke detectors that are installed within the HVAC system (AHU's and Smoke Dampers) shall meet the California Mechanical Code for installation and the California Fire Code. Such detectors shall be interconnected to the buildings' main fire alarm control panel and zoned separately. (deferred submittal, if applicable)
93. 2A:10BC type fire extinguishers are required throughout the building for every 75' of travel or every 3,000 square feet of space including dining and service areas.
94. An automatic fire sprinkler system in accordance with NFPA 13 Standards shall be installed in this building. A separate fire permit is required for the fire sprinkler system installation. A State Licensed C16 Fire Sprinkler Contractor shall be responsible for the fire sprinkler system installation. Maximum static pressure of 80 PSI should be used when the test data indicates higher pressures. (Deferred submittal by licensed C16 contractor)
95. A maximum static pressure of 80 PSI should be used when test data indicates higher pressures. Residual pressures used in the calculation should also be adjusted accordingly.

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Underground fire service lines that serve NFPA 13 systems shall be connected to the city water main per Hayward Public Works Dept. SD-204 Standards. (separate submittal from overhead fire sprinkler system)