



**PLANNING COMMISSION MEETING  
 REMOTE PARTICIPATION  
 Thursday, June 10, 2021, 7:00 p.m.**

This meeting was conducted utilizing teleconference and electronic means consistent with State of California Executive Order No. 29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Planning Commission members participated via the Zoom Webinar platform.

**MEETING**

A meeting of the Planning Commission was called to order at 7:00 p.m. by Commissioner Bonilla.

**ROLL CALL**

Present: COMMISSIONERS: Ali-Sullivan, Bonilla, Goldstein (joined meeting at 7:35),  
 Mendall, Oquenda, Stevens  
 CHAIRPERSON: Roche  
 Absent: COMMISSIONER: None

Staff Members Present: Billoups, Carpenter, Lochirco, Monlux, Vigilia

**PUBLIC COMMENT:**

There were none.

**PUBLIC HEARING:**

**For agenda item no. 1, the decision of the Planning Commission is final unless appealed. The appeal period is 10 days from the date of the decision. If appealed, a public hearing will be scheduled before the City Council for final decision.**

1. Proposed Text Amendments to Chapter 6, Article 14 (Commercial Cannabis Businesses) and Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code for the Regulation of Personal and Commercial Cannabis in the City of Hayward (Application No. 202102446)

Acting Planning Manager Lochirco provided a synopsis of the staff report and a presentation. Mr. Lochirco announced that Hayward Police Sergeant Carpenter was present to answer questions.

Discussion ensued between the Planning Commission and City staff regarding the following: background checks in pre-screening process of applicants and what would disqualify applicants from eligibility; Council's direction at the initial implementation of the program; duplication in City and State regulations; status of the proposed Social Equity



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component; collecting demographic data of employees and operators; business concierge program created by Economic Development Division to support equity applicants; elimination of the community benefit plan as a requirement; additional sales tax increases; neighborhood compatibility to minimize adverse impacts; feedback from previous and current applicants; partnerships with Code Enforcement and HPD to minimize calls; introduction of temporary permits which leaves discretion with City Manager to create pathway for operators awaiting State licensing; concerns about privacy and retention in regards to delivery logs; language to specify hours of operation; reasons behind abandoned applications and licenses; difficulty securing retail sites; volume of applications; bans on name changes; options to restrict marketing of products towards youth; state regulations on product packaging; next opportunity to review Council's direction; measurements of success as identified by organizations versus applicants; collaboration with GARE on social equity efforts; funding required for additional programs; removing barriers to assist applicants who are eager to get started; proposed expanded zoning allowances for additional manufacturing and upscale dispensaries; distance requirements between retail dispensaries and buffers from State-defined Sensitive Land Uses as well as City identified sensitive areas with flexibility of Planning Commission to reduce buffers at their discretion; volume of calls for service and complaints around current dispensaries; revising Ordinance as the State updates regulations; collecting data from current businesses to adjust any problems; restrictions on concentration and dosages of products; how our process compares to neighboring cities; efforts to streamline processes; limit on number of dispensaries; background on first round of applications; distinction between dispensaries and microbusinesses.

Chair Roche opened the public hearing at 8:41 p.m.

Mr. Hector, asked about the differences between microbusinesses and retail storefronts and identified a potential loophole if the number of microbusinesses allowed is not capped; noted he is looking forward to the next application cycle.

Planning Manager Lochirco responded that the size limitation and type of products sold for a microbusiness will be maintained; with non-storefront retail there is no cap, with ancillary retail there is a cap; Council may decide to limit the number of microbusinesses based on future activity.

Chair Roche closed the public hearing at 8:45 p.m.

Commissioner Mendall thanked staff for the outreach efforts and the report which was clear and easy to understand; noted he was on the City Council when the efforts to bring retail cannabis first came to Hayward; appreciates changes presented from staff and believes they are aligned with direction provided by Council; supports allowing



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dispensaries in industrial areas; stated that we may eventually want to revisit the cap on dispensaries but we are still learning as we go and being cautious is appropriate; thrilled about adding another application cycle during the year to alleviate the burden on staff and make it easier on applicants; explained that making the community benefit optional was because it was impossible to enforce and the additional tax revenue in the General Fund made it so the benefits could be dispersed by Council; hours of operation cannot be one size fits all because of the varied locations of the businesses; disagrees with recommendation that loosens restrictions on microbusinesses.

Commissioner Oquenda thanked Commissioner Mendall for his comments and agrees that loosening the restrictions on microbusinesses can be removed; shared that he has professional experience with re-entry barriers and cannabis industry discrimination; duplicative issue of City and State both requiring background checks and decisions to reject can be in conflict which is unfair to applicant; provided context of current Bureau of Cannabis Control regulations; would like to propose that the City does not discriminate against applicants for substance abuse treatment history or convictions that are adjacent to cannabis arrests such as drug charges, gun charges, gang enhancements, only considering felony convictions involving dishonesty such as fraud or embezzlement; has recommended language that aligns criteria for what the City considers as rehabilitation, pulling determining factors from State regulation.

Commissioner Ali-Sullivan asked Senior Assistant City Attorney Vigilia to clarify if applicants need City approval or a State permit first; and asked if an applicant were denied in Hayward, could they still be considered in another city.

Senior Assistant City Attorney Vigilia confirmed the sequencing is to apply for local approval first, then someone from the Bureau of Cannabis Control would contact the City to confirm the applicants were in compliance with all local regulations and confirmed applications are site-specific and denial of an application would not impact decisions made at the State level.

Commissioner Goldstein questioned granting licenses to individuals with violent felony convictions; wants to be open minded from an equity justice perspective for applicants who could be considered rehabilitated but generally those with a violent past who have not completed a treatment program may exhibit violent behaviors again; would like to see data around recidivism rates and does not want to quickly dismiss convictions during the review process; and thanked Commissioner Oquenda for his perspective.

Commissioner Stevens thanked staff for their work and updates; clarified once a license is granted, it is reviewed annually and can be revoked.



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Commissioner Bonilla thanked staff for the comprehensive proposal and stated it is responsive to what the community and the businesses need; agreed with modifications suggested by Commissioner Mendall and Commissioner Oquenda.

Commissioner Ali-Sullivan stated that if an individual has paid their debt to society and the applicant has otherwise met the criteria, a previous criminal record should not be a reason to disqualify them; asked Commissioner Mendall to restate his recommendation.

Commissioner Mendall clarified he wanted to remove the proposed change that would allow microbusinesses to sell products that were not manufactured on site.

Chair Roche expressed appreciation for staff's work and research; streamlining the process for applicants is great; there will be opportunities to address problems as they come up; agrees that the microbusinesses can turn into mini dispensaries if we don't limit it to the original intent to only sell what is made on site; appreciates Commissioner Oquenda's recommendation to include language about the intent of the background process and noted the cannabis industry has made it a point to hire formerly incarcerated individuals; would like to add language under packaging section to make a strong statement paired with our ban on flavored tobacco.

Commissioner Oquenda shared that his proposal is from the Minority Cannabis Business Association which focuses on social equity programming and recommends banning all background checks for anything other than felony convictions involving crimes of dishonesty which would not be an automatic ban but something to be considered for denial.

Commissioner Mendall noted that on Attachment III, page 13, Section 10.1-3605(e), restoring this clause achieves the result he is looking for; responded to Commissioner Oquenda's potential amendment, noted the language is unclear and would be inclined to vote against it without seeing the language but would support directing staff to revisit and bring back options to Council to consider.

Planning Manager Lochirco stated that the sections stricken out were specific under the cultivation and manufacturing sections, but that language could be added under the newly defined microbusiness section.

Commissioner Ali-Sullivan responded to Chair Roche's comments about packaging and would like to go further to acknowledge signage and associated materials if the names and logos evoke associations that could be attractive to children.



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Planning Manager Lochirco confirmed there is language included about business name changes and marketing and branding would need to be reviewed and approved by the City before it would take effect; the wording is broad, but the intent is to make sure consumers are not given the wrong perception.

Chair Roche asked if language about product packaging would apply to delivery-only retailers.

Planning Manager Lochirco noted if delivery and distribution companies are curtailed by what kind of product they can carry, they are not going to be interested in service in this area.

Chair Bonilla asked Senior Assistant City Attorney Vigilia to confirm the City's ability to enforce product packaging and questioned how enforcement would work and what the criteria would be.

Senior Assistant City Attorney Vigilia noted it would be addressed on a case-by-case basis, as it could overlap with first amendment issues, but regulation of commercial speech is addressed differently; there are a lot of nuances to this type of regulation and would require further research; State regulations are somewhat broad.

Commissioner Oquenda made a motion to move staff recommendation with direction to staff to incorporate Commissioner Mendall's suggestion as well as reviewing restrictions on background checks.

Chair Roche seconded the motion.

Commissioner Ali-Sullivan asked for further clarity on Commissioner Oquenda's amendment regarding background checks and asked if he had proposed language or is asking staff to identify and interpret the intent.

Commissioner Oquenda read proposed language for Attachment V, Section 6-14.12, subsection 2 Applicants should be subject to LiveScan/background checks, and proposed replacing the following sections with the provided text: *(a) Background checks may only be used to check for felony convictions involving dishonesty including perjury, fraud, deceit, or embezzlement; (b) Evidence of rehabilitation may be used in determining whether a person should be licensed to operate if their conviction directly relates to the operation of a business; when evaluating whether an applicant or personal employment history who has been convicted of a criminal offense that is directly related, the City should now consider the criteria for rehabilitation as described in State Bureau of Cannabis Control Article III Section*



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517c 1-9; reiterated the intent is to restrict the things we are considering in background checks and to be explicit about what criteria we are relying on in evidence of rehabilitation.

Senior Assistant City Attorney Vigilia noted this could be incorporated as a direction to staff to craft similar language to what was provided.

Chair Roche restated the motion with amendments from Commissioners Mendall and Oquenda directing staff to craft language for Council to consider.

Commissioner Ali-Sullivan asked if it is possible to perform a background check and only see specific items.

Commissioner Oquenda noted a background check would return all items, but this language would identify which items were allowed to be considered in the evaluation process and that this is standard.

Commissioner Mendall and Commissioner Oquenda discussed hypothetical scenarios in which the background check would be applied. Commissioner Mendall does not support the provided language as he feels it is overly broad.

Chair Roche asked if the same background checks apply to individuals who are opening liquor stores.

Planning Manager Lochirco noted there are other businesses for sensitive uses which require background checks such as liquor stores and massage parlors.

Commissioner Oquenda noted his proposal only applies to the pre-screening process to ensure they are not screened out preemptively and noted the specific language he provided will not be part of the motion, just used as reference for staff to craft acceptable language with the intent to restrict background checks.

Commissioner Mendall thanked Commissioner Oquenda for his clarification and noted his support for the language as it is applied to the pre-screening stage with the understanding that other convictions could be considered further in the process.

Senior Assistant City Attorney Vigilia confirmed that the comprehensive background check would be available, but the language restricts the ability to consider what could disqualify someone preliminarily.



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Commissioner Bonilla asked why we would have different standards throughout the background check and noted it would be confusing for applicants to make it into the process then be denied for something that passed a pre-screen.

Planning Manager Lochirco noted the background check for the pre-determination of eligibility is the only time it is reviewed and there is not a subsequent stage when the background check is addressed again.

A motion was made by Commissioner Oquenda, seconded by Chair Roche, to make a recommendation to the City Council adopting proposed text amendments to Chapter 6, Article 14 (Commercial Cannabis Businesses) and Chapter 10 (Planning, Zoning, and Subdivisions) of the Hayward Municipal Code for the Regulation of Personal and Commercial Cannabis in the City of Hayward; with the following amendments: (1) microbusinesses with a proposed storefront may only sell products manufactured on site; and (2) making a recommendation to Council to more narrowly define the background checks for the pre-screening process per the City Attorney's review for consistency and legality.

The motion passed with the following roll call votes:

AYES:	Commissioners Ali-Sullivan, Bonilla, Goldstein, Oquenda, Stevens Chair Roche
NOES:	Commissioner Mendall
ABSENT:	None
ABSTAIN:	None

## **COMMISSION REPORTS**

### ***Oral Report on Planning and Zoning Matters:***

Planning Manager Lochirco apologized for any confusion and noted correspondence will continue to be sent to both City-issued email addresses and personal email addresses until further guidance is provided; provided a follow up to a conversation from the last meeting about concerns related to parking and objective standards, and reiterated staff is working on a joint City Council – Planning Commission work session in the fall to look at the Housing Element program with a racial and social equity lens, as well as development of zoning and design guidelines for residential projects and other concerns will be addressed during that meeting such as compatibility and massing.



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***Commissioners' Announcements, Referrals:***

Commissioner Mendall responded to the comments regarding the joint meeting, and noted he appreciates the follow up work to validate their concerns and matching the spirit of what they were asking for and believes there is no longer a need for the letter mentioned in the previous meeting.

Commissioner Bonilla reminded the community that Council Member Andrews has led the organization in partnership with the Hayward Black Business Roundtable in organizing the first annual Juneteenth Freedom Celebration in downtown Hayward on Saturday, June 19<sup>th</sup> from 10 am – 2pm and arranged to have Covid-19 vaccinations available downtown, and the first 300 to get vaccinated will get \$50 Farmer's Market gift card, encouraged all to visit the Job Resource and Wellness Fair.

**ADJOURNMENT**

Chair Roche adjourned the meeting at 9:54 p.m.

**APPROVED:**

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Robert Stevens, Secretary  
Planning Commission

**ATTEST:**

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Merry Monlux, Deputy City Clerk  
Office of the City Clerk