



DATE: January 15, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Update on Commercial Cannabis Permit Process and Future Rounds and Appropriation of Funds for Commercial Cannabis Permit Program Second Tier Review

RECOMMENDATION

That the Council provides feedback and guidance on the following policy options and appropriates \$70,000 from the General Fund fund balance to cover the costs associated with follow up activities:

Required Buffer for Retail Dispensaries.

- Option 1: Reduce or Eliminate the Over-Concentration Buffer
- Option 2: Add Flexibility to the Over-Concentration Buffer
- Option 3: Process Applications on First-Come, First-Served Basis
- Option 4: Maintain the Over-Concentration Buffer

Second Round of Commercial Cannabis Permits

- Option 1: Expand Interview Score Thresholds.
- Option 2: Remove Interview Thresholds for Cannabis Delivery Businesses
- Option 3: Develop Round Two Request for Proposals (RFP) for FY19/20
- Option 4: Delay Commencement of Second Round RFP for 6 or 12-Months

SUMMARY

On October 30, 2017, the City Council adopted Ordinance 17-13 adding Article 14 to Chapter 6 of the Hayward Municipal Code, which established the request for proposals process by which the City will select commercial cannabis businesses.

In June and July of 2018, the City Council approved Commercial Cannabis Permits for 15 businesses and allowed applicants up to six months to identify a proposed location and to submit applications for land use entitlements.

Over the past six months, staff has received countless phone calls and emails from applicants and potential applicants for Commercial Cannabis Permits who are looking to reapply to establish a cannabis business in Hayward. While a second Request for Proposals (RFP) process for cannabis businesses may be desired, staff is proposing several options to address

the previously approved applicants and meet the mounting demand of applicants wanting to come to Hayward along with the Council's desire to see more supply-chain (non-retail) based cannabis companies within the City.

Additionally, this report presents several policy options regarding the required 1000-foot over-concentration buffers for retail dispensaries, which has arisen since Council adopted the land use regulations and approved these retail operators in 2018.

BACKGROUND

On October 30, 2017, the City Council adopted Ordinance 17-13 adding Article 14 to Chapter 6 of the Hayward Municipal Code which established the RFP process by which the City will select commercial cannabis businesses. The process involves four stages to help differentiate applicants who meet the City's desired set of qualifications. These stages are:

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

The City established a specific RFP for cannabis testing laboratories that required applicants to discuss their proposed business plan and operations, management experience, and safety and security plan.

The first round of the Commercial Cannabis Permit Program began on December 8, 2017, with applications due on January 12, 2018. At that time, the City received 77 total applications for non-testing laboratory cannabis companies. Four of these applications did not meet the background check requirements of the City's commercial cannabis program. The subsequent 73 applications were then sent to neutral, third party review by City consultants HdL and ICF. Application review was completed in early May.

Applications were evaluated based on the Council approved criteria of the following:

- Business Plan and Operations (250 points)
- Management Experience (150 points)
- Safety and Security Plan (150 points)
- Community Benefits (150 points)
- Product Testing and Safety (100 points)
- Environmental Plan (100 points)
- Labor and Employment Practices (100 points)

Applications were scored and ranked out of 1000 points. Based on the overall distribution of scores, staff set thresholds for which companies would advance to the final round of interviews. Of the 74, there were 22 that advanced to the final round interview with staff members from the City Manager's Office, Development Services Department, and Hayward Police Department.

The score ranges and thresholds were:

TABLE 2: Score Ranges and Interview Thresholds

Business Type	Score Range (out of 1,000 total)	Initial Score Threshold	Advancing Applications
Cultivation	239-798	650	4
Manufacturing	385-798	700	3
Distribution	578.5-890	800	3
Retail	438-892	800	7
Delivery	349-702	650	2
Microbusiness	170-755	650	3

Of these 22 applications, the City approved the following businesses in June and July of 2018:

TABLE 3: First Round Approved Businesses

#	Company	Recommended Use
1	Mijosa, LLC	Cultivation & Manufacturing
2	Empress Extracts	Cultivation
3	Hidden Farms, Inc	Cultivation
4	Stoned Aged Edibles Co, Inc.	Manufacturing
5	Green Haven, LLC	Delivery
6	CBRA, Inc.	Distribution
7	Manifest, LLC	Distribution
8	Vista Development Enterprises	Distribution
9	Green Grizzly	Microbusiness
10	Sticky Thumb Delivery	Microbusiness
11	American Holdings	Microbusiness
12	Harrens Laboratory	Testing Laboratory
13	Aunty Honey's	Retail
14	Jiva Life	Retail
15	Hayward Station	Retail

The advancing fifteen (15) companies represented a metered approach for the City's first round of cannabis businesses. This initial approach for the first round was to allow for the City to operationalize and adjust the enforcement activities of the local cannabis regulations.

Planning Application Update

Since Council approved the commercial cannabis applicants in 2018, the Development Services Planning Division has only processed one (1) conditional use permit application for commercial cannabis manufacturing for Stone Aged Edibles and has approved one cannabis testing lab for Harren's Lab. Over the last six months, Planning Division staff have been meeting with and assisting applicants through the entitlement process. Currently, the Planning Division is processing five (5) additional land use applications related to cannabis,

including one Administrative Use Permit for a delivery operation, one Conditional Use Permit for a microbusiness, and three Conditional Use Permit applications for retail dispensaries. Applicants who were approved during the first round of application selection have until April 9, 2019 to submit their land use applications to avoid abandonment of their license. Additionally, any applicant who was selected or rejected during the first round of RFP review would be eligible to resubmit and/or amend their proposal during the second round of review once the second RFP is released.

DISCUSSION

Required Buffer for Retail Dispensaries

When the City Council adopted the cannabis land use ordinance in November 2017, there was a requirement that approved retail dispensaries recognize a 1,000-foot buffer between dispensaries to minimize potential for over-concentration of these uses within the downtown area. At the time the land use ordinances were adopted, it was not known where specific dispensaries would be located but it was discussed that even with a 1,000-foot buffer requirement, a significant number of parcels could accommodate a dispensary within the downtown area.

Following the issuance of the Request for Proposals (RFP) in December 2017, the City selected three applicants to operate retail dispensaries in the City. At the time Council reviewed the business proposals in July 2018, two applicants, Jiva Life and Hayward Station, identified possible locations downtown and one applicant, Aunty Honey's, did not. Since Council's review and selection of these proposals in July 2018, all three applicants have submitted planning applications to operate retail dispensaries and while all three applications are currently incomplete and pending resubmittal, all three applications are within the 1,000-foot over-concentration of one-another and within the buffer adopted by Council last year. As a result, staff is looking for feedback and direction from Council on several possible options related to dispensaries in the downtown, which are described below.

Option 1: Reduce or Eliminate the Over-Concentration Buffer. If Council does not believe the 1,000-foot over-concentration buffer is necessary, they can direct staff to process a zoning text amendment to reduce or eliminate the 1,000-foot requirement from the zoning ordinance. While this could result in several dispensaries located within proximity to one another, it would expand the number of sites that are currently available to accommodate retail dispensaries in the City. With this Option, Council could consider all three applications once a zoning text amendment was completed.

Option 2: Add Flexibility to the Over-Concentration Buffer. While state law requires that all Cannabis businesses be subject to a 600-foot minimum setback from the sensitive land uses, unless reduced by local authority, as described in California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768, the 1,000-foot over-concentration buffer is not mandated by the State. Similar to the flexibility added to the Ordinance for those uses within 600 feet of

parks and open space areas that contain children’s activity areas, the Council could direct staff to process a zoning text amendment to allow the Planning Commission to reduce the 1,000-foot buffer if the Commission or Council finds that the public convenience and necessity will be served by an alternate distance requirement. With this Option, Council could consider all three applications once a zoning text amendment was completed.

The proposed amendment would further limit the possible exposure of these uses by minors and is consistent with how the City has controlled other sensitive, age-restricted uses, including bars, nightclubs, liquor stores, and smoking establishments.

Option 3: Process Applications on First-Come, First-Served Basis. While many sensitive, age-restricted uses maintain a buffer from other established uses, commercial cannabis retail dispensaries are unique in that none of the selected applications have been approved and as such, no buffers from those businesses have been established. Option 3 would direct staff to continue to process all three land use applications and once the applications are deemed complete, forward the application(s) to the Planning Commission and City Council for consideration. Any pending land use application which is not deemed complete and which conflicts with the over-concentration buffer at the time another land use application for retail dispensary is complete, would be rejected. With this Option, Council would only consider those applications which are deemed complete first and outside of the 1,000-foot buffer from each other.

Option 4: Maintain the Over-Concentration Buffer. While two of the retail applicants identified possible locations outside the buffer and submitted land use applications that observed the 1,000-foot buffer, one did not. Council could direct staff to maintain the buffer and only process those applications which fall outside the buffer. Although none of the three applications are deemed complete, this Option would effectively allow only Jiva Life and Hayward Station to proceed through the Conditional Use Permit process. The third applicant, Aunty Honey’s, would be processed with a recommendation of denial, without prejudice, due to a finding of inconsistency with the adopted Municipal Code, which requires a 1,000-foot separation. If rejected, staff would also recommend that Aunty Honey’s be allowed additional time to identify a new location on a site that meets the buffer requirements.

While staff believes the 1,000-foot buffer is warranted to minimize over-concentration, staff also believes that a text amendment to allow the Planning Commission or City Council additional flexibility to evaluate applications on a case-by-case basis may be warranted. A map of the proposed dispensary locations is included as Attachment III.

Expansion of Cannabis Uses

The Development Services, Planning Division has received several inquiries from applicants who were previously approved for a commercial cannabis license in the City who are now looking to expand their operation to include other cannabis activities. For the first RFP issued

last year, applicants were required to submit separate business proposals for each land use activity being requested to allow the City and the outside consultants an opportunity to evaluate and score each activity independently. While this process allowed the City to select the highest scoring applicants for each land use activity, it does not allow applicants the opportunity to expand their business once established. If Council has a desire to allow commercial cannabis businesses the opportunity to expand their non-retail land use activities once established, staff can incorporate that direction into the licensing process. While each cannabis activity would still be subject to the zoning, land use and regulatory process, allowing an expansion of the uses within an already approved cannabis operator could further assist the City in meeting the economic development goals.

Second Round of Commercial Cannabis Permits

Over the past six months, staff has received many phone calls and emails from applicants and potential applicants for the Commercial Cannabis Permit. Staff is presenting an option to meet this mounting demand along with the Council’s desire to see more supply-chain (non-retail) based cannabis companies expanding within the City.

Option 1: Expand Interview Score Thresholds. Staff is recommending expanding the initial score thresholds (as identified in Table 2) to create a second tier of cannabis businesses to interview and therefore bring forward for Council approval. Under this option, the City would not accept any new applications or changes to existing applications outside of updating contact information and management team changes.

Only two of the first-tier applicants have regulatory clearance to operate and five applicants have submitted for their land use approvals. There remain 8 Commercial Cannabis Permit applicants who have yet to submit a formal application. Given these considerations, expanding the interview score thresholds will bring more cannabis businesses to the City in an expeditious manner.

Attachment IV details all the first-tier and proposed second-tier scores by business type. Staff recommends the following thresholds for the second tier of review:

TABLE 4: Second Tier Interview Thresholds

Business Type	Score Range	Initial Score Threshold	New Score Threshold	Advancing Applications
Cultivation	239-798	650	525	5
Manufacturing	385-798	700	500	4
Distribution	578.5-890	800	700	6
Delivery	349-702	650	500	2
Microbusiness	170-755	650	500	5
			TOTAL	22

Option 2: Remove Interview Thresholds for Cannabis Delivery Businesses. Earlier this year, the State Legislature considered SB 1034 (Lara) which would prohibit local governments

from prohibiting cannabis licensees from delivering cannabis within or outside a given jurisdiction. While this bill died earlier this year, its provisions may be useful for this current discussion.

Under this option, the City would not set a score threshold for interviews with Cannabis Delivery applicants. Doing so, would increase the second tier of applications for delivery businesses from two (2) to six (6) and increase the overall number from 22 to 26.

Option 3: Develop Round Two Request for Proposals (RFP) for FY19/20. Following the closure of the second round of application review, staff could prepare for another round of Commercial Cannabis Permit review. To prepare for this, staff will also prepare the necessary budget requests for the FY2020 budget process, which may include additional staffing and consulting services budget increases. Additionally, another Council Work session would then be required to review several changes to the program such as streamlining testing laboratory approvals and providing options for existing businesses to add cannabis as an additional business component (e.g. cosmetic companies manufacturing CBD infused cosmetics). Given that no cannabis businesses (other than one testing lab) are operational, staff recommends at least a six-month delay in actually issuing another RFP. It would be useful to understand the actual operational and enforcement impacts of these businesses so that any additional regulatory changes can be made prior to another RFP process.

Option 4: Delay Second Round of Request for Proposals for 6 or 12 Months. The initial approach for cannabis businesses was to limit the total number of cannabis businesses to afford staff the ability to fine-tune the Fire, Police, and Code Enforcement aspects of regulating operating cannabis businesses. Staff recommends that the Council delay commencement of the second round RFP for 6 or 12-months. This would also give staff the time to conduct a programmatic evaluation of the City's current cannabis regulations and program requirements, in order to streamline permitting processes and reduce the overall impacts of this program on staffing.

FISCAL IMPACT

Earlier this year, the City Council adopted Ordinance 18-027 that set the Cannabis Business Tax at 6% of gross receipts. The cannabis related services provided by these businesses will pay this tax, providing some of the City's first sources of revenue from the voter approved Measure EE.

Based on the three-year pro forma estimates provided by the first-round applicants, staff estimates the City will receive \$2.8 million in year one to \$4.8 million in year three in Measure EE Revenue. These figures are estimates only and should be considered with the understanding that the cannabis market is new, and that reliable market data has not been established and/or validated. It is reasonable to expect similar or slightly reduced revenue projections from the second tier of applicants given potential market saturation.

For FY2019, the City has budgeted a conservative \$750,000 in revenue generation, which accurately reflects the anticipated time to market it will take for these entities, as these

entities still need to complete their land use entitlements. However, it is reasonable to expect that the City will not realize revenue from the 6% cannabis gross receipts tax until the latter part of Fiscal Year 2019, if at all, given the length of time it has taken for these initial applicants to compete their land use approvals. The City should maintain conservative revenue projections for this tax until the City has realized revenue and has enough data to form a reliable revenue forecast.

Review of all Commercial Cannabis Permit applications was funded through the \$5,000 refundable deposit per applicant. All applicants have had their deposits refunded at this time. Given there are no remaining funds for the proposed second tier activities, staff requests a one-time General Fund appropriation of \$70,000 to fund ICF to conduct interviews and other related program costs. Staff will then require the applicants who will now be going through the interview process to resubmit their \$5,000 deposits, which will reimburse the General Fund for these application processing expenses.

ECONOMIC IMPACT

Each of the 15 first-round entities approved articulated the desire to hire local Hayward residents and to pay them a livable wage. From the information provided in each application these firms plan to create an estimated 130 new jobs. These jobs will impact the City as these employees pursue their lives in the Hayward community and therefore contribute to the local economy while also remitting City sales, property, utility user, and other City levied taxes and fees.

The second tier of applicants will also create new jobs for the Hayward community. Those impacts will be articulated in future Council Commercial Cannabis Permit approval proceedings.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

NEXT STEPS

Following direction from the Council, staff will proceed with addressing the 1000-foot buffer issue for retail dispensaries as well as initiate the second tier of interviews for Commercial Cannabis Permits.

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Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

Kelly McAdoo, City Manager