



DATE: March 19, 2019

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Application to Amend Chapter 10, Article 1 (Zoning Ordinance), Section 10-1.3603(B) related to a Proposed Modification of the Required Setbacks for Commercial Cannabis Businesses from Certain Sensitive Land Uses; and Chapter 10, Article 1 (Zoning Ordinance), Section 10-1.3607(C).1 Related to a Reduction of the Overconcentration Buffer from 1,000 feet to 500 feet for Commercial Cannabis Retail Dispensaries of the Hayward Municipal Code in the City of Hayward, Requiring the Introduction of an Ordinance and the Adoption of a Resolution Approving Zoning Text Amendment Application No. 201900727

RECOMMENDATION

That the City Council approves the proposed Zoning Text Amendments to Chapter 10, Article 1, Section 10-1.3600, Cannabis, of the Hayward Municipal Code related to the setback requirements for commercial cannabis businesses and the over-concentration buffer for retail dispensaries in the City of Hayward by introducing an Ordinance (Attachment II) and adopting the Resolution (Attachment III) with the required findings and environmental review.

SUMMARY

Pursuant to HMC Section 10-1.3600¹, the City requires a 1,000-foot separation between commercial cannabis retail dispensaries and a 600-foot separation between all commercial cannabis businesses and sensitive land uses, including schools, day care centers and youth centers. The proposed text amendments would reduce the over-concentration buffer between retail dispensaries from 1,000 feet to 500 feet and additionally provide the Planning Commission the ability to reduce the 600-foot buffer for commercial cannabis uses from sensitive land uses, if two additional findings are made.

¹ Cannabis Land Use Ordinance: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA

BACKGROUND

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.

On June 15, 2017, the State enacted SB 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.

On October 30, 2017² and November 28, 2017³, respectively, the City Council adopted Ordinances 17-14 and 17-15, which enacted the regulatory and land use ordinances and framework authorizing cannabis businesses in the City, subject to compliance with the local and state regulations. Since 2017, several municipalities have adopted similar land use and regulatory ordinances but have modified or eliminated the State's buffering recommendations in an effort to focus more on the quality of cannabis operators within a mixed-use environment, where the strict observation of land use buffers would limit the areas available to establish these businesses. While the existing Ordinance requires a minimum separation from sensitive land uses and other retail dispensaries, the City has adopted a Request for Proposals (RFP) process that already provides for an independent and comprehensive evaluation of the cannabis operators prior to filing any land use applications.

On January 15, 2019⁴, City Council directed staff to process a text amendment to reduce the over-concentration buffer from 1,000-feet to 500-feet. While this reduction could result in several dispensaries locating in closer proximity to one another, it would expand the number of sites in the downtown area that are available to accommodate retail dispensaries.

Planning Commission Review. On February 28, 2019, the Planning Commission reviewed the proposed text amendments and voted 4-1 (two Commissioners absent) to recommend approval to City Council. The Commission expressed concern with the possibility that additional retail dispensaries would locate in the downtown area but supported the flexibility being proposed and suggested that, given the reduced proximity to one another, a quality building design and heightened security were essential.

² October 30, 2017 Council Minutes <https://hayward.legistar.com/MeetingDetail.aspx?ID=570110&GUID=1F62F795-56FA-4667-9BD1-E5FDA22CB8C5&Options=info&Search=>

³ November 28, 2017 Council Minutes <https://hayward.legistar.com/MeetingDetail.aspx?ID=573134&GUID=C82D348A-0412-4741-854C-23697F2AE444&Options=info&Search=>

⁴ January 15, 2019 Council Minutes <https://hayward.legistar.com/View.aspx?M=E3&ID=655077&GUID=C658C300-8AAA-4581-94DC-28AC5D713F7D>

DISCUSSION

Over-Concentration Buffer for Retail Dispensaries. The purpose of the over-concentration buffer is to limit the proximity of retail cannabis dispensaries from one another to mitigate potential cumulative land use impacts associated with traffic, noise, and public safety for those adult-only uses. The proposed text amendment would reduce the over-concentration buffer for retail cannabis dispensaries from 1,000 feet to 500 feet. 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 the 1,000-foot buffer, a significant number of parcels could accommodate a retail 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. When the 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 the Council's initial review and selection of these proposals, all three applicants have submitted planning applications to operate retail dispensaries. While all three applications are incomplete and pending resubmittal, all three applications are within 1,000-feet of one another and within the buffer adopted last year. The proposed text amendment would reduce the distance separation required between each retail dispensary, but the applicants would still be subject to the sensitive land use requirements discussed below and would be required to obtain a Conditional Use Permit, which would assess any environmental, physical, or safety impacts related to the use.

Buffer from Sensitive Uses. Another proposed text amendment would provide a consistent application of the required buffer from commercial cannabis businesses and would additionally provide the Planning Commission with flexibility to reduce the 600-foot buffer from all sensitive land uses, if additional findings of necessity are made. Currently, cannabis operators can apply for a Conditional Use Permit if they desire to locate within 600 feet of parks, libraries, and open space areas that contain children's playgrounds only if the Planning Commission can make findings of necessity to demonstrate that the proposed location is suitable and demonstrate that appropriate measures have been taken to mitigate any safety impacts. The proposed amendments would uniformly extend that provision to include the other sensitive land uses that primarily serve children and provide a consistent land use standard throughout the City.

The existing 600-foot buffer requirement between commercial cannabis businesses and sensitive land uses is based on a State recommendation to minimize possible exposure of cannabis uses from areas that primarily serve children and minors. The setback requirement is from the sensitive land uses described in California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768, unless the local jurisdiction establishes an alternative setback requirement. These uses include kindergarten, any schools

(grades 1 through 12), day care centers, and youth centers, which includes both public and private facilities, businesses and clubs that primarily serve youth. Additionally, the City requires a 600-foot buffer from other public areas where children congregate, including public parks, libraries, and designated open space areas. Public parks and open space areas that do not contain children's playground or similar amenities are exempt from this requirement.

Per Section 10-1.3603.B⁵, the Planning Commission has the ability to reduce the buffer around parks and open space areas upon making two findings of necessity. In order to approve a reduction from the 600-foot buffer, the Planning Commission must issue a Conditional Use Permit and find that: 1) the public convenience and necessity will be served by an alternate distance requirement; and 2) alternative measures have been taken by the applicant to assure public health and safety are in place with respect to a commercial cannabis business. Staff is recommending this flexibility be broadened and uniformly applied to all other sensitive land uses that primarily involve children, including schools, day care centers, and youth centers in order to provide consistency throughout the development review process. As part of the regulatory toolkit established by the State of California and the land use ordinances adopted by the City in 2017, staff believes that the current regulatory framework is sufficient to ensure that any impacts related to sensitive land uses are evaluated and minimized as part of a Conditional Use Permit process. Additionally, as part of the current RFP process, all commercial cannabis businesses are required to submit a business plan, which is reviewed and scored by an independent, outside consultant who determines whether or not the commercial cannabis operator has met the city's objectives related to best practices for the cannabis industry.

Permitted Zoning Districts. The zoning districts that administratively or conditionally permit the commercial cannabis uses would remain unchanged. For most commercial cannabis activities, including distribution, manufacturing and cultivation, the City's Industrial District is the only district where those uses are administratively or conditionally permitted. For retail operators, cannabis dispensaries are conditionally permitted in downtown and isolated areas around the City zoned General Commercial (CG), Central Business (CB), Central City Commercial (CC-C), Central City Residential (CC-R), and Center City Plaza (CC-P). As currently proposed, any commercial cannabis activity located within 600 feet of a sensitive land use would be required to obtain a use permit from the Planning Commission upon making additional findings of necessity, regardless of zoning district or land use activity. The proposed amendments would provide applicants additional options when selecting their business location in the City, but it would add a higher level of discretionary review by the Planning Commission on Use Permit applications near sensitive use areas that otherwise could have been processed administratively at staff level. Copies of the Cannabis Land Use Maps that reflect the 600-foot land use buffers from sensitive land uses is included as Attachment IV.

⁵ Commercial Cannabis Setback Requirement: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.3600CA_S10-1.3603COCABU

Hayward 2040 General Plan. The proposed zoning amendments contained herein are consistent with the goals and policies of all elements of the *Hayward 2040 General Plan*, including the following goals and policies:

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

ED-1.6 Advances and Specialized Manufacturing: The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail: The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.

ED-3.2 Fast Growing Industries: The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

ED-6.2 Land Use Certainty: The City shall strive to enhance land use certainty for businesses by identifying and removing unnecessary regulatory barriers that discourage private-sector investment.

Commercial Cannabis Permits. As part of the Commercial Cannabis Business⁶ regulatory framework approved by the City, cannabis operators are required to obtain multiple approvals through a two-step process at the local level in addition to State licensing. First, an applicant is required to obtain approval of a Commercial Cannabis Business Permit by the City to assure that all regulatory requirements are met. Second, the applicant is required to obtain the necessary land use entitlements that consider the location, size, and types of proposed uses allowed, consistent with the Zoning Ordinance standards. Any cannabis business operating in the City pursuant to City-issued permits must also obtain a cannabis license from the State. Failure to obtain the State license would be grounds for revoking the City's permit.

Commercial Cannabis Permits issued by the City are good for one year and must be renewed annually following the completion of a mandatory safety inspection and demonstrated compliance with all local and State regulations, including any conditions of approval adopted as part of a Use Permit process.

Environmental Review: The proposed text amendments are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Zoning Text Amendment to the Hayward Zoning Ordinance would reduce the over-concentration buffer between retail dispensaries to

⁶ Commercial Cannabis Businesses: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU

500 feet and require additional findings for commercial cannabis uses locating within 600 feet of sensitive land uses. Commercial cannabis operators would still be subject to the RFP review and selection process and subject to the land use entitlement process, which would evaluate applications on a case-by-case basis for environmental impacts pursuant to CEQA.

STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Strategic Initiative is to create and support structured services and amenities to provide inclusive and equitable access for all with the goal of becoming a thriving and promising place to live, work and play. This item supports the following goal and objective:

Goal 3: Develop a Regulatory Toolkit for Policy Makers.

Objective 3: Update, streamline, and modernize zoning codes.

The purpose of a text amendments is to update the regulatory guidelines governing the use(s) and to update them accordingly to be more aligned with the goals and objectives of the City Council related to the establishment of new commercial cannabis businesses in Hayward.

ECONOMIC IMPACT

There is no direct economic impact as a result of the proposed text amendments, but the amendments would provide approved applicants with additional flexibility to locate in the City. Each of the first-round applicants who were 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, which are currently being evaluated, will also create new jobs for the Hayward community. Those impacts will be articulated in future Council Commercial Cannabis Permit approval proceedings.

FISCAL IMPACT

In 2018, the City Council adopted Ordinance 18-027, setting the Cannabis Business Tax rate at 6% of gross receipts. The cannabis related services provided by the businesses included in this report will be subject to this tax, and once operating will provide revenue to the City from the voter approved Measure EE.

Based on the three-year pro forma estimates provided by the first-round applicants, staff estimated that the City would receive approximately \$2.8 million in the first full year of operation and up to to \$4.8 million in year three in Cannabis Business Tax related revenue. These figures are estimates only and should be considered with the understanding that the cannabis market data has proven to be unreliable as initial data was not established and/or validated.

For FY 2019, the City budgeted what at the time felt to be a conservative amount of \$750,000 in Cannabis Tax related revenue generation; however, to date the City does not have any businesses licensed and operating legally that are subject to the tax.

It is reasonable to expect that the City will not realize revenue from the 6% cannabis gross receipts tax until FY 2020, given the length of time it has taken for the initial applicants to compete their land use approvals. The City will maintain conservative revenue projections for this tax until the City begins to realize revenue and has enough data to form a reliable projection.

PUBLIC OUTREACH

On March 8, 2019, a Notice of Public hearing for the City Council meeting was sent to interested stakeholders and published in The Daily Review newspaper. To date, no comments have been received either for or against the proposed text amendments.

NEXT STEPS

If the Council approves the proposed amendments, the decision will be effective and final. A second reading and adoption of the Ordinance will occur at the next scheduled City Council meeting.

Prepared by: Jeremy Lochirco, Principal Planner

Recommended by: Laura Simpson, Director of Development Services

Approved by:



Kelly McAdoo, City Manager