

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING
 COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND
 COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD
 MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE);
 AND ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that:

A. Pursuant to its police powers, and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transporting, and testing within its jurisdiction.

B. The City has previously prohibited, through exclusionary zoning ordinance, both medical and non-medical adult cannabis land uses and regulations within the City.

C. The City wishes to establish a uniform regulatory structure for all medical and non-medical adult cannabis uses in the City in accordance with state law.

Section 2. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance to read as follow:

SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)

SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

- (e) Dance or night club.
- (f) Liquor store.
- (g) Theater, Large Motion Picture.
- (h) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)

SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CO District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (c) Pharmaceutical sales. (Where accessory to a medical office or clinic, and where it does not exceed 3,000 square feet).

SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)

SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See Section 10-1.1045 for special requirements);

SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret, Dance or Nightclub. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Convenience Market
 - (f) Liquor store.
 - (g) Pawn Shop

- (h) Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See [Sec. 10-1.1045](#) for special requirements.)

SEC. 10-1.1530 - CENTRAL CITY—RESIDENTIAL SUBDISTRICT (CC-R)

SEC. 10-1.1533 - CC-R CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:

- (5) Retail Commercial Uses.

[Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

SEC. 10-1.1540 - CENTRAL CITY—PLAZA SUBDISTRICT (CC-P)

SEC. 10-1.1543 - CC-P CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:

- (5) Retail Commercial Uses. (See General Regulations Section 10-1.2750 et seq. for regulations of alcohol.)

- (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)

[\(b\) Commercial Cannabis Retail Dispensary \(See Section 10-1.3600\)](#)

- (c) Dance or night club.

- (d) Convenience Market

- (e) Liquor store

SEC. 10-1.1555 - MINIMUM DESIGN AND PERFORMANCE STANDARDS FOR CC-C, CC-R, AND CC-P SUBDISTRICTS

- [g. Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- h. Decks and Ramps.
- i. Fences, Hedges, Walls.
- j. Grading.
- k. Landscaping.
- l. Lighting, Exterior.
- m. Office Uses in the CC-P Subdistrict.
- n. Open Space (Residential).
- o. Outdoor Storage.
- p. Parking, Driveways and Paving.
- q. Roof-Mounted Equipment.
- r. Signs.
- s. Surfacing.
- t. Trash and Recycling Facilities.
- u. Window Coverage.

SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)**SEC. 10-1.1615 - USES PERMITTED.**

- a. Primary Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District as primary uses, when not adjacent to a residentially zoned property or properties, when not specified as an administrative or conditional use and when the use is conducted completely within an enclosed building(s) provided that minor open storage may be permitted as an ancillary use.
- (2) Administrative and Professional Offices/Services.
- (a) Architectural, drafting and engineering offices.
 - (b) Banks and financial institutions.
 - (c) Commercial Cannabis Delivery
 - (d) Interior design studio.
 - (e) Manufacturer's representative office.
 - (f) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (g) Office. (Offices may constitute no more than 50 percent of the area of a building except when located in a building within a planned industrial park of 25 acres or more in area, as defined on the map on file in the Planning Division.)

SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of an administrative use permit:
- (1) Industrial Uses.
- (a) Any Industrial use(s) located on a parcel(s) which abuts an, R, A MH, OS or residential PD zoning district.
 - (b) Brewery or liquor distillery, including grain elevators.
 - (c) Commercial Cannabis Cultivation (up to 5,000 square feet)
 - (d) Commercial Cannabis Distribution
 - (e) Contractors storage yard.
 - (f) Industrial equipment sales or rental.
 - (g) Perfume or vinegar manufacture.
 - (h) Railroad yard.
 - (i) Recycling collection area.
 - (j) Sandblasting activities.
 - (k) Truck terminal.
 - (l) Truck rental.
 - (m) Truck storage yard.
 - (n) Vehicle dismantling facility. (Indoors only)
 - (o) Wind energy conversion system.
 - (p) Hazardous materials use and storage
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of a conditional use permit:

- (1) Industrial Uses.
 - (a) Commercial Cannabis Cultivation, over 5,000 square feet
 - (b) Commercial Cannabis Medical and Non-Medical Manufacturing, Level 1
 - (c) Hazardous materials use and storage
 - (d) Major outdoor storage.
 - (e) Recreational vehicle storage yard.
 - (f) Public storage facilities.

SEC. 10-1.1645 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

Industrial Buildings and Uses.

For industrial buildings and uses refer to the following specific criteria and standards.

- h. Cannabis. Refer to Section 10-1.3600, Cannabis.
- i. Decks and Ramps.
- j. Fences, Hedges, Walls.
- k. Food Vendor Permit.
- l. Grading.
- m. Landscaping.
- n. Lighting, Exterior.
- o. Outdoor Storage.
- p. Parking.
- q. Retaining Walls.
- r. Roof-Mounted Equipment.
- s. Signs.
- t. Surfacing.
- u. Trash and Recycling Facilities.
- v. Truck Loading Facilities.
- w. Yard Exceptions.
- x. Window Coverage.

SEC. 10-1.1800 - LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT DISTRICT (LM)

SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the LM District subject to approval of an administrative use permit:
 - (1) Light Manufacturing Uses.
 - (a) Laboratories, including cannabis, commercial, testing, research, experimental or other laboratories, including pilot plants.

SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

Special standards and conditions as set forth below are applicable to uses enumerated in this Section and listed in the individual districts. Departure or variation from these standards is permitted only when it can be established by the applicant that the intent and purpose of the district or the necessary findings for permit approval, as specified in this ordinance, are not

compromised. Where warranted by ordinance regulations or to implement official City policy, standards of development may be required that exceed those listed in this Section.

- d. [Cannabis, Personal Cultivation and Commercial Cannabis. Refer to Section 10-1.3600, Cannabis.](#)
- e. Garage Sales.
- f. Livestock, Apiaries, and Household Pets.
- g. Manufactured Housing Regulations.
- h. Outdoor Gatherings.
- i. Private Street Criteria.
- j. Recycling Facilities and Recycling Collection Facilities.
- k. Fence Regulations for Vacant Properties.
- l. Vehicle Parking, Repair, Display, and Storage Requirements

Section 3. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 2 (Off-Street Parking Requirements) to read as follow:

SEC. 10-2.340 - OFFICE, RETAIL, AND SERVICE USES.

The minimum number of off-street parking spaces required for office, retail, and service uses shall be:

USES	PARKING SPACES REQUIRED
OFFICES, medical and dental offices, clinics and laboratories, including Cannabis Testing Laboratories	1.0 for each 200 square feet of gross floor area
RETAIL establishments characterized by hand-carried merchandise in which a customer makes quick purchases or rentals in small quantities, including: Cleaners without a cleaning plant Convenience stores Commercial Cannabis Retail Dispensaries Delicatessen Doughnut shops Ice cream shops Laundry without a cleaning plant Off-sale liquor establishments Take out restaurants Video stores	1.0 per 175 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is 10,000 square feet or less or 1.0 per 215 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is over 10,000 square feet

SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES. The minimum requirements for wholesale, manufacturing, storage, transportation, and similar uses are:

USES	PARKING SPACES REQUIRED
Bakeries, wholesale	1.0 for each 500 square feet of gross floor area, or
Bottling establishments	
Canneries	If the building or structure has leasable bays of
<u>Commercial Cannabis Cultivation</u>	2,500 square feet or greater, the minimum off-
<u>Commercial Cannabis Distribution</u>	street parking required is 1.0 space for each
Communications equipment and service	1,000 square feet of gross floor area, or
facilities	
Creameries	If a building or structure has leasable bays of
Freight transportation terminals	10,000 square feet or greater, the minimum off-
Laundry and/or dry-cleaning plants	street parking required is 1.0 space for each
Lumber yards	1,500 square feet of gross floor area, or
Manufacturing, processing, or assembling	
uses	If a building or structure has leasable bays of
Utility yards	20,000 square feet or greater, the minimum off-
Wholesale or warehouse establishments	street parking required is 1.0 space for each
	2,000 square feet of gross floor area.

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600 to read follows:

Chapter 10-1.3600

CANNABIS

Sections:

- 10-1.3600 Purpose**
- 10-1.3601 Limitation on Use**
- 10-1.3602 Personal Cannabis Cultivation**
- 10-1.3603 Commercial Cannabis Businesses**
- 10-1.3604 General Requirements**
- 10-1.3605 Commercial Cannabis Cultivation**
- 10-1.3606 Commercial Cannabis Manufacturing**
- 10-1.3607 Commercial Cannabis Retail and Delivery**
- 10-1.3608 Special Events**
- 10-1.3609 Findings**
- 10-1.3610 Grounds for Permit Revocation or Modification**
- 10-1.3600 Purpose.**

This Chapter provides the location and operating standards for Personal Cannabis Cultivation and Commercial Cannabis Businesses to ensure neighborhood compatibility, minimize potential environmental impacts, provide safe access to medicine and provide opportunities for economic development.

10-1.3601 Limitations on Use.

A. Compliance with City Code. Personal Cannabis Cultivation and Commercial Cannabis Businesses shall only be allowed in compliance with this Chapter and all applicable regulations set forth in the City Code, including but not limited to, the cannabis business tax ordinance, and all regulations governing building, grading, plumbing, septic, electrical, fire, hazardous materials, nuisance, and public health and safety.

B. Compliance with State Laws and Regulations. All Commercial Cannabis Businesses shall comply with all applicable state laws and regulations, as may be amended, including all permit, approval, inspection, reporting and operational requirements, imposed by the state and its regulatory agencies having jurisdiction over Cannabis and/or Cannabis Businesses. All Cannabis Businesses (Medical and Non-Medical) shall comply with the rules and regulations for Cannabis as may be adopted and as amended by any state agency or department including, but not limited to, the Bureau of Cannabis Control, the Department of Food and Agriculture, the Department of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.

C. Compliance with Local and Regional Laws and Regulations. All Cannabis Businesses shall comply with all applicable Alameda County and other local and regional agency regulations, including, but not limited to, regulations issued by the Regional Water Quality Control Board and the Alameda County Public Health Department.

D. Commercial Cannabis Businesses shall provide copies of state, regional and local agency permits, approvals or certificates upon request by the City to serve as verification for such compliance. Commercial Cannabis permits issued pursuant to Article 14, Chapter 6 of this Code are valid for one year.

E. Applications for Administrative or Conditional Use Permits pursuant to this Chapter will not be accepted unless an applicant has already obtained a commercial cannabis permit pursuant to Article 14, Chapter 6 of this Code.

10-1.3602 Personal Cannabis Cultivation.

Personal Cannabis Cultivation for medical and adult use shall be permitted only in compliance with the provisions of this Article and shall be subject to the following standards and limitations.

A. **Cannabis Maximum Limitation.** The personal cultivation of cannabis is limited to no more than six (6) mature plants within a single private residence or upon the grounds of that private residence, at one time regardless of the number of residents. For purposes of this section, “private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

B. **Residency Requirement.** Cultivation of cannabis may occur only on parcels with an existing legal residence occupied by a full-time resident.

C. **Outdoor Cultivation.** Cannabis plants shall not be located anywhere in a front or street side yard. Cannabis plants are permitted in side and rear yards only if fully screened from public view with a solid fence or wall.

D. **Indoor Cultivation.** All structures used for Personal Cannabis Cultivation (including accessory structures, greenhouses, and garages) must be legally constructed with all applicable Building and Fire permits (including grading, building, electrical, mechanical and plumbing) and shall adhere to the development standards of the underlying zoning district.

E. The following operating requirements are applicable to personal cannabis cultivation:

1. **Visibility.** No visible markers or evidence indicating that cannabis is being cultivated on the site shall be visible from the public right of way.

2. **Security.** All enclosures and structures used for cannabis cultivation shall have security measures sufficient to prevent access by children or other unauthorized persons.

3. **Prohibition of Volatile Solvents.** The manufacturing of cannabis products for personal non-commercial consumption shall be limited to processes that are solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug and Cosmetic Act. The use of volatile solvents to manufacture cannabis products for personal consumption is prohibited.

10-1.3603 Commercial Cannabis Businesses.

Commercial Cannabis Businesses shall be administratively and conditionally permitted only in compliance with the provisions of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and shall be subject to the following standards and limitations.

A. **Land Use.** All Commercial Medical and Non-Medical Cannabis Businesses shall be located in compliance with the requirements of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and as designated in the Zoning

Code. For purposes of this Chapter, Commercial Cannabis Businesses shall include the following land use classifications, all of which are further defined in Chapter 10, Section 10.1-3500 (Definitions):

1. Commercial Cannabis Cultivation, up to 5,000 sf
2. Commercial Cannabis Cultivation, 5,001 sf or greater
3. Commercial Cannabis Dispensaries (Retail)
4. Commercial Medical and Non-Medical Cannabis Distribution
5. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1
6. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2
7. Commercial Medical and Non-Medical Cannabis Testing Laboratory

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children’s playground(s) or similar area dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced as part of the issuance of a Conditional Use Permit from the Planning Commission 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 a commercial cannabis business. The distance shall be measured from the closest boundary line of the property on which the Commercial Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

C. Development Standards. The development standards for specific cannabis land uses in this Chapter supplement and are required in addition to the underlying zoning districts listed in Chapter 10, Article 1 (Zoning Ordinance), Chapter 10, Article 2 (Off-Street Parking Regulations), Chapter 10, Article 22 (Green Building Requirements for Private Development), Chapter 10, Article 24 (South Hayward BART Mission Form Based Code), and Chapter 10, Article 25 (Hayward/Mission Boulevard Form Based Code) of the Hayward Municipal Code.

10-1.3604 General Requirements.

The following general operating requirements are applicable to all Commercial Medical and Non-Medical Cannabis Businesses. In addition, requirements specific to each Cannabis Business subtype are set forth in subsections 10-1.3605 (Commercial Cannabis Cultivation), 10-1.3606 (Commercial Cannabis Manufacturing) and 10-1.3607 (Commercial Cannabis Retail Dispensary and Delivery).

A. Dual Licensing. The City recognizes that state law requires dual licensing at the state and local level for all Cannabis Businesses. All Cannabis Operators shall therefore be required to diligently pursue and obtain a state cannabis license at such

time as the state begins issuing such licenses, and shall comply at all times with all applicable state licensing requirements and conditions related to that license.

1. **New Operators.** New Commercial Cannabis Businesses which have received land use permit approval pursuant to this Chapter shall not commence operations until the Business can demonstrate that all necessary state and local licenses and agency permits have been obtained.

2. **Grounds for Revocation.** Once state licenses and agency permits become available, failure to demonstrate dual licensing in accordance with this Chapter 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.

B. **Age Restriction.** 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 licensed Commercial Cannabis Business.

C. **Inventory and Tracking.** All Cannabis Businesses shall, at all times, operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.

D. **Multiple Permits Per Site.** Multiple Cannabis Businesses and Cannabis Operators proposed on any one site or parcel shall be permitted only if all the proposed Cannabis Businesses and their co-location operators are located on separate and distinct premises as defined in Business and Professions Code section 26001 and have obtained all necessary local and state permits or licenses, and land use approvals from appropriate local and state agencies. Subject to the provisions of this Zoning Ordinance, Cannabis Operators holding multiple licenses from the state may operate from a single premises to the extent such operation is consistent with state law, as it may be amended from time to time.

E. **Transfer of Ownership Operator.** A permittee 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 conditional 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, consistent with Sections 10-1.3170 or 10-1.3270 of this Code, as applicable.

F. **Security.** Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public

safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, security guard on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:

1. **Security Cameras.** Security surveillance IP video cameras shall be installed and 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 cultivated, weighed, manufactured, packaged, stored, transferred, and 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 remain active at all times 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 sixty (60) days.
2. **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. Commercial Cannabis Businesses 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. 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.
3. **Secure Storage and Waste.** Commercial Cannabis products and associated product manufacturing, distribution or cultivation waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance.
4. **Transportation.** Commercial Cannabis Businesses shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Commercial Medical and Non-Medical Cannabis products and currency in accordance with state law.
5. **Building Security.** All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.
6. **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.

7. **Background Checks.** All employees working in a Commercial Cannabis Business 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.

8. **Inspections.** During regular business hours, all Commercial Cannabis Business premises shall be accessible, upon request, to an identified Hayward Police Department or Code Enforcement employee for random and/or unannounced inspections.

G. **Odor Control.** All Commercial Cannabis Businesses shall incorporate and maintain adequate on-site odor control measures such that the odors as a result of cultivation, manufacturing, distribution, transport or sales of Cannabis and Cannabis-related products 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. Any land use application filed with the City of Hayward requesting a Commercial Cannabis Business shall include an Odor Mitigation Plan certified by a professional engineer or industrial hygienist that includes the following:

1. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;
2. Staff training procedures; and
3. 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.

10-1.3605 Commercial Cannabis Cultivation

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides additional requirements for Commercial Cannabis Cultivation.

A. **Administrative Use Permit or Conditional Use Permit Required.** Depending on the size of the facility, an Administrative Use Permit or Conditional Use Permit shall be required for Commercial Cannabis Cultivation, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Cannabis Cultivation businesses up to 5,000 square feet of gross floor area are permitted in select zoning districts, subjected to an Administrative Use Permit. Commercial Cannabis Cultivation businesses containing 5,001 square feet or greater gross floor area are conditionally permitted in select zoning districts, subject to issuance of a Conditional Use Permit.

B. **Outdoor Commercial Cultivation Prohibited.** The commercial cultivation of Medical and Non-Medical Cannabis may only be conducted within a fully enclosed space.

C. **Pesticides.** The Commercial Cultivation of Medical and Non-Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

D. **Sustainability Plan.** As part of an application to operate within the City of Hayward, all Commercial Cannabis Cultivation Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

E. **Ancillary Retail Use.** The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3606 Commercial Medical and Non-Medical Cannabis Manufacturing

In addition to the General Operating Requirements set forth in Section 10.1-3604, this section provides additional operational requirements for Commercial Cannabis Manufacturing:

A. **Conditional Use Permit Required.** A Conditional Use Permit shall be required for all Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1 operations, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2 is prohibited.

B. **Extraction Processes.** Commercial Cannabis Manufacturers shall utilize only extraction processes that are (a) solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act, and/or (b) use solvents exclusively within a closed loop system that meets the requirements of the federal Food, Drug, and Cosmetic Act including use of authorized solvents only, the prevention of off-gassing, and certification by a California licensed engineer. The use of volatile solvents, defined as Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2, is prohibited.

C. Loop Systems. No closed loop systems shall be utilized without prior inspection and approval of the City's Building Official and Fire Code Official.

D. Standards of Equipment. Manufacturing, processing and analytical testing devices used by the Cannabis Manufacturer must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third-party testing agency or engineer and approved for the intended use by the City's Building Official and Fire Code Official.

E. Food Handler Certification. All owners, employees, volunteers or other individuals that participate in the production of edible Cannabis Products must be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the Cannabis Manufacturer's facility where that individual participates in the production of edible Cannabis Products.

F. Edible Product Manufacturing. Commercial Cannabis Businesses that sell or manufacture edible cannabis products shall obtain a permit from the Alameda County Public Health Department. Permit holders shall comply with State and County health permit requirements. These requirements provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee health, demonstrate industry manager knowledge, ensure safe food preparation practices and delineate acceptable levels of sanitation for preparation of edible products.

G. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Manufacturing Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

H. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery.

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides location and operating requirements for Commercial Cannabis Retail Dispensaries and Delivery Businesses:

A. Conditional Use Permit or Administrative Use Permit Required. A Conditional Use Permit shall be required for Commercial Cannabis Retail dispensaries, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. An Administrative Use Permit shall be required for Commercial Cannabis Delivery businesses, pursuant to the land use regulations contained within Chapter 10, Article 1 (Zoning Ordinance).

B. Drive-Through Dispensaries. Drive-through, Drive-up or walk-up window services in conjunction with Commercial Cannabis Retail Dispensaries is prohibited.

C. Setbacks and Buffers. In addition to the zoning requirements and development regulations contained in Chapter 10 (Zoning Ordinance), all Commercial Cannabis Retail dispensaries shall be subject to the following:

1. Overconcentration. To avoid overconcentration, a Commercial Cannabis Retail Dispensary shall not be located within 1,000 feet of any other Commercial Cannabis Retail Dispensary within the City of Hayward.

2. Legal Non-Conforming Use. Establishment of a school or sensitive land use, as defined in Business and Professions Code Section 26054 and Health and Safety Code Section 11362.768, within the required buffer of a Commercial Cannabis Retail dispensary after such facility has obtained a Conditional Use Permit shall render the Retail dispensary a legally non-conforming use, which is subject to the protections and provisions of Section 10-1.2900 (Non-Conforming Uses).

D. Operational Requirements. In addition to project specific conditions of approval, Commercial Cannabis Retail dispensaries shall comply with the following operational requirements:

1. Employees. The Commercial Cannabis Retail Operator shall maintain a current register of the names of all employees employed by the Commercial Cannabis Retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.

2. Recordkeeping. The Commercial Cannabis Retail Operator shall maintain patient and sales records in accordance with state law.

3. Protocols and requirements for patients and persons entering the site. No person shall be permitted to enter a Commercial Cannabis Retail dispensary without government issued photo identification. A Commercial Cannabis Retail dispensary shall not provide Cannabis or Cannabis Products (Medical or Non-Medical) to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government-issued photo identification card or a valid

physician's recommendation under Section 11362.712 of the Health and Safety Code.

4. Hours of Operation. A Commercial Cannabis Retail Dispensary may operate up to seven (7) days per week with the hours of operation determined by the Planning Commission with the issuance of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City's Police Department. The basis for any restriction on the hours or operation shall be specified in the permit.

5. Secured Access. A Commercial Cannabis Retail Dispensary shall be designed to prevent unauthorized entrance into areas containing Cannabis or Cannabis Products. Limited access areas accessible to only authorized personnel shall be established.

6. Product Storage. Commercial Cannabis and Cannabis Products that are not used for display purposes or immediate sale shall be stored in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.

7. Cannabis Paraphernalia. No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit. The sale of such products must comply with the City's zoning code and any other applicable state regulations.

8. On-site Physician Restriction. Commercial Cannabis Retail dispensaries shall not have an on-site or on-staff physician to evaluate patients and provide a recommendation for Medical Cannabis.

9. Site Management. The Commercial Cannabis Retail operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises during business hours if directly related to the patrons of the subject retailer. For purposes of this subsection, "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in nuisance activities to cease those activities, unless personal safety would be threatened in making the request.

10. Permit Display. All Commercial Cannabis Retail dispensaries shall maintain a copy of the valid operating license issued by the City on display during business hours and in a conspicuous place so that the same may be readily seen by all persons entering the facility.

11. Storefront Entrance & Accessibility. The storefront entrance of a Commercial Cannabis Retail dispensary shall be ADA accessible and placed in a visible location that provides an unobstructed view from the public right of way.

E. On-Site Consumption. In general, On-Site Consumption of cannabis and cannabis products by customers or employees is prohibited. If permitted, the consumption of Cannabis and Cannabis Products shall be subject to the following requirements:

1. Patients. Qualified Patients, as defined by state law, shall not be permitted to consume medical cannabis on the site of a Commercial Cannabis Retail dispensary except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as follows:

i. Conditional Use Permit applications for a Commercial Cannabis Retail business shall include a statement as to whether the use will include on-site consumption by patients of Medical Cannabis and Medical Cannabis Products.

ii. If on-site consumption will be included, the application shall describe the operational plan and specific extent of such provision, security protocols, and how the consumption will comply with the requirements set forth in this Chapter and state law. Specifically, any on-site consumption shall be subject to the following conditions: (1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) Cannabis consumption is not visible from any public place or non-age restricted area; (3) sale or consumption of alcohol or tobacco is not allowed on the premises.

2. Employees. Employees of a Commercial Cannabis Retail facility who are qualified patients may consume Medical Cannabis or Medical Cannabis Products on-site within designated spaces not visible by members of the public, provided that such consumption is in compliance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law.

3. Signage and Public Notice. The entrance to a Commercial Cannabis Retail dispensary shall be clearly and legibly posted with a notice indicating that smoking, vaping, and consumption of cannabis and cannabis products is prohibited on site, except as permitted in accordance with Chapter 5, Article 6 of the Hayward Municipal Code (Smoking Pollution Control) and state law.

F. Delivery Services. In addition to the requirements established in this Chapter for Commercial Cannabis Retail Dispensaries, the delivery of Medical and Non-

Medical Cannabis and Cannabis Products shall be subject to the following requirements:

1. An Administrative Use Permit shall be required for Commercial Cannabis Delivery Only businesses, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. If the delivery service is ancillary to a Commercial Cannabis Retail Dispensary, a Conditional Use Permit that identified both uses shall be required.
2. A Commercial Cannabis Retail Dispensary shall not conduct sales exclusively by delivery.
3. All applications for Commercial Cannabis Retail dispensary shall indicate a statement as to whether the proposed use will include delivery of Cannabis and Cannabis Products to customers or qualified patients.
4. If delivery services will be provided as part of the Commercial Cannabis Retail operations, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this Chapter and state law.
5. Delivery vehicles shall not contain identifiable markings that associate the delivery service with the cannabis business.
6. Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site.

10-1.3608 Special Events

- A. Temporary special events that involve onsite cannabis sales to, and consumption by persons 21 years of age or older shall not be allowed unless the Commercial Cannabis Business obtains a special event permit from the City pursuant to the adopted Rules and Regulations for Food Vendors and the Rules and/or the Regulations for Special Event Organizers, as applicable, and, demonstrates that it possesses a local cannabis business permit and state license for retail cannabis sales.
- B. Permit Required. Applications for a special event that includes cannabis shall be considered a Temporary Use, per Chapter 10, Article 1 (Zoning Ordinance) and shall obtain an Administrative Use Permit, pursuant to the zoning district and location of the event.

10-1.3609 Findings

In addition to the required findings contained in Section 10-1.3125 (Administrative Use Permit) and 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;
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;
3. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

10-1.3610 Grounds for Permit Revocation or Modification

In addition to the permitting requirements contained in Chapter 6 (Businesses, Professions and Trades), the reviewing authority may require modification, discontinuance or revocation of a Conditional Use Permit or Administrative Use Permit for a Commercial Cannabis Business permit if the review authority finds 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.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add the following Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions) to read and provide as follows:

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be

discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

“**Commercial Cannabis Business**” means an entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

“**Cannabis Delivery**” means the commercial transfer of Cannabis or Cannabis Products to a customer, including Medical Cannabis or Cannabis Products, to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code. “Delivery” also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables clients or patients to arrange for or facilitate the commercial transfer by a permitted Commercial Cannabis Retail dispensary.

“**Edible Cannabis Product**” means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“**Greenhouse**” means a permanent enclosed structure for the propagation and growing of plants, constructed with a translucent roof and/or walls.

“**Marijuana**” See “**Cannabis**”.

“**Medical Cannabis**” or “**Medical Cannabis Product**” means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medical cannabis patient in California who possesses a physician’s recommendation.

“**Microbusiness**” means a commercial cannabis business holding a license issued by the State Bureau of Cannabis Control for the cultivation of cannabis on an area less than 10,000 square feet and to act as a licensed distributor, Level 1 manufacturer, and retailer pursuant to Business and Professions Code sections 26050 and 26070.

“**Premises**” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“Commercial Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

“Commercial Cannabis Distribution” means the procurement, sale, and transport of medical and non-medical adult recreational use Cannabis and medical and non-medical adult recreational use Cannabis Products between Commercial Cannabis Businesses.

“Commercial Cannabis Manufacturing” means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Commercial Cannabis Manufacturing - Level 1” means the manufacturing of cannabis products using nonvolatile solvents, or no solvents. A Commercial Cannabis Manufacturing Level 1 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail facility.

“Commercial Cannabis Manufacturing - Level 2” means the manufacturing of cannabis products using volatile solvents. A Commercial Cannabis Manufacturing Level 2 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail dispensary. For purposes of this section, “volatile solvents” shall include ethanol and all solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, as such section may be amended.

“Medical Marijuana” See **“Medical Cannabis”**.

“Commercial Cannabis Operator” or **“Operator”** means the person or entity that is engaged in the conduct of any commercial medical or non-medical adult recreational Cannabis use.

“Commercial Cannabis Retail Dispensary” means a facility where Commercial Cannabis or Commercial Cannabis Products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical and non-medical adult recreational use Cannabis or medical and non-medical adult recreational use Cannabis Products as part of a retail sale.

“Commercial Cannabis Testing Laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the ___ day of _____, 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the _____ day of _____ , 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward