



DATE: December 5, 2017

TO: Mayor and City Council

FROM: City Manager

SUBJECT Adoption of Commercial Cannabis Permit Selection Process and Amendment to FY2018 Master Fee Schedule for Associated Selection Process Costs

RECOMMENDATION

That the Council reviews this report and draft Commercial Cannabis Permit Request for Proposals (Attachment IV) and approves the attached resolutions establishing the selection process request for proposals (Attachment II) and amending the FY2018 Master Fee Schedule for costs associated with the Commercial Cannabis Permit selection process (Attachment III).

BACKGROUND

With the advent of legal cannabis businesses approaching in January 2018, the Council has directed staff to prepare a process by which the City can select cannabis businesses that both fit the desires of the community and create a framework that addresses the needs of a new, emerging market.

Over the past several months, the City has been taking steps to ensure proper and legal implementation of adult and medical cannabis business regulations. Following two work sessions earlier this year, the Council is currently moving forward with establishing a regulatory and land use framework to permit certain commercial cannabis businesses within the City of Hayward.

To help develop the review of cannabis businesses, the City engaged ICF, a firm with experience developing cannabis license applications, guidelines, and criteria for municipalities locally and in other states that have legalized medical and adult use cannabis. Their staff consists of individuals with expertise in regulation, cannabis, public health, finance, safety, security, environment, and community outreach.

At the October 17th meeting, the Council reviewed the proposed regulatory framework and although they expressed overall support for the land use ordinance, the Council identified several additional components for inclusion as part of the RFP scoring and evaluation process. Specifically, the Council directed staff to include a youth education component to any new commercial cannabis business proposal and indicated a desire for business operators to enter into a labor peace agreement and provide worker's compensation for employees. In addition,

the Council directed staff to prepare a resolution to limit the number of commercial cannabis retail dispensaries to no more than three.

At the October 30th meeting, the Council reviewed a proposed framework for a Commercial Cannabis Permit Request for Proposal (RFP) framework for the City to use to determine which cannabis businesses the City will permit to operate within the city limits. At this meeting, the Council specifically reviewed the process and scoring criteria. Council feedback from this work session is detailed later in this report.

DISCUSSION

Selection of cannabis business operators will take place through a request for proposal (RFP) process that will cover all commercial cannabis business types, including commercial cannabis dispensaries, testing/research laboratories, distribution centers, and grow facilities. The RFP process will ensure transparency and objectivity while providing the City with a competitive process that allows for the selection of the best applicants available. The desired applicants will be forward-thinking and offer solutions that implement best practices in management, operations, training, safety and diversion control, reduction of noise or nuisance behaviors, sustainable energy and waste solutions, and local hiring amongst other best practices the City may wish to include.

The draft RFP can be found in Attachment IV, which provides, in greater detail, the specific requirements and information the City will use to determine eligibility for a Commercial Cannabis Permit.

RFP Process Overview

The RFP materials will provide the evaluation criteria to all applicants to ensure a transparent process in which applicants understand the evaluation framework and relative importance (weighting) of each application component. The City will accept questions from potential applicants during the RFP process and will publicly post responses to questions to the RFP. Potential applicants will have to submit their proposals in accordance with City guidelines. Applicants can apply for one or more business type but must provide separate responses to address each specific business type for which they are applying.

Each application will be accompanied by an application fee in the form of a refundable deposit of \$5,000 for processing and review. In accordance with the proposed Master Fee Schedule changes found in Exhibit A to Attachment III, if costs for processing the applications exceed the \$5,000 initial deposit amount, the applicant will be billed on a time and materials basis.

Per Council direction, there will be two periods annually for which the City will accept Commercial Cannabis Permit proposals. Table 1 below provides the current tentative timeline for this process.

TABLE 1: RFP Process Timeline	
Month	Activities
December 5, 2017	City Council Approval of CCP RFP
December 8, 2017	Release RFP application
January 12, 2018	RFP application due
Mid-January 2018 – Early March 2018	Review RFP applications, scoring, and recommendations
Mid-March 2018	Conduct interviews and select successful applicants
April 2018	Council approval of applicants
May 2018	Release Second CCP RFP

Application Review Process and Evaluation Criteria

The review of proposals involves four stages to help differentiate applicants who meet the City’s desired set of qualifications. Stages one and two will involve an, independent of the City, objective application adjudication process by ICF’s neutral third-party team of subject matter experts.

Stage One: Criminal Background Investigation

Applicants who pass a background and criminal history check will advance on to the evaluation phase of the application process. Compliance determinations made by the City will not be subject to appeal.

Stage Two: Competitive Scoring and Ranking

Neutral third-party subject matter experts, as mentioned earlier, will evaluate this stage of the review process and will consider the responsiveness and quality of the proposal with respect to each of the question topics, for each specific business type.

The proposed evaluation criteria, as well as a description of requested information is as follows:

1. **Business Plan and Operations:** Proposed cannabis business operations, including products and/or services, discussion of compliance with all state and local laws, proposed schedule for start-up, proposed budget including start-up and operating costs, and proof of capitalizations for costs. Pro-forma for at least three years of operation.
2. **Management Experience:** Experience of the proposed cannabis business management team to determine if they have the requisite managerial, cultivation/agricultural, or

research experience to safely, responsibly, and successfully start and manage the long-term operations of a commercial cannabis business.

3. **Safety and Security Plan:** Safety plan and protocols to be implemented, including discussion of fire prevention and proposed security infrastructure and processes, including but not limited to operational security, transactional security, delivery security, and 3rd party security.
4. **Community Benefits:** Proposed community benefits such as employment opportunities, youth education and other outreach activities, potential tax revenue, and other benefits for local business owners and residents.
5. **Product Testing and Safety:** Proposed product testing and inventory management plan and tools, and description of data management systems used for inventory and recordkeeping as well as discussion of consumer safety as required by state and/or local laws.
6. **Environmental Plan:** Proposed business practices related to energy usage, water conservation and materials / waste management.
7. **Labor and Employment Practices:** Proposed compensation and hiring practices, employee training programs including security, product education/awareness, legal and regulatory standards, local hire preference, existing or forthcoming labor peace agreements, worker’s compensation protections, etc.

The evaluation and ranking of proposals will lie within the sole judgement and discretion of the neutral third-party subject matter expert reviewers. These reviewers will evaluate each application against weighted criteria, assigning points in accordance with the table below:

TABLE 2: CRITERIA WEIGHING		
Criteria	Maximum Points	%
Business Plan and Operations	250	25
Management Experience	150	15
Safety and Security Plan	150	15
Community Benefits	150	15
Product Testing and Safety	100	10
Environmental Plan	100	10
Labor and Employment Practices	100	10
Total	1,000	100%

Stage Three: Proposer Interviews

Following completion of the review process, ICF will recommend a sub-set of the highest-ranking applicants to participate in interview(s) with the City Manager or her designees who will make a final determination on which applicant will continue to the final stage. This will also be the stage where the City will determine the total number of permits that will be allowed for the different types of cannabis businesses, excluding retail dispensaries (already

limited to three). According to ICF, typically responses ‘naturally break’ into cohorts that separate the strongly qualified applicants from the less qualified operators, which help to determine the appropriate amount of permits the City should issue.

Stage Four: City Council Approval

Following an objective review and ranking of the RFP materials and interview process, City staff will recommend operator applicants for the City Council’s consideration for permit award during a City Council public hearing. At the public hearing, these operators should be present to provide a brief public introduction to their team. The City Council and Mayor will make the final decision of which applicants are selected for permit awards.

Incorporation of Council Feedback

Following the October 30th City Council work session on this item, staff incorporated the following pieces of Council feedback into the RFP.

Administrative Timelines

The CCP RFP will run on six-month application periods ending in July and December. The first application period will commence in December 2018 while the second will commence in May 2018.

Background Checks for Owners and Operators

Background checks will include both the applicant and owner. “Applicant” means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of a business entity, who applies to obtain a permit under this Article. “Owner” means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity; (3) a member of the board of directors of a nonprofit; (4) an individual who will be participating in the direction, control, or management of the person applying for a permit.

Business Plan and Operations Weights

Business Plan and Operations will now be weighted at 250 points or 25% of the total score, down from 300 in the prior draft. The difference of 50 points has been distributed to boost weighting for Environmental Plans and Labor and Employment Practices.

Legal Status of Entity

Applicants will now have to disclose the legal status of their entity as a part of their applicant information. They will also have to provide a copy of their state registration.

Neighborhood Benefits and Improvements

The RFP makes a reference to Community Services Commission funding requests and information as a prompt for potential community benefit proposals. Additionally, the RFP also identifies that applicants will be expected to take steps to support the needs of their business’ adjacent community as well as describe community outreach strategies they will take.

Labor Peace Agreements

The RFP specifically requests that applicants certify that they have a labor peace agreement in place or are planning to negotiate one. If they do have an existing agreement in place, applicants will include a copy of said agreement. Pre-existing recognition from a certified labor union or being party to a collective bargaining agreement with a certified labor union should be submitted if available. Per Council direction, applicants without either will receive no points for this component.

Labor Practices - Local Hire

Applicants will need to indicate their policies and plans for hiring that give preference to hiring Hayward residents.

Prior Criminal Record

Applicants will need to complete an Attestation Form which describes all past criminal history, pending litigation, bankruptcies, or code violations, as well as a list of all jurisdictions in which the applicant is doing or has done cannabis business. Specifically, applicants must disclose any regulatory actions (e.g., issuance of notices of violation, citations, suspension or revocation of licenses, or similar actions) currently pending or taken against the Applicant or co-Applicants related to any business owned or operated by the Applicant related to air quality, water quality, storage or use of hazardous chemicals, building code violations, or public health and safety violations. The name and location of the jurisdiction or agency, which took the action shall also be included.

Education

As a component of the Community Benefits proposal, applicants will need to detail their health education and prevention and substance abuse activities and strategies for both youths and adults.

Application Priority for Testing Facilities

Council expressed a desire to have an expedited process for cannabis testing facilities, due to the more onerous regulations they must undergo from the State. As a result, there will be a separate CCP RFP for these entities that includes only the Business Plan and Operations, Management Experience, and Safety and Security Plan. This RFP can be found in Attachment IV. Per Council feedback, this will allow for an expedited review process of these entities.

Commercial Cannabis Permit (CCP) Expiration

As a condition of CCP approval, applicants will have up to 6 months (i.e., 180 calendar days) to submit an application for land use approvals with the Development Services - Planning Division. If an applicant fails to do so during this time, the CCP expires. Applicants may re-apply for a permit during the next open application period.

ECONOMIC IMPACT

It is difficult to predict the potential tax revenue stream created by commercial cannabis businesses in Hayward. Different business types (i.e. manufacturing vs. cultivation) may generate different levels of revenue. Staff will focus efforts on compiling data and information on this matter to assist the Council with determining the optimal tax rate to be imposed.

In late 2016, the University of the Pacific business school and law school authored a report studying the economic impact of a cannabis industry to the greater Sacramento area. The report, among other things, analyzed the potential economic impact of various sectors of the cannabis industry and assumed a range of potential market models from strictly regulated local models to less regulated regional market models. Although the assumptions utilized in the report may not hold true for Hayward, the methodology will be useful to Hayward staff as staff moves forward with a more detailed economic impact analysis.

FISCAL IMPACT

The total cost of the ICF contract is \$74,640. This contract includes RFP application review and recommendations for 16 applications. This number may increase depending on the total number of applications, after which staff will return to Council for additional contract authorization.

Staff anticipates that a significant cost from cannabis uses would be associated with the administration of land use and regulatory ordinances, depending on the number and type of businesses Council chooses to allow. Staff would be required to process applications, prepare reports to the Planning Commission and City Council, review business plans, obtain background investigation results for proposed owners and employees, and interact with the State's cannabis regulators. Staff would also be involved in auditing financial records to determine if the City is accurately receiving funds resulting from the application of Measure EE. These staff functions would cover multiple departments and several full-time equivalent higher-level classifications, at the outset of operations in Hayward and subsequently to assure ongoing compliance. Some or possibly all of these administrative costs could be covered by City licensing fees approved as part of the Master Fee Schedule, but it would take at least two fiscal years of operations to identify true administrative costs.

Under the current Master Fee Schedule, if staff charges exceed the \$5,000 amount, the applicant will be billed on a time and materials basis. After two years of experience with the staff charges associated with these types of applications, staff will return to Council to adjust the deposit amount as needed.

STRATEGIC INITIATIVES

The proposed regulatory and land use ordinances are consistent with the goals and policies of the *Hayward 2040 General Plan*, and more specifically, are consistent with two of the Council's Strategic Initiatives: Complete Communities and Tennyson Corridor. Under the

proposed regulatory and land use framework, new cannabis land uses could be established in select locations along the Tennyson Corridor and would support the Complete Communities Initiatives by diversifying employment opportunities and creating redevelopment and adaptive reuse of existing properties along the Tennyson Corridor and other locations throughout Hayward. Staff has identified several goals and policies of the Hayward 2040 General Plan, which support the Council's Initiatives:

LU-5.6 Adaptive Reuse, Renovation or Redevelopment. The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

LU-6.1 Land Uses. The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.

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 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.

HLQ-4.1 Adequate Health Care Facilities. The City shall encourage the development and maintenance of a full range of health care facilities, including hospitals, acute care facilities, neighborhood health portals/clinics, and mental health facilities, to meet the needs of all residents.

PUBLIC CONTACT

This program will be managed from the City Manager's Office. The staff contact for this project is John Stefanski, Management Analyst II, who can be reached at 510-583-3904 or at john.stefanski@hayward-ca.gov.

Additional information can also be found at <https://www.hayward-ca.gov/your-government/programs/medical-and-adult-use-cannabis>

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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