



**DATE:** February 28, 2023

**TO:** Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Cannabis Regulations Revised Ordinance: Introduction of an Ordinance Amending Article 14, Chapter 6 of the Hayward Municipal Code Regarding Commercial Cannabis Businesses by Amending Section 6-14.13 Relating to Commercial Cannabis Permit Applications, Amending Section 6-14.14 Relating to Operating and Performance Standards and Adding Section 6-14.18 Relating to Enforcement; Finding that this Action is Subject to CEQA Common Sense Exemption

## **RECOMMENDATION**

That the City Council introduces the attached Ordinance (Attachment II) amending Article 14, Chapter 6 of the Hayward Municipal Code regarding Commercial Cannabis Businesses by Amending Section 6-14.13 relating to Commercial Cannabis Permit Applications, Amending Section 6-14.14 relating to Operating and Performance Standards and adding section 6-14.18 related to enforcement.

## **SUMMARY**

The purpose of the proposed amendments to Article 14, Chapter 6 of the Hayward Municipal Code relating to Commercial Cannabis Businesses is to:

- 1) Clarify that permit applications are to be accompanied by payment of a fee established by resolution of the City Council rather than a refundable deposit, consistent with prior amendments to the Master Fee Schedule relating to cannabis fees;
- 2) Clarify that violations of Hayward's commercial cannabis regulations are subject to the administrative enforcement processes contained in Chapter 1, Article 3 (Penalties) and Chapter 1, Article 7 (Administrative Citation Program) of the Municipal Code, as well as to the nuisance abatement processes contained in Chapter 4, Article 1 (Public Nuisances); Chapter 4, Article 15 (Social Nuisance); and Chapter 5, Article 7 (Community Preservation and Improvement); and
- 3) Authorize the City Attorney to institute civil actions to obtain injunctions and civil penalties against violators.

No new fees or penalties are proposed to be adopted through this action, however the cannabis program fees/penalties contained in the Fiscal Year 2024 Master Fee Schedule will be reorganized to be consistent with the proposed Municipal Code amendments.

## **BACKGROUND**

The City Council initially adopted ordinances establishing the City's commercial cannabis program in 2017. In 2021, the City Council adopted ordinances revising the previously adopted commercial cannabis regulations. In the interim, staff has identified a need for clarifying language related to application fees and strengthening the enforcement mechanisms for violations of the commercial cannabis regulations to address illegal operations, particularly illegal cannabis cultivation operations.

## **DISCUSSION**

The cannabis regulatory ordinance (HMC Article 14, Chapter 6) and the cannabis land use ordinance (HMC Section 10-1.3600, et seq.) do not currently contain any specific provisions regarding enforcement of violations other than general statements that it is unlawful to conduct a cannabis business without the required permits or in violation of applicable land use regulations.

The proposed amendments would clarify that existing administrative enforcement provisions of the Hayward Municipal Code are applicable to violations of the commercial cannabis regulations. Additionally, the proposed amendments would specifically authorize the City Attorney to institute civil actions for injunctive relief and imposition of specified amounts of civil penalties against violators. The proposed amendments are consistent with enforcement provisions adopted by other jurisdictions, including the City of Sacramento, which has a particularly robust administrative enforcement program.

On July 6, 2021, the City Council adopted Resolution 21-135 amending the Fiscal Year 2022 Master Fee Schedule to include specific program-related fees and penalties related to the commercial cannabis program. The Fiscal Year 2023 Master Fee Schedule continues to include those fees and penalties. Resolution 21-135 included the establishment of permit application fees to cover administrative costs of the commercial cannabis program. Previously, applicants paid a refundable deposit. However, the language of HMC section 6-14.13(d) was inadvertently not amended to reflect that change. This item includes corrective language to that section. The Fiscal Year 2024 Master Fee Schedule will include a minor re-organization of the fee provisions for the sake of clarity and conformity with the proposed Municipal Code amendments. No new fees or penalties are proposed for adoption.

This action is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, 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 general exemption applies in this instance because it can be

seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA.

**FISCAL IMPACT**

No new fees or penalties are proposed as part of this item. Fiscal impact of existing cannabis program fees and penalties have previously been discussed with the City Council.

**STRATEGIC ROADMAP**

This a routine operational item.

**NEXT STEPS**

If the City Council introduces the ordinance, it will be brought back for adoption at a subsequent City Council meeting. The ordinance will take effect 30 days from the date of adoption by the City Council.

*Prepared by:* Michael G. Vigilia, Senior Assistant City Attorney

*Recommended by:* Michael S. Lawson, City Attorney

Approved by:



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Kelly McAdoo, City Manager