

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-___

Introduced by Council Member _____

RESOLUTION DENYING A CONDITIONAL USE PERMIT FOR A CANNABIS
RETAIL DISPENSARY AT 1004 B STREET; SIAVASH AFSHAR ON BEHALF
OF HAYWARD STATION/ALFRED J ANTONINI (APPLICANT/OWNER)

WHEREAS, on November 14, 2018, Siavash Afshar, on behalf of Hayward Station, submitted Conditional Use Permit No. 201806005, to establish a cannabis retail dispensary at 1004 B Street, Assessor Parcel Numbers (APN) 428-0061-056-00; and

WHEREAS, in 2015, the State of California enacted a comprehensive regulatory framework (AB 243, AB 266, SB 643) for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. The legislation was collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA); and

WHEREAS, 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; and

WHEREAS, on June 15, 2017, the State enacted Senate Bill 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; and

WHEREAS, on October 30, 2017 and November 28, 2017, the City Council enacted regulatory and land use Ordinance Nos. 17-13 and 17-15, respectively, authorizing cannabis businesses within the City of Hayward subject to compliance with local and state laws; and

WHEREAS, on October 30, 2017, the City Council adopted Resolution No. 17-158, imposing a limit of three cannabis retail dispensaries within the City of Hayward. The proposed dispensary would be the first to be established within the city limits; and

WHEREAS, on March 20, 2018, the City Council adopted Ordinance No. 18-03, establishing a commercial cannabis tax for all products associated with medical or adult use of cannabis; and

WHEREAS, between December 2017 and January 2018, the City conducted a Request for Proposals (RFP) process and received 77 applications to establish commercial cannabis companies with the City, and issued commercial cannabis permits to eleven companies, one of which was the Applicant; and

WHEREAS, on March 19, 2019, the City Council adopted Ordinance Nos. 19-06 and 19-07, reducing the overconcentration buffer between retail dispensaries from 1,000 feet to 500 feet; and, authority to waive or reduce the 600-foot buffer between commercial cannabis uses and sensitive uses, subject to special findings; and

WHEREAS, on April 26, 2019, notice of the Planning Commission public hearing was mailed to all property owners and residents within 300 feet of the project site as well as those who requested such notice; and was published in The Daily Review; and

WHEREAS, on May 9, 2019, the Planning Commission held a duly noticed public hearing on the proposed project and voted 6:0:1 to recommend City Council approval of the project; and

WHEREAS, on May 17, 2019, notice of the City Council public hearing was mailed to all property owners and residents within 300 feet of the project site as well as those who requested such notice; and was published in The Daily Review; and

WHEREAS, on May 28, 2019, the City Council held a public hearing and accepted public testimony on the proposed project and voted 2:4:1 directing staff to return with a Resolution with findings for denial at a subsequent meeting.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby adopts the following findings:

CONDITIONAL USE PERMIT

A. The proposed use is desirable for the public convenience or welfare;

The proposed retail cannabis dispensary is desirable for the public convenience and welfare in that cannabis retail sales are a burgeoning retail category that would contribute to the sales tax base in Hayward and attract a regional clientele to the area. However, establishment of a cannabis retailer in a prominent building at the center of Downtown Hayward is not consistent with applicable Specific Plan regulations related to activating street frontages.

B. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

The proposed commercial cannabis dispensary will occupy a relatively large building at a prominent corner in the center of Downtown Hayward. The B and Main street corridors support a significant amount of pedestrian traffic, including students and children, and the intersection of those streets is arguably the heart of Downtown Hayward. The storefronts along these major corridors are intended to support open, transparent frontages. In fact, the applicable Downtown Main Street with Required Shop Frontage Downtown Specific Plan designation calls for transparency at the storefront to activate the street frontages outside of the building. While the proposed use is a retail use, it would be inappropriate to display the age-restricted cannabis products at the street frontage and it would be inconsistent with General Plan policies and applicable Specific Plan regulations to close off the storefront and not allow views into the substantial ground floor glazing. Thus, the proposed use and design would impair the character and integrity of the applicable zoning district and surrounding area.

C. The proposed use will not be detrimental to the public health, safety, or general welfare; and

The proposed cannabis retail dispensary will not be detrimental to the public health, safety or general welfare in that it will operate within the permit requirements and regulations established by State, County and local laws. The applicant has provided an Odor Plan to ensure that cannabis odors cannot be detected outside of the building, and a detailed Security Plan.

The proposed dispensary is also subject to the City's Cannabis Ordinance, which contains operating and performance standards for establishments that handle cannabis and cannabis related products. The applicant's Business and Security Plan were reviewed and evaluated by an independent consultant and determined to include procedures and protocols to ensure public safety and those security measures were incorporated into the conditions of approval for the project. Further, the applicant and all employees associated with the business are subject to an extensive background check by the City's Police Department. However, the proposed use is inappropriate in the specific location.

D. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The applicable Downtown Main Street Zone permits retail uses, including cannabis retail dispensaries provided that the specific location is appropriate. However, the proposed location and building is inappropriate for the proposed use due to the prominent location of the building along a major pedestrian thoroughfare in the Downtown core. Specifically, the display of cannabis products in a prominent manner and in a traditional storefront setting as called for in the General Plan and in the

applicable Specific Plan designation is not appropriate in that cannabis and related products are highly sensitive due to their recent legalization, and in that it is only available for purchase by individuals that are 21 and older (18 and older with a medical marijuana card).

CANNABIS ORDINANCE

- A. 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;**

The proposed commercial cannabis dispensary will not be detrimental to the public health, safety or general welfare in that the facility will operate within the permit requirements established by the City and to obtain the necessary State permits. However, the proposed location and building is inappropriate for the proposed use due to the prominent location of the building along a major pedestrian thoroughfare in the Downtown core. Specifically, the display of cannabis products in a prominent manner and in a traditional storefront setting as called for in the General Plan and in the applicable Specific Plan designation is not appropriate in that cannabis and related products are highly sensitive due to their recent legalization, and in that it is only available for purchase by individuals that are 21 and older (18 and older with a medical marijuana card).

- B. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;**

Physical and operational safeguards are in place to ensure the cannabis retail dispensary will operate at the proposed location without impacts to other properties. The proposed project includes an Odor Mitigation Plan and robust Security Plan including but not limited to installation of cameras inside and outside of the building and in the parking lot, provision for on-site security guards, ID scanners, and employee background checks among other safety and security measures.

- C. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and**

Physical and operational safeguards are in place to ensure this cannabis retail dispensary will operate at the proposed location in a safe and secure fashion. However, the proposed commercial cannabis dispensary will occupy a relatively large building at a prominent corner in the center of Downtown Hayward. The B and Main street corridors support a significant amount of pedestrian traffic, including students and children, and the intersection of those streets is arguably the heart of Downtown Hayward. The storefronts along these major corridors are intended to support open, transparent frontages. However, the proposed storefront design would be closed off and screened and thus aesthetically incompatible with the surrounding area and the applicable Downtown Main Street with Required Shop Frontage Downtown Specific

Plan designation which calls for storefront transparency to activate the street frontages outside of the building.

D. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.

It is likely that sales of cannabis and cannabis related products to the public will result in some impact on public services but that those impacts can be minimized and managed by strong and present on-site management, adherence to the comprehensive Security and Safety Plan and conditions of approval prohibiting loitering and on-site consumption. In addition, the applicant is subject to an annual review and inspection of the proposed dispensary by the City's Code Enforcement Division, Police Department and Fire Department as part of the cannabis permit renewal. Further, as conditioned, any excessive calls for service, including nuisance and code violations, may result in the revocation of the commercial cannabis permit and/or the conditional use permit.

E. The required 600-foot setback for sensitive uses may be reduced 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 the commercial cannabis business.

There are sensitive uses that serve youth, as defined by State Law, within 600 feet of the project site including High Scores Arcade, an interactive museum of classic arcade games approximately 290 feet east of the project site; and Stellar Prep, a tutoring center for high school aged children approximately 400 feet west of the project site. As noted in findings above, the proposed location and structure are inappropriate for the proposed use due to the prominent location of the building along a major pedestrian thoroughfare in the Downton core. While an alternate distance could be permitted for a less prominent building and location, such reductions are not appropriate in this instance where the prominent nature of the location and building make it nearly impossible to avoid if one is visiting Downtown Hayward.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, based on the foregoing findings, hereby rejects Conditional Use Permit Application 201806005, for a cannabis retail dispensary at 1004 B Street.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward