



SUBJECT

Proposal to Operate a Commercial Cannabis Retail Dispensary in a Vacant Tenant Space in a Shopping Center at 21463 Foothill Boulevard (Assessor Parcel No. 414-0086-056-02) in the General Commercial (CG) Zoning District, Requiring Approval of Conditional Use Permit Application No. UP-25-0011 and a Finding that the Project is Categorically Exempt from the Provisions of the California Environmental Quality Act (CEQA) Pursuant to Section 15301 of the CEQA Guidelines. Esther Lopez and Angilbert Sarkis, Gream Enterprises, Inc. [DBA Phenos Hayward] (Applicant/Operator); Foothill-Grove LLC (Property Owner).

RECOMMENDATION

That the Planning Commission recommend that the City Council find the proposed project to be categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301, Existing Facilities, and approve Conditional Use Permit (CUP) Application No. UP-25-0011 to allow the establishment of the commercial cannabis retail dispensary as shown in the proposed plans in Attachment V and described in the applicant's project description in Attachment IV, based on the analysis set forth in this staff report and the required findings contained in Attachment II, and subject to the conditions contained in Attachment III.

SUMMARY

The applicant is requesting approval of a Conditional Use Permit to operate a Commercial Cannabis Retail Dispensary in the vacant tenant space previously occupied by a Walgreens drugstore at 21463 Foothill Boulevard. The dispensary would be open seven days a week from 9:00 AM to 8:00 PM and would offer cannabis and cannabis-based products to customers 21 years of age and older for recreational use, and 18 years of age and older for medicinal use, as allowed under State law. The project includes a robust security plan which includes the presence of two professionally licensed security guards on the premises during all business hours that has been reviewed and approved by the Hayward Police Department, which the applicant will be required to implement and adhere to at all times, and would include minor alterations to the interior and exterior of the subject tenant space.

The applicant, Esther Lopez, was one of three operators selected by the City Council to operate a retail cannabis dispensary in 2018 and has been looking for a suitable location for several years following the previous approval a Conditional Use Permit in 2020, which has since expired.

BACKGROUND

In 2015, the State of California enacted a comprehensive regulatory framework (Assembly Bills AB 243 and AB 266 and Senate Bill SB 643) for the licensing and enforcement of

cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis throughout the state. The legislation was known collectively as the Medicinal Cannabis Regulation and Safety Act (MCRSA). On November 8, 2016, California voters passed 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 the combination of the MCRSA and AUMA was to establish a comprehensive regulatory system for the legal cultivation, production and sale of cannabis and cannabis-based products.

On June 15, 2017, the State enacted SB 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated provisions of the MCRSA into the regulatory framework of the AUMA, thereby creating a unified regulatory system for adult medicinal and recreational cannabis use. MAUCRSA specifically authorized local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed in accordance with state law, including local zoning and land use regulations, and business license requirements. Subsequently, on October 30, 2017, and November 28, 2017, the City Council enacted new regulatory and land use ordinances authorizing cannabis businesses in certain zones throughout the City, subject to compliance with local and state regulations.

At the October 30th meeting, the City Council established a four-step Request for Proposals (RFP) process by which the City would accept proposals during a limited application window from individuals/entities wishing to establish a legal commercial cannabis business within the City and select those individuals/entities who best met the City's desired set of qualifications. The four steps in the process included:

1. Conducting a criminal background (LiveScan) check;
2. Competitive scoring and ranking of all candidates who passed the LiveScan check;
3. Conducting interviews with candidates who passed the LiveScan check; and
4. Requiring City Council approval of a Commercial Cannabis Business Permit prior to completion of the land use entitlement (typically a CUP) approval process.

In December 2017, the applicant, Esther Lopez (Aunty Honeys) was selected as one of three retail dispensary operators approved for a Commercial Cannabis Business Permit (CCBP) by the City Council on July 17, 2018¹ and subsequently obtained approval of a Conditional Use Permit (CUP) to operate a retail dispensary at 1147 B Street. Ms. Lopez, along with 11 other commercial cannabis operators, were recommended by City staff out of a total of 73 applicants to be awarded CCBPs for a variety of cannabis-related land use activities, including cultivation, manufacturing, testing, delivery and retail sales. The CUP approval process included a public hearing by the Planning Commission on January 23, 2020², at which the Commission made a recommendation for approval to the City Council and, subsequently, obtained City Council approval at a public hearing on March 3, 2020³.

Since 2020, Ms. Lopez was unable to reach a final agreement with the property owner to operate a retail dispensary at the approved location on B Street and ultimately chose to look for a new location as well as partner with another operator, Angilbert Sarkis, who has

¹ July 17, 2018 City Council Meeting: <https://portal.laserfiche.com/Portal/Browse.aspx?id=215505&repo=r-b6d2994c>

² January 23, 2020 Planning Commission Meeting: <https://hayward.legistar.com/LegislationDetail.aspx?ID=4310293&GUID=199A3DE0-0567-4C3D-9E36-527D524E1DBA&Options=&Search=>

³ March 3, 2020 City Council Meeting: <https://hayward.legistar.com/LegislationDetail.aspx?ID=4345461&GUID=50C12DDA-1CB9-4D45-AAE0-57D9A95FDB02&Options=&Search=>

experience operating retail dispensaries and can assist with the financing and management of the business. The subject location along Foothill Boulevard was chosen by the applicants because it has significantly greater visibility, being situated along one of the City's major commercial thoroughfares at a signalized intersection, that has easy access to Interstate 580 and State Route 238, and plentiful, easily accessible on-site parking located directly outside the storefront entrance.

The retail center housing the subject tenant space was originally constructed in the 1950s and underwent an exterior remodel in 1983. The two adjoining tenant spaces are currently occupied by a donut shop and martial arts studio, while a dental office occupies the remaining tenant space. The subject tenant space was last occupied by a Walgreens drugstore which ceased operations and vacated the premises in April 2024.

Public Outreach. On April 25, 2025, the City mailed 172 Notices of Application Receipt for the project to the owners and occupants of all properties within a 300-foot radius of the project site. At the time, the Planning Division staff received two emails (included as Attachment VI) and four phone calls expressing opposition to the proposed dispensary use. All of the individuals who contacted staff expressed similar opinions that the location was too close to the residential neighborhood where they live and the martial arts studio in that retail center may train children and as a result, the dispensary may result in public nuisances and/or crimes, such as loitering, public consumption, and theft.

On September 15, 2025, a Notice of Public Hearing for this Planning Commission meeting was sent to the same list of addresses that received the Notice of Application Receipt and published in *The Daily Review* newspaper. As of the date this report, staff has not received any additional comments from members of the public regarding the proposed project.

PROJECT DESCRIPTION

Existing Conditions: The subject tenant space is the anchoring space in a neighborhood shopping center located on a 1.33-acre parcel at the northwest corner of Foothill Boulevard and Grove Way. The total floor area of the shopping center is 21,833 square feet, of which 14,928 would be leased by the applicant for the retail dispensary. The remainder of the floor area is currently occupied by a donut shop, martial arts studio and dental office. The subject property is surrounded by a mix of commercial, residential and institutional uses to the north and east along Foothill Boulevard, and single-family and multi-family residential uses to the south and west along Grove Way and Locust Street.

A total of 61 unassigned parking spaces, including two accessible spaces, are provided on the site for use by all four tenants. Vehicular access to the site is provided via two-way driveways along both Foothill Boulevard and Grove Way, as well as an exit-only driveway along Locust Street. Fifteen of the 61 total parking spaces are provided in a separate parking lot around the back side of the shopping center along Locust Street.

Proposed Project: The proposed retail dispensary would occupy the entire 14,928 square feet of floor area previously occupied by a Walgreens drugstore. Approximately one-third of the floor area facing Foothill Boulevard would serve as the retail area open to the public, with a security/reception desk situated immediately inside the main entrance, a product display area, and a manager's office. The remaining two-thirds of the tenant space would serve as

warehouse/storage space, a breakroom and restrooms for staff, and an information technology room. The proposed floor plan would require a number of minor alterations to the tenant space, but no changes to the building's exterior are proposed.

As proposed and reflected in the business plan, the dispensary will offer a range of cannabis and cannabis-based products for both recreational and medicinal use, including edibles, oils, salves, and concentrates. It will be open for business seven days a week from 9:00 AM to 8:00 PM, with staff arriving at approximately 8:45 AM to prepare for opening and staying until 9:00 PM to prepare for closing. Employees will work in three shifts of at least three employees per shift, with the morning shift running from 8:45 AM to 1:45 PM, the afternoon shift from 1:45 PM to 6:00 PM, and the evening shift from 4:00 PM to 9:00 PM. The dispensary would only offer on-site sales with no in-house delivery or on-demand delivery by a third-party provided. A copy of the business plan and project plans are included as Attachment IV and V, respectively.

Safety/Security Requirements. The applicant submitted a detailed safety and security plan to ensure the safety of the employees and product inventory, the adjacent businesses, and the general public. The plan has been reviewed and approved by the Police Department, which includes many robust security measures including providing two professionally licensed, armed security guards to be present onsite during all business hours and during daily morning pre-opening time beginning at 8:45 AM and after-closing time until 9:00 PM, or whenever the last employee leaves. One of the security guards would be stationed at the entrance to the dispensary and responsible for checking each patron's government-issued identification (ID) card to ensure that they are either at least 21 years of age if purchasing for recreational use or at least 18 years of age and possessing a valid physician's prescription, if purchasing for medicinal use. The second guard would be responsible for monitoring the vendor/back entrance, the product storage area, and the exterior premises to ensure that no loitering, public consumption or other illegal activities are occurring which could pose a public nuisance or be threatening in any way to the adjoining businesses and their patrons.

Other safety and security requirements include: 1) installation of a professionally monitored security alarm system that includes entry/exit detection sensors on all door and window openings as well as motion sensor lighting; 2) installation of a surveillance Internet Protocol (IP) camera system covering the entire interior and exterior of the dispensary, including the parking lots, and retention of all video footage for a minimum of 90 days; and 3) installation of commercial-grade Building Code-compliant locks on all windows and doors.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan: The project site has a land use designation of Commercial/High-Density Residential (CHDR) in the *Hayward 2040 General Plan*⁴. This land use designation applies to commercial and larger-scale residential properties situated along the City's primary arterial streets. Allowable uses include all types of retail, dining and service uses, professional offices, multi-story apartment and condominium buildings and mixed-use developments containing ground-floor commercial uses and residential units on upper floors.

The proposed use will add a new specialized retail establishment for adults who choose to purchase legal cannabis products for personal recreational or medical use along one of the

⁴ Hayward 2040 General Plan: <https://www.hayward-ca.gov/2040-General-Plan>

City's main commercial thoroughfares, as allowed under State law. Further, legally operated cannabis businesses can provide significant sales tax revenues for the City which, in turn, can assist with the provision of essential services to the City's residents. Allowing the proposed use would be consistent with the following *Hayward 2040 General Plan* goals and policies:

- *Land Use Policy LU-2.16 – Uses to Attract the Creative Class*: The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward, including: restaurants and cafes; art studios and galleries; and entertainment and cultural venues.
- *Land Use Policy LU-5.1 – Mix of Uses and Activities*: The City shall encourage a mix of retail, service, dining, recreation, entertainment, and cultural uses and activities in regional and community centers to meet a range of neighborhood and citywide needs.
- *Economic Development Goal ED-1*: Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for residents.
- *Economic Development Goal ED-1.4*: The City shall establish business attraction efforts that focus on small and medium-sized businesses in emerging and growing business sectors.
- *Community Safety CS-1.12 – On-Site Security*: The City shall require conditions of approval related to the provision of on-site security and safety measures for bars, nightclubs, live entertainment businesses, and related uses. Conditions shall promote a healthy balance of public safety and nightlife vibrancy, and may include surveillance cameras, crowd management practices, and on-site security staff.

Additional discussion on the consistency between the proposed use and the *Hayward 2040 General Plan* is included in the Staff Analysis section below and contained in the Draft Findings for Approval (Attachment II).

Zoning Ordinance: The project site is located within the General Commercial (CG) zoning district⁵. The CG district allows the establishment of commercial cannabis retail dispensaries subject to approval of a CUP⁶. While most CUP applications are typically decided by the Planning Commission, pursuant to HMC Section 10-1.3250⁷, the Commission may refer a CUP application to the City Council at any time, with or without a recommendation. Due to the sensitive nature of retail dispensaries, the Commission has historically referred these CUP applications to the City Council for their consideration. The Commission is again being asked to make a formal recommendation on the proposed CUP application to the Council.

Pursuant to HMC Section 10-1.3225⁸, the deciding body may approve or conditionally approve a CUP when all of the following findings are met:

- a. The proposed use is desirable for the public convenience or welfare;
- b. The proposed use will not impair the character and integrity of the zoning district and surrounding area;

⁵ HMC Section 10-1.1000 – General Commercial District (CG)

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.1000GECODICG

⁶ HMC Section 10-1.3200 – Conditional Use Permit: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=CD_ORD_CH10PLZOSU_ART1Z0OR_S10-1.3200COUSPE

⁷ HMC Section 10-1.3250 – Referrals: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.3200COUSPE_S10-1.3250RE

⁸ HMC Section 10-1.3225 – Conditional Use Permit Findings:

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.3200COUSPE_S10-1.3225FI

- c. The proposed use will not be detrimental to the public health, safety, or general welfare; and
- d. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

The proposed dispensary would help meet a specialized demand for a legal drug product that can be used for both recreational and medicinal purposes throughout the state. While there may be perceptions that such a business could have the potential to adversely impact the surrounding area, a set of stringent conditions crafted by the Police Department requiring implementation of several robust security measures and prohibiting any nuisance-related activities involving cannabis such as loitering and public consumption/intoxication in and around the premises would be placed upon the CUP. In addition, any operator that has been determined to be a public nuisance with excessive calls for service or by operating in violation of their approved conditions of approval may be subject to revocation of the Commercial Cannabis Business Permit and the Conditional Use Permit by the City Council. Additional analysis related to the findings required is included in the Staff Analysis section below and contained in the draft Findings for Approval in Attachment II.

Cannabis Land Uses: HMC Section 10-1.3600⁹ governs all commercial cannabis businesses that cultivate, manufacture, transport, distribute, or sell any type of cannabis or cannabis-based products throughout the City. The various subsections of HMC Section 10-1.3600 contain numerous regulations and requirements governing all commercial cannabis businesses, all of which have been included as conditions in Attachment III. In addition, HMC Section 10-1.3612¹⁰ prescribes a small number of additional findings meant to supplement those required for approval of a CUP listed above which the decision-making body must make when considering an application for a CUP to operate a retail dispensary. Specifically, these additional findings are required to determine whether the proposed use will detrimentally affect the surrounding neighborhood or place a disproportionate burden on public safety services as compared to other commercial or industrial uses whose businesses do not involve cannabis or cannabis-related products. The findings are as follows:

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, sustainable 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.

As stated previously, the proposed use would meet a specialized demand by offering legal cannabis and cannabis-based products for recreational and medicinal use in Hayward and while such activities do have the potential to have adverse impacts on nearby uses, several stringent operational and security-related conditions have been included on the CUP which are designed to prevent such impacts from occurring. As with the CUP findings, a more

⁹ HMC Section 10-1.3600 – Cannabis: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA

¹⁰ HMC Section 10-1.3612 – Findings: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA_S10-1.3612FI

detailed analysis related to the findings required for approval of the commercial cannabis businesses is included in the Staff Analysis section below and contained in the Draft Findings for Approval in Attachment II.

Commercial Cannabis Business Permit: Pursuant to HMC Section 6.14-13¹¹, and applicant for a new commercial cannabis business must obtain approval of a Commercial Cannabis Business Permit by the City Council to ensure that all regulatory requirements are met. Ms. Lopez completed this task when she obtained CCBP approval to operate a retail dispensary (Aunty Honey's) at 1147 B Street from the City Council on July 17, 2018. Since Ms. Lopez is now transferring partial, minority ownership and operational control of her previously approved business to Mr. Sarkis, Mr. Sarkis was required to undergo the required background/LiveScan check to ensure that he did not have a history of committing any drug-related or other serious crimes. His background check was previously processed by the Hayward Police Department as part of the New Change of Owner/Attestation required by the City and did not reveal any criminal history.

HMC Section 6.14-13 also requires that the applicants obtain the necessary land use entitlements which in this case, the CUP is subject to City Council review. Should the CUP application be approved, the applicants would be required to obtain a cannabis license from the State Department of Cannabis Control prior to operation and failure to obtain the State license, as well as maintaining the license in good standing, would be grounds for revocation. In addition, all Commercial Cannabis Business Permits issued by the City are valid for one (1) year and must be renewed annually following the completion of mandatory safety inspection and demonstrated compliance with all local and state regulations, including all conditions of approval of the CUP.

STAFF ANALYSIS

Staff has reviewed the project plans, business plan and safety/security plan submitted by the applicant and believes the Planning Commission can make the required findings to recommend approval of the Use Permit to the City Council, subject to the findings and recommended conditions of approval in Attachment III. As mentioned previously, the proposed use would contribute to the public welfare by providing a safe and secure environment for adults to purchase legal cannabis and cannabis-based products for their private consumption at a convenient location along a major thoroughfare that currently offers a wide variety of other retail and service uses. It is also possible that the dispensary's customers may patronize other nearby businesses, including the many restaurants located along Foothill Boulevard. Sales and cannabis tax revenues from a legal cannabis dispensary could also be significant for the City and could help to fund essential City services.

Furthermore, allowing the proposed use would be consistent with the goals and policies of the *Hayward 2040 General Plan*, which call for supporting local small businesses and providing a wide range of goods and services within the City that meet the everyday and specialized needs of Hayward residents, including legal drugs such as cannabis that can be used in California for recreational and medicinal purposes. Additionally, the zoning on the property allows for a wide variety of retail uses, including cannabis dispensaries, subject to approval of a CUP, so the

¹¹ HMC Section 6-14.13 – Commercial Cannabis Business Permit Application:
https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU_S6-14.13COCABUPEAP

proposed use is permissible subject to the Planning Commission and/or City Council being able to make the prescribed findings.

Staff has drafted a set of strict conditions of approval regulating the daily operations of the proposed dispensary, including several crafted by the Hayward Police Department that specifically pertain to security measures in an effort to mitigate any unsafe, nuisance and/or criminal activity at the establishment. With the inclusion of these conditions, staff does not believe that the use will have a detrimental impact on public safety or welfare. The applicant will be required to adhere to the conditions at all times, and as previously stated any failure to do so could constitute grounds for revocation of the CUP. For these reasons, staff recommends that the Commission recommend approval of the CUP to the City Council based on the findings in Attachment II and subject to the recommended conditions in Attachment III.

ENVIRONMENTAL REVIEW

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities, which exempts projects that utilize existing structures while only making minor modifications to them. The proposed project involves only minor alterations to an existing commercial building with no expansion of the subject tenant space.

NEXT STEPS

If the Planning Commission concludes that the findings required for the approval of the CUP and commercial cannabis business can be made, then it may refer the item to the City Council with a recommendation for approval. If the Commission does not believe that all of the required findings can be made, then it may recommend denial of the CUP application to the City Council for their consideration at a public meeting tentatively scheduled for October 21, 2025.

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Approved by:



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