



DATE: December 8, 2020

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Commercial Cannabis Program Work Session: Review and Provide Feedback on Recommended Process and Policy Updates to the City's Commercial Cannabis Program

RECOMMENDATION

That the Council provides feedback and guidance on the proposed policy and process recommendations for updating the Regulatory and Land Use Ordinances for the Commercial Cannabis Program in the City of Hayward.

SUMMARY

During the past three years that Hayward's cannabis program has been operational, staff has identified several issues and inconsistencies with processes and local regulations that should be resolved before embarking on a new request for applicant proposals. During this same time, the State of California has promulgated several new laws and regulations related to cannabis as the broader industry has evolved. While the City's regulatory and land use ordinances were sufficient to accommodate the first round of applicants, the lack of resources coupled with a greater demand for operational processes and protocols have also presented challenges to the administration and management of the cannabis program in the City.

Over the past year, City staff and ICF have been working to identify new opportunities and recommendations to improve the current cannabis program to ensure long term success, including an evaluation of what has worked well and what could be improved, taking stock of changes in the broader industry and state regulatory system, and learning from effective and innovative practices from other jurisdictions.

The purpose of this work session is to obtain feedback on the recommendations being proposed to the City's cannabis licensing and permitting processes. If Council supports this approach, these changes will be codified in the revised Commercial Cannabis Ordinances with the aim of opening a new commercial cannabis application period in Spring 2021.

BACKGROUND

In December 2019, the City Council directed staff, supported by its consultants at ICF, to conduct a review of experiences to date with the city's commercial cannabis program and develop recommendations for updating key elements of the program and the two related City ordinances. This work plan has five main components:

- Task 1** Conduct Background Review – Complete
- Task 2** Refine Processes for Licensing and Permitting – Complete (seeking Council feedback)
- Task 3** Strengthen Systems for Auditing and Compliance – Upcoming
- Task 4** Assess Organizational Requirements and Update Fee Schedule – Upcoming
- Task 5** Update Regulatory Ordinance and Land Use Ordinance – Upcoming

Under Task 1 of this work program, ICF conducted a review of the City's current cannabis program as well as relevant local and statewide factors that might inform any proposed changes to Hayward's program. The review by ICF summarized these findings and consolidated the feedback received from cannabis licensees and city staff into the six categories below.

- Refine Business Licensing (RFP, Application, & Review) Processes – Complete
- Improve Land-Use Entitlement Processes – Complete
- Strengthen Auditing, Inspection, and Compliance Processes – (Task 3)
- Enhance Measures to Curtail Illegal Operations – (Task 3)
- Strengthen Organizational Capacities & Update Fee Schedule – (Task 4)
- Revise Commercial Cannabis Ordinance & Land-Use Ordinance – (Task 5)

Feedback on the Business Licensing (RFP, Application, & Review) and Land-Use Entitlement Processes was addressed through the proposed changes outlined in the Licensing and Permitting redesign guidance documents. A summary of the background review and findings is included as Attachment II.

DISCUSSION

Following the City Council work session in December 2019, City staff and ICF have been working to identify possible procedural and regulatory improvements for the commercial cannabis program in the City. To date, much of the work has been focused on evaluating the current application and licensing process and identifying new opportunities to consolidate and streamline development review. Below is a summary of the recommended updates, including the benefits for adopting this approach.

Proposed Updates to the Cannabis Licensing and Permitting Process

Primary Objective

Based on feedback from internal and external stakeholders, the key goal of this evaluation was to streamline the cannabis licensing and permitting processes to improve administrative efficiency and to promote further economic development through the establishment of more active businesses, while maintaining a safe and responsible local commercial cannabis industry.

Proposed Process

The proposed process streamlines the City's existing RFP and review process by delineating three components, with the latter two running concurrently: (1) an initial screening process to determine applicant eligibility; (2) the land use permit process, focusing primarily on site-specific requirements; and (3) a concurrent business operating permit process, focusing on broader operational and regulatory requirements. Attachment III provides a flow diagram of the proposed process.

Benefits of the Proposed Process

1. **Intelligently utilizes limited City staff time and resources.** The new pre-application screening process provides a preliminary determination of eligibility before both the applicant and the City begin the time- and resource-intensive process of reviewing detailed application and business plan materials by immediately weeding out applicants who (a) don't have a proposed location that meets the zoning requirement; (b) don't have proof of site control for the proposed location; (c) don't pass the background check requirements; or (d) don't meet minimum requirements for sound business operation.
2. **Increases administrative efficiency and decreases the time it takes applicants to become operational.**
 - a. **Removes duplication:** Many licensees expressed frustration that they had to submit the same materials to different divisions/staff throughout the process. The new concurrent process clearly outlines responsibility and ensures that there is no duplication between material submittal requirements for the business license permit and the land use permit. Additionally, the proposed process removes duplicative requirements that are sufficiently covered by the state regulations.
 - b. **Reduces complexity:** Many licensees felt that Hayward's entitlement process was overly complex, cumbersome, and costly compared to other cities. The proposed update simplifies the application requirements and clearly outlines approval criteria for each stage of the process.
 - c. **Improves coordination and information sharing between city staff:** Concurrent permitting processes will allow city staff to utilize the most recent information from applicants to inform their decision making and improve consistency and efficiency.
3. **Maintains the rigor of the existing RFP process.** It also ensures that cannabis businesses will work to meet the city's expectations related to social equity, labor and employment practices, and community benefit proposals.

Recommended Frequency of Review

Staff recommends the City evaluate new cannabis applications on a bi-annual basis moving forward. This approach would balance limited staff resources yet allow cannabis applicants two opportunities per year to submit a proposal for review. If this approach is supported by Council, these changes will be codified in the revised Commercial Cannabis Ordinance with the aim of opening a new application period in Spring 2021.

Proposed Social Equity Component

As part of the program update, City staff and ICF are recommending the inclusion of a social equity component for the City's Commercial Cannabis program. Low income and minority communities have been disproportionately affected by the adverse impacts of cannabis criminalization and its enforcement. Social equity programs have been established by many cities to address the inequitable impacts of past cannabis policies by helping to ensure access for minority and low-income communities to the legal cannabis industry.

If the Council supports the idea of introducing a social equity component as part of the update to the City's cannabis program, there are a number of potential approaches that could be employed to increase the successful participation of equity applicants. Below is a list of recommended approaches for consideration, along with a brief discussion of how they might be implemented in Hayward. All of these options were presented to the City's GARE Task Force for review and input and only those programs that were supported by the Task Force are reflected below:

❖ **Require half of approved applicants to be equity applicants.**

- **Justification:** During the era of cannabis prohibition, minority and low-income communities were disproportionately affected by the war on drugs and cannabis policing. Now that cannabis has been legalized, the majority of legal adult-use and medicinal cannabis operations are not led or owned by minority or low-income applicants. While it's not clear how many of the City's current businesses and approved applicants are owned by equity applicants, requiring a specific proportion of equity applicants would help to redress this past injustice by more equitably spreading the economic benefits of cannabis legalization.
- **Objective:** Provide an explicit mandate that will ensure that at least half (or other percentage) of all new approved applicants qualify as equity applicants. Ensure that access to the legal cannabis industry in Hayward supports the growth of equity business.
- **ICF/Hayward Discussion:** This approach is a good fit for the City. How it is implemented will largely be dependent on the criteria that are defined for "equity applicants." The City could implement a point-based system or a menu of options that could qualify an equity applicant. Possible criteria for equity applicants could include:
 - Majority women, veteran, or minority owned business
 - Applicant has been convicted of a cannabis possession offense or has a parent, sibling, or child who was arrested or convicted for a cannabis possession-related offense
 - Applicant is a member of a household with annual income at or less than 80 percent of Hayward Median Income OR has lived for at least five years in Hayward census tracts that have been designated as a Community of Concern by ABAG/MTC. ABAG/MTC defines Communities of Concern (CoCs) as census tracts that have a concentration of both minority and low-income residents, or that have a concentration of low-income residents and any three or more of the following six disadvantage factors: persons with limited English proficiency; zero-vehicle households; seniors aged 75 years and over;

persons with one or more disability; single-parent families; and renters paying more than 50 percent of their household income on housing.

- Proposed business location is in a low-income area. The City would need to consider how any proposed policy interacts with the current zoning.
- Applicant is willing to partner with other equity applicants or support other equity applicants. The City would need to consider how this would be audited and enforced; could require demonstration of partnership.
- Open-ended applicant justification

❖ **Provide priority permit processing for equity applicants.**

- **Justification:** Significant financial barriers exist for low income equity entrepreneurs. Long permitting timelines can drive up costs and bar these equity applicants from the legal cannabis industry.
- **Objective:** Speed the permitting timeline for equity applicants to ensure that the process does not become more costly.
- **ICF/Hayward Discussion:** This approach is a good fit for the City. With limited time and resources, the Planning Division could prioritize equity applications during the review process. Other aspects of an expedited processing are not necessary given the proposed streamlining of the overall application process.

❖ **Cannabis-related possession offenses do not exclude applicants from getting a license.**

- **Justification:** Cannabis use is roughly equal among blacks and whites, yet Black Americans are 3.73 times as likely to be arrested for cannabis possession. Cannabis possession arrests have had a staggeringly disproportionate impact on Black Americans and that comes with a tremendous human cost. Arrests and convictions negatively impact public housing and student financial aid eligibility, employment opportunities, and more.
- **Objective:** Now that commercial cannabis has been legalized, this approach would ensure that marginalized communities are not barred from participating in this emerging and now legal industry.
- **ICF/Hayward Discussion:** This approach is a good fit for the City. Since expungement is done at the state level, the City can instead ensure that cannabis possession-related convictions do not exclude applicants from pursuing a local commercial cannabis license.

❖ **Provide technical assistance for cannabis business ownership.**

- **Justification:** The planning and start-up process for a new cannabis business is significant and could present a barrier to entry for low-income applicants.
- **Objective:** Provide technical assistance for equity applicants.
- **ICF/Hayward Discussion:** Hayward can investigate implementing the approach if the City does not receive the anticipated number of equity applicants. This approach may tie in with an equity incubator program. Hayward has an existing business concierge service within the Economic Development Division that could assist with this effort, but limited staff resources may impact the long-term viability of this program component.

Staff is requesting feedback on the proposed social equity components of the ordinance update.

Proposed Evaluation Criteria. The updated review and selection process propose to maintain most of the original evaluation criteria that was supported by Council and included as part of the original RFP process. These new criteria include the following:

- Business Structure: Provide a description of the Commercial Cannabis Business organizational status and provide proof of status, such as articles of incorporation, by-laws, partnership agreements, and other documentation as may be necessary. This shall include a list of all owners/entities that have an interest of 5% or greater in the business.
- Local Ownership and Control: A description of the extent to which the business will be locally managed and/or if the principal owners/employees reside in Hayward or in Alameda County.
- Business Plan: A more detailed description of the project narrative, including business model, expertise of owners and staff, and implementation plan (schedule of anticipated first-year startup activities and capitalization).
- Community Benefit: Applicant should submit a Community Benefit Proposal discussing the proposed activities to benefit the City of Hayward and its residents. Applicants are encouraged to be creative, realistic, and specific in their proposals, and seek to align those proposals with the City's priorities and needs. Proposed community benefit could include neighborhood-specific benefits, health education and prevention approaches, quantification of economic benefits or community outreach examples.
- Social Equity Component Description.
- Labor and Employment Practices: Discuss proposed labor and employment practices for the business. Proposals should include a discussion of the overall hiring plan, a certification of a labor peace agreement in place or the applicant's intention to negotiate one, the extent of the applicant's commitment to local hiring, and a guarantee that the applicant will pay a living wage, will not discriminate, and will provide compensation and opportunities for continuing education to its employees.

Although most screening criteria remain the same, staff is requesting feedback on the following:

- ***Does Council want to remove the Community Benefits criteria from the updated application process due to the supplemental 1% sales tax increase that was approved in 2018?***
- ***Does Council recommend that any additional criteria be included or removed from those criteria listed above?***

Zoning/Land Use Update. As part of the original land use regulatory framework adopted in 2017, the City limited areas where commercial cannabis operators could locate. For most non-retail activities, a majority of the City's industrially zoned properties currently allow commercial cannabis businesses that include non-volatile manufacturing, cultivation,

distribution, delivery, and testing labs, including microbusinesses which are allowed to operate several activities on a smaller scale. Retail dispensaries, which are currently limited to three in the City, are primarily allowed in downtown Hayward as well as conditionally permitted on scattered parcels throughout the City that are zoned General Commercial. While all three dispensaries have been approved for locations in downtown, at least one of these operators has experienced difficulty in securing a site despite obtaining Council approval of the Use Permit, and as a result, has been actively looking for other areas throughout the City that could accommodate a retail dispensary. Additionally, since the Council established a cap of three retail dispensaries, there have been multiple inquiries for other retail operators interested in opening a dispensary in Hayward. Microbusinesses, which require a Type 12 license with the State, does allow a licensee to engage in 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 (storefront or non-storefront). In order to qualify for a microbusiness license with the State, a licensee must engage in at least three (3) of the four (4) commercial cannabis activities listed. Currently, the City does allow microbusinesses the ability to maintain a small storefront retail operation on-site as an ancillary use; however, only products that are manufactured or cultivated on-site can be sold in the retail space and the total area dedicated towards that on-site retail is limited to no more than 10 percent of the total floor area of the building. While this provision is consistent with other Industrial uses that allow for ancillary retail activities, it does not require the applicant establish a retail storefront and as such, the retail component could be storefront or non-storefront.

As part of the update, staff is seeking confirmation and direction from the City Council on the following policy questions:

- ***Does the Council want to maintain the current cap on retail dispensaries at three?***
- ***Does the Council want to limit the number of other cannabis uses in the City?***
- ***Does the Council want staff to explore other areas in the City where the zoning could be amended to allow cannabis?***
- ***Does the Council want to maintain the current size limitation for ancillary retail operations associated with microbusiness and/or does the Council want to limit the retail operation to non-storefront only?***

Cannabis Manufacturing. For the purposes of the land use impacts, there are two types of manufacturing activities designated by the State: Level 1 and Level 2. The principal distinction between the two levels is that Level 1 involves the use of few non-volatile solvents or no solvents for the manufacturing process while Level 2 primarily involves the use of volatile solvents, such as butane, for extraction. Level 2 manufacturing has a greater potential for public safety issues, including a higher risk for explosion and fire; however several communities throughout the State have allowed both types of manufacturing activities as long as enhanced safety and operational protocols are incorporated. Currently, the City does not allow Level 2 cannabis manufacturing due to the potential public safety implications. Since the adoption of the original land use categories, new equipment and technologies have emerged that create a more regulated, safer environment for cannabis extraction.

As part of the land use update, staff is requesting feedback from Council on following:

- ***Does the Council want to maintain a prohibition of Level 2 cannabis manufacturing activities throughout the City?***

If the Council supports allowing Level 2 cannabis manufacturing, staff will proceed to update the land use ordinances accordingly otherwise no additional action is required.

Cannabis Ancillary and Cannabis Related Activities. While much of the cannabis industry has evolved over the last few years to reflect on-going consumer demand and the changing regulatory environment, there are several new and emerging industries that have been created or expanded using cannabis as an ancillary use. Testing laboratories, which function to ensure that the products manufactured and sold to consumers meet minimum safety standards, is one example of an operation that has grown in response to the cannabis industry. The City's only approved cannabis testing lab, Harrens Lab, opened in 2019 and while this company does provide State compliance testing for cannabis, they also provide testing for several non-cannabis products, such as food additives, pesticides and veterinary drugs.

While the current regulatory process established by the City requires that all operators who handle cannabis be subject to the RFP review and selection process, staff is requesting feedback on whether or not the Council wants to establish a streamlined process for the following:

- ***Does the Council want operators who handle cannabis as an ancillary activity, such as testing labs, be subject to the same evaluation, review, and selection process as operators who handle cannabis as a primary activity, such as cultivation or retail dispensaries?***

In addition to testing labs, City staff has received an inquiry from a cannabis waste hauler who is interested in relocating their headquarters to Hayward. Unlike the testing lab, this operator would primarily be handling cannabis waste to ensure that the leftover products are disposed properly. While the State requires this operator obtain a cannabis distribution permit to transfer cannabis products, this waste hauler would not operate like a typical cannabis distributor. Under the current regulatory framework, this operator would be subject to the same review and selection process as more traditional cannabis distribution businesses, even though the operator would not be distributing usable cannabis products.

Expansion of Existing Cannabis Uses. Aside from retail dispensaries, which currently have a cap of three, there have been several cannabis operators who have expressed interest in expanding their business to include other cannabis activities that were not previously approved. Under the current regulatory framework, applicants must submit separate business proposals for each activity and be evaluated/scored on each activity as part of the review and selection process. For operators who have already secured a license from the City and are now looking to expand, there is currently no framework established that

allows these operators an ability to expand their activities outside of the RFP process. As such, applicants are somewhat limited in their ability to expand in Hayward and those that choose to expand are subject to a time consuming and resource intensive process.

While staff believes the recommended process improvements will help streamline the review and selection process for new cannabis applicants, staff is requesting feedback from Council on the following:

- ***Does Council support a separate, expedited review process existing operators who have already obtained their cannabis license and are now seeking to expand to include other cannabis uses?***

If supported by Council, staff recommends that these applicants be allowed to amend their Use Permit without being subject to the standard review and selection process that new applicants are required to complete.

Auditing, Inspection and Compliance Processes

Background and Objectives

Communities across the state are strengthening their auditing, inspection, and compliance processes to ensure that operating cannabis businesses are complying with regulations and that illegal operations are fined. During internal discussions, City and Police department staff indicated the need for an active, coordinated compliance program to ensure that local cannabis operations act in accordance with the City ordinance and State Law.

Proposed Process

City staff is proposing to establish a more explicit and robust system for cannabis auditing, inspection, and compliance reporting to ensure that licensees are complying with relevant state/local regulations and following through on their stated intentions from their license applications. This system would address both revenue reporting and a range of operational issues (e.g., new employee/workers background checks and clearances, emergency access, parking, waste disposal, security, lighting, storage of chemicals, product storage, etc.). The City will establish integrated inspection checklists and processes to ensure coverage of all key issues while improving coordination across all relevant City departments. The updated compliance system would incorporate a range of penalties and incentives -- including fees and potential license revocation -- to help ensure compliance and enable corrective actions.

In addition to the updates in the auditing and compliance process, several applicants have experienced financial and regulatory challenges in establishing or expanding their cannabis operation due to changes in State regulations and shifting demand as a result of an emerging cannabis industry. As a result, many of the City's previously approved applicants have inquired about the possibility of selling or transferring ownership to other entities. Since adoption of the regulatory ordinance in 2017, the City has allowed cannabis operators the ability to transfer a minority share of ownership (less than 50%) to another entity as long as a majority ownership group remains the same and as long as the minority ownership group successfully passes a background check and completes a New Owner Attestation Form.

Prior to any update to the regulatory ordinance, staff is requesting feedback from the City Council on the following policy questions:

- ***Does the Council support full cost recovery for administration and enforcement of the cannabis program in the City? This may require an increase of the annual cannabis license fee, which is currently \$15,000 per year.***
- ***Does the Council support the assessment of fines for illegal operations to strengthen deterrence and help shift businesses into the regulated market? This would require an update to the City's Master Fee Schedule to include new fines specific to illegal cannabis activities.***
- ***Does the Council want to continue to allow cannabis operators the ability to transfer a minority share of ownership, consistent with the provisions outlined above?***

ECONOMIC IMPACT

Each of the approved applicants who were issued a license by Council articulated the desire to hire local Hayward residents and to pay them a living wage. From the information provided by each applicant, these firms plan to create an estimated 250 new jobs. These jobs will impact the City as these employees pursue their lives in the Hayward community and therefore contribute to the local economy while also remitting City sales, property, utility user, and other City levied taxes and fees. While the number of jobs and economic impact from the cannabis industry is expected to grow in Hayward, the updated regulatory and land use ordinances will further accommodate economic growth in the City and improve overall organizational efficiencies.

FISCAL IMPACT

In December 2019, the City Council authorized an amendment to the agreement with ICF Incorporated LLC to review and update the Commercial Cannabis Permit Program for approximately \$70,000. These funds were included within the approved Development Services FY2020 Operating Budget. There will be no additional impact to the General Fund by approving this action.

STRATEGIC ROADMAP

In January 2020, the Council adopted six Strategic Priorities as part of its three-year Strategic Roadmap:

1. Preserve, Protect & Produce Housing
2. Grow the Economy
3. Combat Climate Change
4. Improve Infrastructure
5. Improve Organizational Health
6. Support Quality of Life

This agenda item supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following project(s):

Project 6: Update and Implement a Revised Cannabis Ordinance to Incorporate Best Practices to Better Support Cannabis Businesses

PUBLIC CONTACT

On November 27, 2020, a Notice of Public Hearing for the City Council work session was posted at City Hall and published within The Daily Review newspaper as a Legal Ad, and the staff report and attachments were uploaded to the City's cannabis webpage, which provides members of the public and interested stakeholders with the status updates and the latest meeting information on the City's cannabis program. In addition, the public notice was sent to nearly 100 additional stakeholders that are on the interested parties list. To date, no comments have been received from members of the public on the proposed program revisions although several stakeholders have indicated support for updates to the City's regulatory and land use ordinances.

NEXT STEPS

Staff expects to finalize the draft land use and regulatory ordinance updates in early 2021 with Planning Commission review shortly thereafter. Following Planning Commission review and feedback, staff anticipates the proposed ordinance revisions will be presented to the City Council and a new round of applications will be launched in late Spring 2021.

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Approved by:



Kelly McAdoo, City Manager