



DATE: June 25, 2019

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Adopt a Resolution of Denial for a Proposed Cannabis Retail Dispensary at 1004 B Street (Assessor Parcel No. 428-0061-056-00) by Siavash Afshar on Behalf of Hayward Station (Applicant); Alfred J Antonini (Property Owner), Conditional Use Permit Application No. 201806005.

RECOMMENDATION

That the City Council adopts a Resolution (Attachment II) that contains findings for denial for Conditional Use Permit Application No. 201806005.

SUMMARY

On May 28, 2019, the City Council held a public hearing on a Conditional Use Permit to establish a boutique, cannabis retail dispensary within a vacant building at 1004 B Street in Downtown Hayward. The Council took public testimony from the applicant and one individual who was opposed to the use, discussed the proposal, and directed staff to return with findings for denial.

BACKGROUND

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).

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.

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.

On October 30, 2017¹ and November 28, 2017², respectively, the City Council enacted regulatory and land use ordinances authorizing cannabis businesses within the City of Hayward subject to compliance with local and state regulations. At the October 2017 meeting, the Council also established a request for proposal process by which the City would select commercial cannabis businesses. The process involved four stages to help differentiate applicants who meet the City's desired set of qualifications. These stages include:

1. Criminal Background Investigation
2. Competitive Scoring and Ranking
3. Proposer Interviews
4. City Council Approval

The RFP process commenced on December 8, 2017, with applications due on January 12, 2018. At that time, the City received 77 total applications for commercial cannabis companies. Four of these applications did not meet the background check requirements of the City's cannabis program; however, 73 applications were then sent to a neutral, third party reviewer hired by the City to evaluate and score the proposals. Following an independent review by the outside consultants and interviews by key City staff, the City Manager recommended to City Council the award of commercial cannabis licenses to eleven commercial operators for land use activities that include cultivation, manufacturing, distribution, testing labs, delivery, and retail. Once selected, applicants had six months to file their land use applications. The applicant, Hayward Station, was one of the eleven companies selected for a commercial cannabis permit and is the first retail dispensary to file for license review and approval in the City.

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, giving authority to waive or reduce the 600-foot buffer between commercial cannabis uses and sensitive uses, subject to special findings³. It is essential to note that the reduction in overconcentration did not amend the regulations related to the total number of retail

¹ October 30, 2017 City Council Meeting Materials & Video

<https://hayward.legistar.com/MeetingDetail.aspx?ID=570110&GUID=1F62F795-56FA-4667-9BD1-E5FDA22CB8C5&Options=info&Search=>

² November 28, 2017 City Council Meeting Materials & Video

<https://hayward.legistar.com/MeetingDetail.aspx?ID=573134&GUID=C82D348A-0412-4741-854C-23697F2AE444&Options=info&Search=>

³ March 19, 2019 City Council Meeting Materials & Video

<https://hayward.legistar.com/MeetingDetail.aspx?ID=680215&GUID=4249ED39-B6F2-4823-AC4D-DD7B8718F8D4&Options=info&Search=>

dispensaries permitted within the City, which is set at a maximum of three pursuant to City Council Resolution No. 17-158. Rather, the regulations were intended to relax distance requirements in the Downtown area where lots are smaller and uses are closer to each other by design.

On May 9, 2019, the Planning Commission held a public hearing to consider the proposed CUP and voted 6:0:1 to recommend approval of the project.⁴ One member of the public spoke against the use in this location. The Commissioners expressed concerns about issues of compatibility between the use and all-age events that are held Downtown and felt that a typical retail, restaurant, or office use would be preferred in the proposed historic building. However, they felt that the proposed security measures and design measures to screen the interior would minimize nuisances related to the use.

On May 28, 2019, the City Council held a public hearing to consider the proposed project, took public testimony from one member of the public, asked clarifying questions, and discussed the proposed project. Clarifying questions included questions about: the applicant's community benefits proposal; whether there would be obvious cannabis-related signage on the building; whether the City's Social Host Ordinance would cover cannabis use; and, whether the business owners considered placing the entrance on Main Street versus B Street, among others. Discussion focused on: standardizing the community benefit requirements for cannabis businesses; whether there are other appropriate zoning districts for cannabis retail uses; and if the proposed location, and Downtown Hayward, is an appropriate location for cannabis retail dispensaries.

Following the discussion, a motion to approve the cannabis dispensary with amendments to the conditions of approval to require that the applicant provide one percent of gross receipts annually as the specified community benefit and a requirement to remit taxes on a quarterly basis failed. A subsequent motion passed 4:2:1⁵ directing staff to return with findings for denial based on concerns related to proximity of the proposed cannabis dispensary to sensitive uses; the inappropriateness of the proposed site due to its location at the intersection of two major pedestrian corridors at the center of Downtown Hayward; and, the determination that the proposed project would not be in harmony with applicable City policies and standards.

ECONOMIC IMPACT

As described in the previous staff report, development of the vacant and underutilized site with the proposed use would have resulted in establishment of a new retail use that would draw customers from the larger region to shop in Downtown Hayward. Disapproving the use

⁴ May 9, 2019 Planning Commission Materials and Video
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3936270&GUID=FBCA81ED-430B-47F3-AA24-14C5931D9483&Options=&Search=>

⁵ May 28, 2019 City Council Materials and Video
<https://hayward.legistar.com/LegislationDetail.aspx?ID=3956880&GUID=3EA30AA5-ADF0-49EB-88A7-BD714E2ABCF5&Options=&Search=>

without having a certain tenant to occupy the space represents an opportunity cost, which is defined as the loss of potential gain from other alternatives when one alternative is chosen.

FISCAL IMPACT

Denial of the proposed retail dispensary represents an opportunity cost in the loss of potential sales tax revenues, tenant improvement and other permit fees, annual renewal of the cannabis permit, and any revenues that would have been directed to community benefits as a result of establishing the use in that location.

STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not specifically relate to the Council's Strategic Initiatives.

PUBLIC CONTACT

On November 16, 2018, an initial Notice of Application Receipt for the project application was sent to 244 addresses including property owners, residents, and businesses within a 300-foot radius of the project site. Between November 16 and December 3, 2018, following submittal of the CUP application, the applicant walked the area around the project site to introduce the proposed project.

On May 17, 2019, a Notice of Public Hearing for the City Council meeting was sent to property owners, residents, and businesses within 300-feet of the project site and published in The Daily Review newspaper.

NEXT STEPS

The applicant may look into establishing the business at alternative locations in Hayward.

Prepared by: Leigha Schmidt, Senior Planner

Recommended by: Laura Simpson, Development Services Director

Approved by:



Kelly McAdoo, City Manager