

CITY COUNCIL MEETING
TUESDAY, OCTOBER 17, 2017

Documents Received After Published Agenda

ITEM # 7 – WS 17-049

Comments

- **Frank Burton**
- **Aloha Group**
- **Alicia Lawrence**

From: Frank Burton [REDACTED]
Sent: Tuesday, October 17, 2017 12:30 AM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Subject: Affordable housing

Hayward City Council,

I appreciate your taking time tonight to discuss various elements which will hopefully result in more affordable housing in Hayward.

Unfortunately, I'm not able to be at your meeting tonight because of a prior commitment, so am submitting these comments in lieu of delivering them during the public comment period on your Agenda Item 7, the Work Session devoted to Activities Relating to Housing Affordability and Anti-Displacement Strategies.

>>>Relating to Item 4 in the "Strategies Identified by Council for Further Review and Potential Implementation, on Page 3 of the staff report:"

I distributed to all members of the City Council many months ago a group of news articles about Tiny Homes, and I believe Tiny Homes are worth considering as one element of "... transitional and supportive housing programs for the homeless and those who are at risk of becoming homeless."

I'm concerned that Tiny Homes has not been seriously considered by the Hayward City Council because of racial and class considerations which are hidden behind NIMBY objections to any proposal which might place partial solutions to homelessness such as clusters of Tiny Homes too close to "good neighborhoods."

I don't see Tiny Homes as **the sole answer** to housing programs for the homeless and those who are at risk of becoming homeless, but surely they can play a part in such housing programs, especially if they are located in industrial areas of the city, similar to their successful placement in other cities.

>>>Relating to Item 5 in the "Strategies Identified by Council for Further Review and Potential Implementation, also on Page 3:"

"The inclusionary requirement existed some years ago in a previous iteration of the ordinance, and is an effective tool

to create affordable units within market-rate projects."

This requirement was reduced or limited by the Council during the Great Recession, responding to the situation at that time. Perhaps the reduction in requirements for affordable units within market-rate projects served the City well then, but it certainly doesn't serve us well in today's situation.

Circumstances have changed drastically in the last decade, resulting in the crisis we now have on affordable housing. I urge you to restore or even enhance the requirement for affordable units to be built within a market-rate projects, rather than allowing in-lieu fees. **Hayward is desperate for affordable housing now, and in-lieu fees don't get that housing built in a timely manner, if ever.**

Frank Burton
Hayward

Frank Burton, volunteer
with progressive organizations

***Passively to participate in an unjust system is to accept that system and to participate in its evil. --
Martin Luther King, Jr.***

***Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only
thing that ever has. --Margaret Mead***

--

Aloha Apartment
250 W. Jackson St
Hayward, ca 94544

Good Evening: Mayor, City counsel Members, & Staff

Our laws for Tenants Rights are weak, we are Pleading too City Counsel Members for stronger Protection for Tenant's Rights, against Landlord for "Examples"

- 1) Giving out 60 days notice without reason (which they should give a reason)
- 2) Intimidation (Tenants speaking their opinion about the Landlord/Manager)
- 3) Fear of speaking to manager (things needs fixing in the apartment)
- 4) Removal of expensive door screen tenant brought and paid to
Have screen door Install, given permission from the Manger/Agent
- 5) I do not have protection (which I have been told), Two different months My water was turned off twice without written notice for four hours
- 6) Please give stronger restriction to Landlord/Manager to Protected Tenants Rights,
We have the right to stand up & complain when the Landlord & Manager Are not doing their Job in fixing Items in our building, without tenants fear Of Intimation or threats from the Landlord/Manager

Thanks

Aloha group

From: Alicia Lawrence [REDACTED]
Sent: Tuesday, October 17, 2017 5:23 PM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Subject: Affordable Housing & Rent Stabilization Comments

When we moved to Hayward in 2014, we found ourselves in a diverse, interconnected community; a community we've grown to deeply appreciate and welcome the opportunity to raise our child in. In the short while we've been here, we've seen the gentrification that is happening (and that frankly we are complicit in). We're astounded by how the market has increased in just 3 years, and we have deep concerns for those not in the financial and economic position we are in.

Regarding Fees from rental units, I would like to voice support for those fees being used to leverage funding from other sources (Alameda County General Obligation Board, Measure A1, etc). I understand the idea of creating leverage for funding is being used to support keeping the fee-by-right option as-is. However, I would contend that leverage can be created by the funds generated from Fees from rental units and the fee-by-right option can be discussed without invoking concern for Hayward's competitiveness for other sources.

I would also like to voice support for Keyser Marston Associates' recommendation regarding the on-site units requirement. I don't believe decreasing on-site units is compatible with creating a deeper affordability in Hayward.

I would also like you to consider a review of the current Average Median Income requirements as they relate to affordability and qualification for housing. They are not aligned with what renters in Hayward actually experience. The requirements should be lowered to support deeper affordability in Hayward for those who are deeply low-income.

Lastly, the previous City Council meeting I attended I heard from families in the midst of displacement at the Aloha Apartments. It's critically important that renters be protected, that enforceable rent control be enacted, and that renters' voices be centered in these conversations. Please listen to them; center them.

Developers will continue to want to develop in Hayward. It's the people already in Hayward, the

people who make Hayward the community we all love - their needs must be addressed. Otherwise, we stand to lose the community we all love.

Thank you for making this a priority. I'm sorry I can't attend tonight's meeting, but I appreciate this subject being given proper attention and concern.

Sincerely,
Alicia Lawrence
Burbank Neighborhood

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Alicia G. Lawrence



ITEM # 7 – WS 17-049

ITEM #8 – WS 17-046

Comments

- **Corinne Vasaure**
- **Dan Goldstein**

From: Corina Vasaura [REDACTED]
Sent: Tuesday, October 17, 2017 11:14 AM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Subject: Hayward City Council Housing Work Sessions Items #7 & #8

Hello Mayor, City Council members and Hayward City Staff,

my name is Corina Vasaura. I am a resident of Hayward. I write to you today to give my input regarding the work session on housing happening tonight and wish I could speak in person. I have been in the field of nonprofits for 14 years and work with working class families. What has been really disturbing for me to see in the past 2 years is a lot of these families (working class leaders invested in our community) having to move away from Hayward because they can't afford our city anymore. The thing is, their spouses are still working in the peninsula or east bay area jobs but they are now commuters from Modesto, Newman, Stockton + Tracy. So they are coming through Hayward area everyday, twice a day, but only to drive on our streets to get to their jobs. Not to live, have their kids attend our schools, shop at our stores or eat at our restaurants. These once Hayward residents are now added commuters to our streets.

Also, I live on Pinedale Court and unlike comments you might hear from other neighbors, I don't mind the houseless neighbors who hang out at Jack-in-the box or the Hayward Plunge parking lot. This is the result of the city not providing enough housing and the larger issue of sky-rocking rents that leaves them with no where to go. I have read over the documents that were prepared by city staff and I have a few questions/comments:

- Will any of the new housing programs discussed, prioritize current Hayward residents (or recently displaced) to fill the new housing? I am not against other people moving to Hayward but we have so many in our community that are having to move away, double up with other family members, live in terrible rental conditions or are homeless because they can't find anything affordable in Hayward.
- From what I am reading, the new housing programs are for low-income/disabled/seniors. Can individuals/families (who might fall under these categories) who don't have U.S. legal status qualify to live in these new homes?
- If we have new families moving to Hayward, does HUSD have enough classroom space

to accommodate them? Is the city looking at current numbers of children on HUSD school campuses? A lot of our schools are way past capacity and wonder how the city and working with HUSD on addressing this issue? For example, Burbank has 920 kids at this elementary school. This is way over the planned enrollment for the school when it was rebuilt. And more homes are currently being built around Burbank.

- If outside nonprofits will be used to do outreach/renter advocacy/landlord support, please provide support for these organizations to conduct more outreach in the community and in Spanish. Numerous times at my job we would encourage people to use the local housing advocacy group. They had either had visited them or trying to get support from them without much help. Maybe it is the organization needs more financial support to do what is being asked of them? Maybe the case loads are higher than staff capacity? I'm not sure. Maybe the two new Housing positions proposed could help with this?
- I would encourage language that includes renter/landlord mediation become mandatory. As of now it is voluntary for the landlords to participate and most don't which makes it harder for the renter to address concerns they have in a space space.
- I would encourage language that includes providing as much low and middle income housing (no matter your immigration status) that is possible and prioritizing current or recently displaced Hayward residents into Hayward's plan. These are the families that are having to leave and we need to support our community.

Thank you for your time and I look forward to hearing from you.

Sincerely,

Corina Vasauré

Pinedale Court, Hayward 94544

From: Dan Goldstein [REDACTED]
Sent: Tuesday, October 17, 2017 2:35 PM
To: List-Mayor-Council <List-Mayor-Council@hayward-ca.gov>
Cc: Mimi Bauer [REDACTED]; Cecilia Miskic [REDACTED]; Minane Jameson [REDACTED]
Subject: Affordable Housing

Honorable Mayor and City Council: Worthy concepts like 'universal design' and 'aging in place' have little value if generations of families can't afford to stay in the same community. To stay close to family, each generation approaching retirement age has to consider moving away, potentially losing lifelong connections with friends, places of worship, medical and home care providers, and others.

"Market rate" in Hayward today means townhomes selling for \$785k, costing new owners 3600/month plus insurance, taxes, and HOA dues. To qualify, buyers need a combined household income of about \$154k annual. Builders know this number is a sweet spot for the Bay Area, hugely popular and profitable.

Affordability needs to be a priority. We won't address the issue adequately by allowing tiny 'in lieu fees'. Even with increased fees, I don't believe Hayward has ever been adequately served by them. We don't want developments solely dedicated to low/moderate income earners; it is uniquely stigmatizing to the residents, and tends to downgrade the value of surrounding neighborhoods.

In fact, we need the same market rate units built by the same developers, in market rate developments, in market rate neighborhoods, with market rate neighbors, made affordable to the economically diverse community we have. I would like to see those affordable units made available with top priority to buyers who have homeowner family members in Hayward already, to help keep aging families together. And second priority to families working in Hayward, to help reduce traffic and increase community pride.

Respectfully,

Dan
[REDACTED]

Goldstein

ITEM #8 – WS 17-046

Questions & Answers

AGENDA QUESTIONS & ANSWERS
MEETING DATE: OCTOBER 17, 2017

Item #8: Discussion of the Residential Nexus and Financial Feasibility Study Findings and Draft Recommendations for Potential Amendments to the Affordable Housing Ordinance (AHO) and AHO Fees.

Q: Attachment I - Executive Summary. Page 6 of 7. Are you referring to fees levels on p. 5 of 7 or 2 of 7?

A: This is referring to the recommended fee ranges outlined on pages 3-5, in the Recommendations section of the executive summary, specifically the numbered items in the sub-sections under the headers "For-Sale (Homeownership) Housing Recommendations" and "Rental Housing Recommendations," and the bulleted items and table under the header, "Additional Fee-Related Recommendations."

Attachment I - Executive Summary. Page 6 of 7. Number 3. I can't find the corresponding analysis in any of the reports. CPI or ENR? Where is the explanation?

This suggested consideration is mentioned in the "Other Recommendations and Considerations" section of the summary, in which staff offers some additional options for Council to consider above and beyond those that were studied in the Nexus analysis. Staff seeks Council direction to determine if there is interest to explore any of these options further, and if Council so directs, staff will analyze them and bring back options to Council with the introduction of the ordinance.

ITEM #8 – WS 17-046

Comments

- **Richard Ersted**
- **Grupe Company**

From: [Miriam Lens](#)
To: [Al Mendall](#); [Barbara Halliday](#); [Elisa Marquez](#); [Francisco Zermeno](#); [Mark Salinas](#); [Marvin Peixoto](#); [Sara Lamnin](#)
Cc: [Kelly McAdoo](#); [Michael Lawson](#); [Maria Hurtado](#); [Sean Reinhart](#); [Omar Cortez](#); [Marian Handa](#); [Colleen Kamai](#); [Denise Chan](#); [Diana Hernandez](#); [Kristoffer Bondoc](#); [Brienne Elizarrey](#)
Subject: City Council Meeting: October 17, 2017: Agenda Item 8: WS 17-046
Date: Tuesday, October 17, 2017 10:10:23 AM
Attachments: [city of hayward city council work session 17-046.2017 oct 17.v3 signed.pdf](#)

Mayor and Council Members,

Mr. Richard C. Ersted has asked me to forward the attached document and his email below to you which is regarding [Item No. 8 \(WS 17-046\)](#) on tonight's Council packet.

Thank you,

Miriam Lens, City Clerk

From: Richard C. Ersted [mailto:rcersted@ircoc.com]
Sent: Tuesday, October 17, 2017 10:02 AM
To: Miriam Lens <Miriam.Lens@hayward-ca.gov>
Cc: Barbara Halliday <Barbara.Halliday@hayward-ca.gov>; Sara Lamnin <Sara.Lamnin@hayward-ca.gov>; Francisco Zermeno <Francisco.Zermeno@hayward-ca.gov>; Marvin Peixoto <Marvin.Peixoto@hayward-ca.gov>; Al Mendall <Al.Mendall@hayward-ca.gov>; Elisa Marquez <Elisa.Marquez@hayward-ca.gov>; Mark Salinas <Mark.Salinas@hayward-ca.gov>
Subject: Fwd: City Council Meeting: October 17, 2017: Agenda Item 8: Work Session 17-046

Hi Miriam. My email to list-mayor-council@hayward-ca.gov 'bounced back' from Ms. Brienne Elizarrey's email account. Could you ensure delivery of the letter attached hereto to the Mayor and each of the Council Members prior to tonight's work session? Thank you very much in advance.

Richard C. Ersted
Hayward Tennyson, LLC
% Industrial Realty Company of California
1091 Industrial Rd
Ste 101
San Carlos CA 94070-4118
650.592.5425 [v]
650.592.5488 [f]
650.766.9665 [c]
rcersted@ircoc.com

Begin forwarded message:

From: "Richard C. Ersted" <rcersted@ircoc.com>
Subject: City Council Meeting: October 17, 2017: Agenda Item 8: Work Session 17-046
Date: October 17, 2017 at 9:56:19 AM PDT
To: List-Mayor-Council@hayward-ca.gov

Mayor Barbara Halliday; Council Members Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall, Elisa Márquez, and Mark Salinas,

Attached please find letter to you regarding the above-referenced subject on tonight's Council agenda.

Richard C. Ersted
Hayward Tennyson, LLC
% Industrial Realty Company of California
1091 Industrial Rd
Ste 101
San Carlos CA 94070-4118
650.592.5425 [v]
650.592.5488 [f]
650.766.9665 [c]
rcersted@ircoc.com

VIA EMAIL TO list-mayor-council@hayward-ca.gov

October 17, 2017

Mayor Barbara Halliday; Council Members Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall,
Elisa Márquez, and Mark Salinas
City of Hayward
777 B St
Hayward CA 94541-5007

Re: City Council Meeting: October 17, 2017
Agenda Item 8: Work Session 17-046

Subject: Affordable Housing

Mayor Halliday and Council Members Lamnin, Zermeño, Peixoto, Mendall, Márquez, and Salinas:

On behalf of Hayward Tennyson, LLC, I am writing, for the reasons set forth herein, to respectfully suggest the City Council adopt, in the proposed update to the City's affordable housing regulations, a grandfathering provision. Such provision would be applicable to all projects with a prior submittal of a Tentative Map application to the City and would allow the applicant to pay the affordable housing fee, as revised in accordance with the discussions now underway.

As you all likely remember, I, together with others, own Alameda County Assessor Parcel Numbers 078C-461-1-13 and 078C-461-1-14 (collectively, Property), real property adjoining, in part, the former La Vista Quarry. We've owned the Property since purchase on February 12, 1970.

Together with DeSilva Gates, the then-owner and operator of the La Vista Quarry, and others, we played a role in the Mission-Garin Annexation Plan, a City-led planning process started in late 2001. This process spanned several years; was funded by the Quarry, us and others; and resulted in, among other planning actions, rezoning of the Quarry, the Property, and other nearby property owned by others. Prior to his entry onto the Council, Mr. Mendall played an important role in the late-on negotiations with the Quarry, the City, and several neighborhood groups regarding the final proposed unit allocation; this City-determined allocation is codified within the City Code, in the table found near the end of Code Section 10-1.2630.

Of course, development of the Quarry required reclamation and, given the lack of any public street access or utilities, the extension of Tennyson Road up from Mission Boulevard. Unfortunately,

city of hayward city council_work session 17-046.2017 oct 17.v3.docx | 10/17/17 9:47 AM

C/O INDUSTRIAL REALTY COMPANY OF CALIFORNIA

1091 INDUSTRIAL ROAD SUITE 101 SAN CARLOS CALIFORNIA 94070-4118
(650) 592-5425 [VOICE] ❖ (650) 592-5488 [FAX] ❖ rcersted@ircoc.com

Mayor Barbara Halliday; Council Members Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall,
Elisa Márquez, and Mark Salinas

October 17, 2017

Page 2 of 3

outside events in 2008 delayed development and a subsequent issue with the Garin Vista project on the Quarry's southerly border delayed development work further.

Ultimately, after negotiations with La Vista, LP, the successor to DeSilva Gates, Hayward Tennyson played a role in extending Tennyson from Mission up to the Quarry, granting certain temporary and permanent easements and making a binding commitment to further grant, upon final acceptance of the Road by the City, fee title to the right-of-way, each at no cost to the Quarry or to the City. We're excited to see the end results; Tennyson has been extended east from Mission Boulevard quite some distance, including through a portion of the Property. DR Horton is now building and marketing homes at the Quarry. It's great to see the final outcome of work begun, in part, sixteen (16) or so years ago.

To prepare development of the Property in accordance with the final Mission-Garin Annexation Plan, Hayward Tennyson, LLC completed significant geotechnical engineering work in 2005 and 2007 and, upon reaching agreement with La Vista, LP in 2016 regarding the extension of Tennyson Road, marketed the Property to various builders and developers.

We entered into a purchase agreement with Grupe, a home builder with an enviable track record dating back to 1966, including the build-out of approximately 50,000 homes in 35 cities nationwide. Grupe promptly got to work planning a development on the Property, completing further geotechnical work, a wetland study, and additional planning documents.

On October 10, 2017, Grupe submitted to the City a completed Tentative Map application and remitted the required fees. We're excited by the project; it's the culmination of a lot of careful work over a long period of time. The application is detailed; the homes look fantastic; the site planning is well thought out, leaving significant areas of open space both east and west of the single development envelope.

But, the economics work only under certain circumstances; we've been at it for a long time and the possibility of a significant change to the affordable housing regulations alters the viability of the project.

To date, both Hayward Tennyson, LLC and Grupe have expended significant amounts of time and money in the planning, partial entitlement, extension of road and utility infrastructure, site studies, and preparation of the detailed Tentative Map. A change by the City now – removing the ability to pay the fee and instead requiring the provision of the affordable housing on-site – alters the project materially. With some certainty, the product type, the home siting plan, and other site development will need to change to make certain the financial viability of the project works.

We respectfully request an exemption from the on-site provision of affordable housing, a change now contemplated by the City.

Hayward Tennyson, LLC respectfully suggests the City, like other SF Bay municipalities, may be able to best leverage, using access to public affordable housing monies and related public financing, the

Mayor Barbara Halliday; Council Members Sara Lamnin, Francisco Zermeño, Marvin Peixoto, Al Mendall,
Elisa Márquez, and Mark Salinas

October 17, 2017

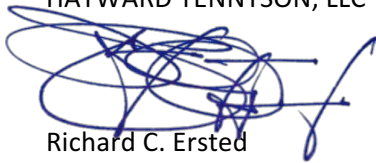
Page 3 of 3

affordable housing fees now contemplated by the City, including the updated fee range discussed in tonight's work session documents.

The City's receipt of such fees is greatest when the City does all it can to encourage and support the development of housing on a significant scale, at many price points, in many locations, with many different product types. With greater production of housing, the City, of course, generates more fees; and, using its access to public funding sources, the City leverages such greater fee revenue into more or much more affordable housing. Reliance on on-site affordable housing diminishes, perhaps greatly, such fee revenue and, as a result, may cut the City off from these outside funding sources.

Thank you very much for your consideration of the foregoing.

Sincerely,
HAYWARD TENNYSON, LLC

A handwritten signature in blue ink, appearing to read 'Richard C. Ersted', with a large, stylized flourish extending to the right.

Richard C. Ersted
Managing Member



October 17, 2017

VIA EMAIL: list-mayor-council@hayward-ca.gov

Mayor Barbara Halliday; Council Members Sara Lamnin, Francisco Zermeño,
Marvin Peixoto, Al Mendall, Elisa Márquez, and Mark Salinas
City of Hayward
777 B Street
Hayward, CA 94541-5007

Re: Affordable Housing Work Session
City Council Meeting: October 17, 2017

Attention: Mayor Halliday and Council Members Lamnin, Zermeño, Peixoto, Mendall, Márquez, and Salinas

The Grupe Company is submitting this letter as a request to City Council to adopt the grandfathering provision set forth in the proposed update to the City's affordable housing regulations. The Grupe Company submitted a Tentative Map application for development of the Ersted property on October 10th taking into account the current affordable housing fees. We are very much looking forward to working with the City through the entitlement process and bringing an exciting new community to the City of Hayward. We have currently spent hundreds of thousands of dollars studying the geotechnical aspects of this piece of property, outlining development envelopes, performing wetland delineations, performing engineering studies, etc., and ultimately developing a plan that we are truly proud of. We have been working on this process for well over a year now and have fine-tuned our proposal into a beautiful proposed project.

If in fact we are forced to pay the increased affordable housing fees that are mentioned in your proposed update, and are not grandfathered in via our application being already submitted along with the man hours and finances that have already been expended on this project, the project will not be viable. We generated multiple proformas and financial studies over this past year based upon the affordable housing fee in place at that time and decided to move forward with our efforts based upon those affordable housing figures within the City guidelines.

The Grupe Company respectfully requests that Council adopt the grandfather provision within the proposed update to the City's affordable housing regulations.

Thank you very much for your time and attention to this matter and your consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Conklin", is written over a light blue circular stamp.

Chris Conklin
Vice President
The Grupe Company
(209) 473-6067

TGC-One Drive/H/Chris C. Tennyson_Affordable Housing Ltr 10.17.17

THE GRUPE COMPANY

3255 West March Lane, 4th Floor, Stockton, CA 95219 • P.O. Box 7576, Stockton, CA 95267-0576
209/473-6000 • Fax 209/473-6188

ITEM # 9 – PH 17-091

Attachment III-Revised Draft Ordinance

ORDINANCE NO. ____

ORDINANCE OF THE COUNCIL OF THE CITY OF HAYWARD ENACTING COMPREHENSIVE REGULATIONS FOR PERSONAL CANNABIS CULTIVATION AND COMMERCIAL CANNABIS LAND USES THROUGH THE AMENDMENT OF HAYWARD MUNICIPAL CODE, CHAPTER 10, ARTICLE 1 (ZONING ORDINANCE); ARTICLE 2 (OFF-STREET PARKING REQUIREMENTS); ARTICLE 24 (SOUTH HAYWARD BART/MISSION BOULEVARD FORM-BASED CODE); AN ARTICLE 25 (HAYWARD MISSION BOULEVARD CORRIDOR FORM-BASED CODE).

THE CITY COUNCIL OF HAYWARD DOES ENACT AS FOLLOWS:

Section 1. The Council finds, based on evidence and records presented, that:

A. Pursuant to its police powers, and as authorized by the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act (“MCRSA”), the Adult Use of Marijuana Act (“AUMA”), SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”), the City may enact laws or regulations pertaining to cannabis cultivation, dispensing, manufacturing, distribution, transporting, and testing within its jurisdiction.

B. The City has previously prohibited, through exclusionary zoning ordinance, both medical and non-medical adult cannabis land uses and regulations within the City.

C. The City wishes to establish a uniform regulatory structure for all medical and non-medical adult cannabis uses in the City in accordance with state law.

Section 2. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance to read as follow:

SEC. 10-1.800 - NEIGHBORHOOD COMMERCIAL DISTRICT (CN)

SEC. 10-1.820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the CN District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (e) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

SEC. 10-1.845 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

Commercial Buildings and Uses.

For commercial buildings (including second story residential uses) refer to the design criteria contained in the City of Hayward Design Guidelines, the Hillside Design and Urban/Wildland Interface Guidelines and the following specific criteria and standards.

- i. Cannabis. Refer to Section 10-1.3600, Cannabis. j.. Decks and Ramps.
- k. Drive-in Establishments - Special Standards and Conditions.
- l. Fences, Hedges, Walls.
- m. Grading
- n. Landscaping.
- o. Lighting.
- p. Mixed-Use Development.
- q. Outdoor Storage.
- r. Parking.
- s. Retaining Walls.
- t. Roof-Mounted Equipment.
- u. Signs.
- v. Surfacing.
- w. Trash and Recycling Facilities.
- x. Window Coverage.

SEC. 10-1.900 - NEIGHBORHOOD COMMERCIAL-RESIDENTIAL DISTRICT (CN-R)

SEC. 10-1.920 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the CN-R District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See Section 10-1.1045 for special requirements; not allowed in the SD6 Special Design District.)

SEC. 10-1.1000 - GENERAL COMMERCIAL DISTRICT (CG)

SEC. 10-1.1020 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CG District subject to approval of an administrative use permit:
 - (1) Administrative and Professional Offices/Services.

- (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CN District, subject to approval of a conditional use permit:
- (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Dance or night club.
 - (f) Liquor store.
 - (g) Theater, Large Motion Picture.
 - (h) Tobacco Retail Sales Establishment. (See General Regulations Section 10-1.2780 for tobacco regulations).

SEC. 10-1.1100 – COMMERCIAL OFFICE DISTRICT (CO)

SEC. 10-1.1120 - CONDITIONALLY PERMITTED USES

- a. Administrative Uses. The following uses, or uses determined to be similar by Planning Director, are permitted in the CO District subject to approval of an administrative use permit:
- (1) Administrative and Professional Offices/Services.
 - (a) Commercial Cannabis Delivery
 - (b) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (c) Pharmaceutical sales. (Where accessory to a medical office or clinic, and where it does not exceed 3,000 square feet).

SEC. 10-1.1300 - CENTRAL BUSINESS DISTRICT (CB)

SEC. 10-1.1320 - CONDITIONALLY PERMITTED USES

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CB District subject to approval of a conditional use permit:
- (5) Retail Commercial Uses.
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Liquor store
 - (e) Theater, Large Motion Picture (See Section 10-1.1045 for special requirements);

SEC. 10-1.1520 - CENTRAL CITY—COMMERCIAL SUBDISTRICT (CC-C)

SEC. 10-1.1523 - CC-C CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses are, or uses determined to be similar by the Planning Director, are permitted in the CC-C Subdistrict subject to the approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge.
 - (b) Brewery or Distillery.
 - (c) Cabaret, Dance or Nightclub. (See Chapter 6, Article 2 for regulations.)
 - (d) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (e) Convenience Market
 - (f) Liquor store.
 - (g) Pawn Shop
 - (h) Theater, Large Motion Picture. (Located outside area between A and D Streets and Grand and Second Streets. See Sec. 10-1.1045 for special requirements.)

SEC. 10-1.1530 - CENTRAL CITY—RESIDENTIAL SUBDISTRICT (CC-R)

SEC. 10-1.1533 - CC-R CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses.
 - Commercial Cannabis Retail Dispensary (See Section 10-1.3600)

SEC. 10-1.1540 - CENTRAL CITY—PLAZA SUBDISTRICT (CC-P)

SEC. 10-1.1543 - CC-P CONDITIONALLY PERMITTED USES.

- b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the CC-R Subdistrict subject to approval of a conditional use permit:
 - (5) Retail Commercial Uses. (See General Regulations Section 10-1.2750 et seq. for regulations of alcohol.)
 - (a) Bar, Cocktail lounge. et seq. for regulations of alcohol.)
 - (b) Commercial Cannabis Retail Dispensary (See Section 10-1.3600)
 - (c) Dance or night club.
 - (d) Convenience Market
 - (e) Liquor store

SEC. 10-1.1555 - MINIMUM DESIGN AND PERFORMANCE STANDARDS FOR CC-C, CC-R, AND CC-P SUBDISTRICTS

- g. Cannabis. Refer to Section 10-1.3600, Cannabis. h. Decks and Ramps.
- i. Fences, Hedges, Walls.
- j. Grading.
- k. Landscaping.
- l. Lighting, Exterior.

- m. Office Uses in the CC-P Subdistrict.
- n. Open Space (Residential).
- o. Outdoor Storage.
- p. Parking, Driveways and Paving.
- q. Roof-Mounted Equipment.
- r. Signs.
- s. Surfacing.
- t. Trash and Recycling Facilities.
- u. Window Coverage.

SEC. 10-1.1600 - INDUSTRIAL DISTRICT (I)

SEC. 10-1.1615 - USES PERMITTED.

- a. Primary Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District as primary uses, when not adjacent to a residentially zoned property or properties, when not specified as an administrative or conditional use and when the use is conducted completely within an enclosed building(s) provided that minor open storage may be permitted as an ancillary use.
 - (2) Administrative and Professional Offices/Services.
 - (a) Architectural, drafting and engineering offices.
 - (b) Banks and financial institutions.
 - (c) Commercial Cannabis Delivery
 - (d) Interior design studio.
 - (e) Manufacturer's representative office.
 - (f) Medical/dental laboratory, including Cannabis Testing Laboratory
 - (g) Office. (Offices may constitute no more than 50 percent of the area of a building except when located in a building within a planned industrial park of 25 acres or more in area, as defined on the map on file in the Planning Division.)

SEC. 10-1.1620 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of an administrative use permit:
 - (1) Industrial Uses.
 - (a) Any Industrial use(s) located on a parcel(s) which abuts an, R, A MH, OS or residential PD zoning district.
 - (b) Brewery or liquor distillery, including grain elevators.
 - (c) Commercial Cannabis Cultivation (up to 5,000 square feet)
 - (d) Commercial Cannabis Distribution
 - (e) Contractors storage yard.
 - (f) Industrial equipment sales or rental.
 - (g) Perfume or vinegar manufacture.
 - (h) Railroad yard.
 - (i) Recycling collection area.
 - (j) Sandblasting activities.

- (k) Truck terminal.
- (l) Truck rental.
- (m) Truck storage yard.
- (n) Vehicle dismantling facility. (Indoors only)
- (o) Wind energy conversion system.
- (p) Hazardous materials use and storage

b. Conditional Uses. The following uses, or uses determined to be similar by the Planning Director, are permitted in the I District subject to approval of a conditional use permit:

- (1) Industrial Uses.
 - (a) Commercial Cannabis Cultivation, over 5,000 square feet
 - (b) Commercial Cannabis Medical and Non-Medical Manufacturing
 - (c) Hazardous materials use and storage
 - (d) Major outdoor storage.
 - (e) Recreational vehicle storage yard.
 - (f) Public storage facilities.

SEC. 10-1.1645 - MINIMUM DESIGN AND PERFORMANCE STANDARDS.

Industrial Buildings and Uses.

For industrial buildings and uses refer to the following specific criteria and standards.

- h. Cannabis. Refer to Section 10-1.3600, Cannabis.
- i. Decks and Ramps.
- j. Fences, Hedges, Walls.
- k. Food Vendor Permit.
- l. Grading.
- m. Landscaping.
- n. Lighting, Exterior.
- o. Outdoor Storage.
- p. Parking.
- q. Retaining Walls.
- r. Roof-Mounted Equipment.
- s. Signs.
- t. Surfacing.
- u. Trash and Recycling Facilities.
- v. Truck Loading Facilities.
- w. Yard Exceptions.
- x. Window Coverage.

SEC. 10-1.1800 - LIGHT MANUFACTURING, PLANNING/RESEARCH AND DEVELOPMENT DISTRICT (LM)

SEC. 10-1.1820 - CONDITIONALLY PERMITTED USES.

- a. Administrative Uses. The following uses are permitted in the LM District subject to approval of an administrative use permit:
 - (1) Light Manufacturing Uses.
 - (a) Laboratories, including cannabis, commercial, testing, research, experimental or other laboratories, including pilot plants.

SEC. 10-1.2735 - SPECIAL STANDARDS AND CONDITIONS FOR CERTAIN USES.

Special standards and conditions as set forth below are applicable to uses enumerated in this Section and listed in the individual districts. Departure or variation from these standards is permitted only when it can be established by the applicant that the intent and purpose of the district or the necessary findings for permit approval, as specified in this ordinance, are not compromised. Where warranted by ordinance regulations or to implement official City policy, standards of development may be required that exceed those listed in this Section.

- d. Cannabis, Personal Cultivation and Commercial Cannabis. Refer to Section 10-1.3600, Cannabis.
- e. Garage Sales.
- f. Livestock, Apiaries, and Household Pets.
- g. Manufactured Housing Regulations.
- h. Outdoor Gatherings.
- i. Private Street Criteria.
- j. Recycling Facilities and Recycling Collection Facilities.
- k. Fence Regulations for Vacant Properties.
- l. Vehicle Parking, Repair, Display, and Storage Requirements

Section 3. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 2 (Off-Street Parking Requirements) to read as follow:

SEC. 10-2.340 - OFFICE, RETAIL, AND SERVICE USES.

The minimum number of off-street parking spaces required for office, retail, and service uses shall be:

USES	PARKING SPACES REQUIRED
OFFICES, medical and dental offices, clinics and laboratories, including <u>Cannabis Testing Laboratories</u>	1.0 for each 200 square feet of gross floor area
RETAIL establishments characterized by hand-carried merchandise in which a customer makes quick purchases or	1.0 per 175 square feet of gross floor area where the total gross floor area of the development, whether an individual

rentals in small quantities, including: Cleaners without a cleaning plant Convenience stores <u>Commercial Cannabis Retail Dispensaries</u> Delicatessen Doughnut shops Ice cream shops Laundry without a cleaning plant Off-sale liquor establishments Take out restaurants Video stores	establishment or a shopping center, is 10,000 square feet or less or 1.0 per 215 square feet of gross floor area where the total gross floor area of the development, whether an individual establishment or a shopping center, is over 10,000 square feet
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SEC. 10-2.350 - WHOLESALE, MANUFACTURING, STORAGE, TRANSPORTATION, AND SIMILAR USES. The minimum requirements for wholesale, manufacturing, storage, transportation, and similar uses are:

USES	PARKING SPACES REQUIRED
Bakeries, wholesale Bottling establishments Canneries <u>Commercial Cannabis Cultivation</u> <u>Commercial Cannabis Distribution</u> Communications equipment and service facilities Creameries Freight transportation terminals Laundry and/or dry-cleaning plants Lumber yards Manufacturing, processing, or assembling uses Utility yards Wholesale or warehouse establishments	1.0 for each 500 square feet of gross floor area, or If the building or structure has leasable bays of 2,500 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,000 square feet of gross floor area, or If a building or structure has leasable bays of 10,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 1,500 square feet of gross floor area, or If a building or structure has leasable bays of 20,000 square feet or greater, the minimum off-street parking required is 1.0 space for each 2,000 square feet of gross floor area.

Section 4. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 24 (South Hayward BART/Mission Boulevard Form-Based Code) to read as follows:

SEC. 10-24.300 - STANDARDS AND TABLES

TABLE 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T4	T5	CS
a. RESIDENTIAL			
Multiple Family	P	P	-
Second Dwelling Unit	P	P	-
Live-Work	P	P	-
Small Group Transitional Housing	P	P	-
Large Group Transitional Housing	CU	CU	-
Small Group Supportive Housing	P	P	-
Large Group Supportive Housing	CU	CU	-
Emergency Homeless Shelter	P	-	-
b. LODGING			
Bed & Breakfast	AU	AU	-
Hotel	CU	CU	-
c. OFFICE			
Commercial Cannabis Delivery	AU	AU	
Office	P	P	-
d. RETAIL			
Alcohol Sales**	CU	CU	-
Artisan/Craft Production	P	P	-
Appliance Repair Shop	P	P	
Check Cashing & Loans	-	-	-
Commercial Cannabis Retail Dispensary	CU	CU	
Dance/Nightclub	-	-	-
Equipment Rentals	AU	AU	-
Home Occupation	P	P	-
Indoor Recreation	AU	AU	CU
Kennel	AU	AU	-
Liquor Store	-	-	
Massage Parlor	CU	CU	-
Media Production	AU	P	-
Pawn Shop	-	-	
Personal Services	P	P	-
Printing and Publishing	AU	P	-
Recycling Collection Area	AU	AU	-
Restaurant	P	P	-
Retail Sales	P	P	CU
Tattoo Parlor	-	-	
Tobacco Specialty Store	-	-	-
Small Motion Picture Theater	P	P	CU

Large Motion Picture Theater ⁽¹⁾	CU	CU	CU
Live Performance Theater	P	P	CU
e. CIVIC			
Assembly*	AU	AU	CU
Conference Center	-	CU	CU
Cultural Facility	P	P	CU
Park & Recreation	P	P	P
Parking Facility	AU	AU	CU
Public Agency Facility	P	P	P
Religious Facility*	AU	AU	CU
Wind Energy	P	P	P
f. OTHER: AGRICULTURE			
Vegetable Garden	P	-	P
Urban Farm	P	P	P
Community Garden	P	P	P
Green Roof			
Extensive	P	P	P
Semi Intensive	P	P	P
Intensive	P	P	P
Vertical Farm	-	P	P
g. OTHER: AUTOMOTIVE			
Automobile Repair (Minor)	AU	AU	-
Automobile Repair (Major)	CU	CU	-
Drive-Through Facility	CU	CU	-
Gas Station	CU	CU	-
Taxi Company	AU	AU	-
h. OTHER: CIVIL SUPPORT			
Fire Station	P	P	P
Hospital	CU	CU	CU
Medical/Dental Clinic	AU	AU	CU
Mortuary	AU	AU	CU
Police Station	P	P	P
i. OTHER: EDUCATION			
Day Care Center	P	P	CU
Day Care Home	AU	AU	-
Educational Facility	AU	AU	CU
Vocational School	AU	AU	CU

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
- (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT
- * Places of Assembly and Religious Facility: for properties fronting Mission Blvd., such uses are not allowed within one-half mile of existing similar uses that front Mission Blvd.
 ** Unless exempted by the Alcohol Beverage Outlet Regulations contained in Section 10-1.2735(b) of the Hayward Municipal Code or specifically exempted by this Code.
⁽¹⁾ An application for conditional use Permit for a Large Motion Picture Theater shall be accompanied by a study acceptable to the Planning Director documenting the absence of negative impact upon the downtown of the opening of another Large Motion Picture Theater.

Section 5. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 25 (Hayward/Mission Boulevard Corridor Form-Based Code) to read as follows:

SEC. 10-25.400 - STANDARDS AND TABLES

Table 9: Allowed Functions. This table allocates Functions and permit requirements to Zones within the Code area. See Definitions for descriptions of functions/uses and for special requirements.

	T3	T4-1	T4-2	T5	CS
a. RESIDENTIAL					
Multiple Family ^{1,2}	CU	P/CU	P/CU	P/CU	-
Second Dwelling Unit ^{1,2}	P	P/CU	P/CU	P/CU	-
Single Family ^{1,2}	P	-	-	-	-
Live/Work ^{1,2}	-	P/CU	P/CU	-	-
Emergency Homeless Shelter ^{1,2}	-	P/CU	P/CU	-	-
Single Room Occupancy (SRO)	-	-	-	CU	-
b. LODGING					
Bed & Breakfast	CU	AU	AU	AU	-
Hotel	-	AU	AU	AU	-
c. OFFICE					
Commercial Cannabis Delivery		AU	AU	AU	
Office	CU	P	P	P	-
d. RETAIL					
Alcohol Sales	-	CU	CU	CU	-
Artisan/Craft Production	-	P	P	P	-
Appliance Repair Shop	-	P	P	P	-
Check Cashing & Loans	-	-	-	-	-
Commercial Cannabis Retail Dispensary		CU	CU	CU	
Dance/Nightclub	-	-	-	-	-
Equipment Rentals	-	AU	AU	AU	-
Home Occupation	P	P	P	P	-
Indoor Recreation	-	AU	AU	AU	CU
Kennel	-	AU	AU	AU	-
Liquor Store	-	-	-	-	-
Massage Establishment ³	-	-	-	-	-
Media Production	-	AU	AU	P	-
Pawn Shop	-	-	-	-	-
Personal Services	CU	P	P	P	-
Printing and Publishing	-	AU	AU	P	-
Recycling Collection Area	-	AU	AU	AU	-
Restaurant	-	P	P	P	-
Retail Sales	-	P	P	P	CU

Tattoo Parlor	-	-	-	-	-
Tobacco Specialty Store	-	-	-	-	-
Small Motion Picture Theater	-	P	P	P	CU
Large Motion Picture Theater ⁴	-	CU	CU	CU	CU
Live Performance Theater	-	P	P	P	CU
e. CIVIC					
Assembly	CU	AU	AU	AU	CU
Conference Center	-	-	AU	AU	CU
Cultural Facilities	CU	AU	AU	AU	CU
Park & Recreation	P	P	P	P	P
Parking Facility	-	AU	AU	AU	CU
Public Agency Facilities	CU	P	P	P	P
Wind Energy	P	P	P	P	P
f. OTHER: AGRICULTURE					
Vegetable Garden	P	P	P	-	P
Urban Farm	P	P	P	P	P
Community Garden	P	P	P	P	P
Green Roof	P	P	P	P	P
Vertical Farm	-	-	-	P	P
f. OTHER: AUTOMOTIVE					
Automobile Repair (Minor)	-	AU	AU	AU	-
Automobile Repair (Major)	-	CU	CU	CU	-
Drive-Through Facility	-	CU	CU	CU	-
Gas Station	-	CU	CU	CU	-
Taxi Company	-	AU	AU	AU	-
f. OTHER: CIVIL SUPPORT					
Fire Station	CU	P	P	P	P
Hospital		AU	AU	AU	AU
Medical/Dental Clinic		AU	AU	AU	CU
Mortuary	-	AU	AU	AU	-
Police Station	CU	P	P	P	P
f. OTHER: EDUCATION					
Day Care Center	CU	P	P	P	CU
Day Care Home	P	AU	AU	AU	-
Educational Facilities	-	AU	AU	AU	CU
Vocational School	-	AU	AU	AU	CU
f. OTHER: LIGHT INDUSTRIAL					
Research and Development	-	-	P	-	-
Wholesale	-	-	P	-	-
Manufacturing/Assembly of Clothing	-	-	P	-	-
Woodworking Shop	-	-	P	-	-
Light Manufacturing	-	-	P	-	-

- (-) = NOT PERMITTED (AU) = ADMINISTRATIVE USE PERMIT
- (P) = BY RIGHT (CU) = CONDITIONAL USE PERMIT

- ¹ For properties located within Commercial Overlay Zone 1, as shown in the Regulating Plan (Figure 4-1), residential units are not permitted on the ground floor.
- ² For properties located within Commercial Overlay Zone 2, as shown in the Regulating Plan (Figure 4-1), residential units are only allowed on the ground floor with a conditional use permit.
- ³ Massage establishments are only permitted where mandated by State law.

Section 6. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance) to add Chapter 10-1.3600 to read follows:

Chapter 10-1.3600

CANNABIS

Sections:

- 10-1.3600 Purpose**
- 10-1.3601 Limitation on Use**
- 10-1.3602 Personal Cannabis Cultivation**
- 10-1.3603 Commercial Cannabis Businesses**
- 10-1.3604 General Requirements**
- 10-1.3605 Commercial Cannabis Cultivation**
- 10-1.3606 Commercial Cannabis Manufacturing**
- 10-1.3607 Commercial Cannabis Retail and Delivery**
- 10-1.3608 Special Events**
- 10-1.3609 Findings**
- 10-1.3610 Grounds for Permit Revocation or Modification**

10-1.3600 Purpose.

This Chapter provides the location and operating standards for Personal Cannabis Cultivation and Commercial Cannabis Businesses to ensure neighborhood compatibility, minimize potential environmental impacts, provide safe access to medicine and provide opportunities for economic development.

10-1.3601 Limitations on Use.

A. Compliance with City Code. Personal Cannabis Cultivation and Commercial Cannabis Businesses shall only be allowed in compliance with this Chapter and all applicable regulations set forth in the City Code, including but not limited to, the cannabis business tax ordinance, and all regulations governing building, grading, plumbing, septic, electrical, fire, hazardous materials, nuisance, and public health and safety.

B. Compliance with State Laws and Regulations. All Commercial Cannabis Businesses shall comply with all applicable state laws and regulations, as may be amended, including all permit, approval, inspection, reporting and operational requirements, imposed by the state and its regulatory agencies having jurisdiction over Cannabis and/or Cannabis Businesses. All Cannabis Businesses (Medical and Non-Medical) shall comply with the rules and regulations for Cannabis as may be adopted and as amended by any state agency or department including, but not limited to, the Bureau of Cannabis Control, the Department of Food and Agriculture, the Department

of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.

C. Compliance with Local and Regional Laws and Regulations. All Cannabis Businesses shall comply with all applicable Alameda County and other local and regional agency regulations, including, but not limited to, regulations issued by the Regional Water Quality Control Board and the Alameda County Public Health Department.

D. Commercial Cannabis Businesses shall provide copies of state, regional and local agency permits, approvals or certificates upon request by the City to serve as verification for such compliance. Commercial Cannabis permits issued pursuant to Article 14, Chapter 6 of this Code are valid for one year.

E. Applications for Administrative or Conditional Use Permits pursuant to this Chapter will not be accepted unless an applicant has already obtained a commercial cannabis permit pursuant to Article 14, Chapter 6 of this Code.

10-1.3602 Personal Cannabis Cultivation.

Personal Cannabis Cultivation for medical and adult use shall be permitted only in compliance with the provisions of this Article and shall be subject to the following standards and limitations.

A. Cannabis Maximum Limitation. The personal cultivation of cannabis is limited to no more than six (6) mature plants within a single private residence or upon the grounds of that private residence, at one time regardless of the number of residents. For purposes of this section, “private residence” means a house, an apartment unit, a mobile home, or other similar dwelling.

B. Residency Requirement. Cultivation of cannabis may occur only on parcels with an existing legal residence occupied by a full-time resident.

C. Outdoor Cultivation. Cannabis plants shall not be located anywhere in a front or street side yard. Cannabis plants are permitted in side and rear yards only if fully screened from public view with a solid fence or wall.

D. Indoor Cultivation. All structures used for Personal Cannabis Cultivation (including accessory structures, greenhouses, and garages) must be legally constructed with all applicable Building and Fire permits (including grading, building, electrical, mechanical and plumbing) and shall adhere to the development standards of the underlying zoning district.

E. The following operating requirements are applicable to personal cannabis cultivation:

1. **Visibility.** No visible markers or evidence indicating that cannabis is being cultivated on the site shall be visible from the public right of way.
2. **Security.** All enclosures and structures used for cannabis cultivation shall have security measures sufficient to prevent access by children or other unauthorized persons.
3. **Prohibition of Volatile Solvents.** The manufacturing of cannabis products for personal non-commercial consumption shall be limited to processes that are solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug and Cosmetic Act. The use of volatile solvents to manufacture cannabis products for personal consumption is prohibited.

10-1.3603 Commercial Cannabis Businesses.

Commercial Cannabis Businesses shall be administratively and conditionally permitted only in compliance with the provisions of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and shall be subject to the following standards and limitations.

A. **Land Use.** All Commercial Medical and Non-Medical Cannabis Businesses shall be located in compliance with the requirements of Chapter 10, Article 1 (Planning, Zoning and Subdivisions), as amended, and as designated in the Zoning Code. For purposes of this Chapter, Commercial Cannabis Businesses shall include the following land use classifications, all of which are further defined in Chapter 10, Section 10.1-3500 (Definitions):

1. Commercial Cannabis Cultivation, up to 5,000 sf
2. Commercial Cannabis Cultivation, 5,001 sf or greater
3. Commercial Cannabis Dispensaries (Retail)
4. Commercial Medical and Non-Medical Cannabis Distribution
5. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1
6. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2
7. Commercial Medical and Non-Medical Cannabis Testing Laboratory

B. **Required Setbacks.** All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children’s playground(s) or similar use dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced following the issuance of a Conditional Use Permit from the Planning Commission 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 a commercial cannabis business. The distance shall be

made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

C. **Development Standards.** The development standards for specific cannabis land uses in this Chapter supplement and are required in addition to the underlying zoning districts listed in Chapter 10, Article 1 (Zoning Ordinance), Chapter 10, Article 2 (Off-Street Parking Regulations), Chapter 10, Article 22 (Green Building Requirements for Private Development), Chapter 10, Article 24 (South Hayward BART Mission Form Based Code), and Chapter 10, Article 25 (Hayward/Mission Boulevard Form Based Code) of the Hayward Municipal Code.

10-1.3604 General Requirements.

The following general operating requirements are applicable to all Commercial Medical and Non-Medical Cannabis Businesses. In addition, requirements specific to each Cannabis Business subtype are set forth in subsections 10-1.3605 (Commercial Cannabis Cultivation), 10-1.3606 (Commercial Cannabis Manufacturing) and 10-1.3607 (Commercial Cannabis Retail Dispensary and Delivery).

A. **Dual Licensing.** The City recognizes that state law requires dual licensing at the state and local level for all Cannabis Businesses. All Cannabis Operators shall therefore be required to diligently pursue and obtain a state cannabis license at such time as the state begins issuing such licenses, and shall comply at all times with all applicable state licensing requirements and conditions related to that license.

1. **New Operators.** New Commercial Cannabis Businesses which have received land use permit approval pursuant to this Chapter shall not commence operations until the Business can demonstrate that all necessary state and local licenses and agency permits have been obtained.

2. **Grounds for Revocation.** Once state licenses and agency permits become available, failure to demonstrate dual licensing in accordance with this Chapter shall be grounds for revocation of a City approved permit. Revocation of a local permit and/or a state license shall terminate the ability of the Commercial Cannabis Business to operate until a new permit and/or state license is obtained.

B. **Age Restriction.** No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a licensed Commercial Cannabis Business.

C. **Inventory and Tracking.** All Cannabis Businesses shall, at all times, operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.

D. Multiple Permits Per Site. Multiple Cannabis Businesses and Cannabis Operators proposed on any one site or parcel shall be permitted only if all the proposed Cannabis Businesses and their co-location operators are located on separate and distinct premises as defined in Business and Professions Code section 26001 and have obtained all necessary local and state permits or licenses, and land use approvals from appropriate local and state agencies. Subject to the provisions of this Zoning Ordinance, Cannabis Operators holding multiple licenses from the state may operate from a single premises to the extent such operation is consistent with state law, as it may be amended from time to time.

E. Transfer of Ownership Operator. A permittee shall notify the City if it intends to transfer ownership or operational control of a Commercial Cannabis Business. The transferee shall be responsible for complying with all applicable local and state licensing requirements. Any conditions imposed upon the transferor by the original conditional use permit shall be binding upon any subsequent transferees. Any transfer of ownership or operational control of a Commercial Cannabis Business which results in a lapse of normal operations for a period of six months or more shall be required to obtain a new use permit, consistent with Sections 10-1.3170 or 10-1.3270 of this Code, as applicable.

F. Security. Commercial Cannabis Businesses shall provide adequate security on the premises, including any on-site security, lighting and alarms, to insure the public safety and the safety of persons within the facility and to protect the premises from theft. All Commercial Cannabis Businesses shall provide at least one, State-licensed, armed Security Officer on the premises during hours of operation. Additionally, all Commercial Cannabis Businesses and Cannabis Operators shall include a security and safety plan that includes the following minimum requirements:

1. Security Cameras. Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed. The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.

2. Alarm System. A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis

Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.

3. Secure Storage and Waste. Commercial Cannabis products and associated product manufacturing, distribution or cultivation waste shall be stored and secured in a manner that prevents diversion, theft, loss, hazards and nuisance.

4. Transportation. Commercial Cannabis Businesses shall implement procedures for safe and secure transportation and delivery of Commercial Medical and Non-Medical Cannabis, including all Commercial Medical and Non-Medical Cannabis products and currency in accordance with state law.

5. Building Security. All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.

6. Emergency Access. Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

7. Background Checks. All employees working in a Commercial Cannabis Business shall be subject to background /LiveScan checks. Additionally, all employees shall furnish the Hayward Police Department a state or federal registered Identification Card, upon request.

8. Inspections. During regular business hours, all Commercial Cannabis Business premises shall be accessible, upon request, to an identified Hayward Police Department or Code Enforcement employee for random and/or unannounced inspections.

G. Odor Control. All Commercial Cannabis Businesses shall incorporate and maintain adequate on-site odor control measures such that the odors as a result of cultivation, manufacturing, distribution, transport or sales of Cannabis and Cannabis-related products cannot be readily detected from outside of the structure in which the Business operates or from other non-Cannabis businesses adjoining the Commercial Cannabis Business. Any land use application filed with the City of Hayward requesting a Commercial Cannabis Business shall include an Odor Mitigation Plan certified by a professional engineer or industrial hygienist that includes the following:

1. Operational processes and maintenance plan, including activities undertaken to ensure the odor mitigation system remains functional;
2. Staff training procedures; and

3. Engineering controls, which may include carbon filtration or other methods of air cleansing, and evidence that such controls are sufficient to effectively mitigate odors from all odor sources. All odor mitigation systems and plans submitted pursuant to this subsection shall be consistent with accepted and best available industry-specific technologies designed to effectively mitigate cannabis odors.

10-1.3605 Commercial Cannabis Cultivation

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides additional requirements for Commercial Cannabis Cultivation.

A. Administrative Use Permit or Conditional Use Permit Required. Depending on the size of the facility, an Administrative Use Permit or Conditional Use Permit shall be required for Commercial Cannabis Cultivation, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Cannabis Cultivation businesses up to 5,000 square feet of gross floor area are permitted in select zoning districts, subjected to an Administrative Use Permit. Commercial Cannabis Cultivation businesses containing 5,001 square feet or greater gross floor area are conditionally permitted in select zoning districts, subject to issuance of a Conditional Use Permit.

B. Outdoor Commercial Cultivation Prohibited. The commercial cultivation of Medical and Non-Medical Cannabis may only be conducted within a fully enclosed space.

C. Pesticides. The Commercial Cultivation of Medical and Non-Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides. Any fumigation or insecticidal fogging shall comply with the California Fire Code Chapter 26 (Fumigation and Insecticidal Fogging).

D. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Cultivation Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

E. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the

retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3606 Commercial Medical and Non-Medical Cannabis Manufacturing

In addition to the General Operating Requirements set forth in Section 10.1-3604, this section provides additional operational requirements for Commercial Cannabis Manufacturing:

A. **Conditional Use Permit Required.** A Conditional Use Permit shall be required for all Commercial Medical and Non-Medical Cannabis Manufacturing – Level 1 operations, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2 is prohibited.

B. **Extraction Processes.** Commercial Cannabis Manufacturers shall utilize only extraction processes that are (a) solvent-free or that employ only non-flammable, nontoxic solvents that are recognized as safe pursuant to the federal Food, Drug, and Cosmetic Act, and/or (b) use solvents exclusively within a closed loop system that meets the requirements of the federal Food, Drug, and Cosmetic Act including use of authorized solvents only, the prevention of off-gassing, and certification by a California licensed engineer. The use of volatile solvents, defined as Commercial Medical and Non-Medical Cannabis Manufacturing – Level 2, is prohibited.

C. **Loop Systems.** No closed loop systems shall be utilized without prior inspection and approval of the City’s Building Official and Fire Code Official.

D. **Standards of Equipment.** Manufacturing, processing and analytical testing devices used by the Cannabis Manufacturer must be UL (Underwriters Laboratories) listed or otherwise certified by an approved third party testing agency or engineer and approved for the intended use by the City’s Building Official and Fire Code Official.

E. **Food Handler Certification.** All owners, employees, volunteers or other individuals that participate in the production of edible Cannabis Products must be state certified food handlers. The valid certificate number of each such owner, employee, volunteer or other individual must be on record at the Cannabis Manufacturer’s facility where that individual participates in the production of edible Cannabis Products.

F. **Edible Product Manufacturing.** Commercial Cannabis Businesses that sell or manufacture edible cannabis products shall obtain a permit from the Alameda County Public Health Department. Permit holders shall comply with State and County health permit requirements. These requirements provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure employee

health, demonstrate industry manager knowledge, ensure safe food preparation practices and delineate acceptable levels of sanitation for preparation of edible products.

G. Sustainability Plan. As part of an application to operate within the City of Hayward, all Commercial Cannabis Manufacturing Businesses shall provide a Sustainability Plan that incorporates best practices of sustainability for the proposed Business operations and site-specific improvements. The Plan may include, but not limited to, recommendations for energy conservation and efficiency, use of solar panels, water conservation, reductions in air emissions, use of toxic materials, and recycling.

H. Ancillary Retail Use. The retail sale of cannabis and cannabis products is allowed only as a component of a microbusiness operation as defined by Business and Professions Code section 26070. The operator must hold a microbusiness (Type 12) license issued by the state Bureau of Cannabis Control. The cumulative floor area of the retail activity shall not exceed 10 percent of the first-floor area of the industrial building. All cannabis and cannabis products for sale must have been cultivated, produced and manufactured on-site.

10-1.3607 Commercial Cannabis Retail Dispensaries and Delivery.

In addition to the General Operating Requirements set forth in Section 10-1.3604, this section provides location and operating requirements for Commercial Cannabis Retail Dispensaries and Delivery Businesses:

A. Conditional Use Permit or Administrative Use Permit Required. A Conditional Use Permit shall be required for Commercial Cannabis Retail dispensaries, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. An Administrative Use Permit shall be required for Commercial Cannabis Delivery businesses, pursuant to the land use regulations contained within Chapter 10, Article 1 (Zoning Ordinance).

B. Drive-Through Dispensaries. Drive-through, Drive-up or walk-up window services in conjunction with Commercial Cannabis Retail Dispensaries is prohibited.

C. Setbacks and Buffers. In addition to the zoning requirements and development regulations contained in Chapter 10 (Zoning Ordinance), all Commercial Cannabis Retail dispensaries shall be subject to the following:

1. Overconcentration. To avoid overconcentration, a Commercial Cannabis Retail Dispensary shall not be located within 1,000 feet of any other Commercial Cannabis Retail Dispensary within the City of Hayward.

2. Legal Non-Conforming Use. Establishment of a school or sensitive land use, as defined in Business and Professions Code Section 26054 and Health and Safety Code Section 11362.768, within the required buffer of a Commercial

Cannabis Retail dispensary after such facility has obtained a Conditional Use Permit shall render the Retail dispensary a legally non-conforming use, which is subject to the protections and provisions of Section 10-1.2900 (Non-Conforming Uses).

D. Operational Requirements. In addition to project specific conditions of approval, Commercial Cannabis Retail dispensaries shall comply with the following operational requirements:

1. Employees. The Commercial Cannabis Retail Operator shall maintain a current register of the names of all employees employed by the Commercial Cannabis Retailer, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.
2. Recordkeeping. The Commercial Cannabis Retail Operator shall maintain patient and sales records in accordance with state law.
3. Protocols and requirements for patients and persons entering the site. No person shall be permitted to enter a Commercial Cannabis Retail dispensary without government issued photo identification. A Commercial Cannabis Retail dispensary shall not provide Cannabis or Cannabis Products (Medical or Non-Medical) to any person, whether by purchase, trade, gift or otherwise, who does not possess a valid government-issued photo identification card or a valid physician's recommendation under Section 11362.712 of the Health and Safety Code.
4. Hours of Operation. A Commercial Cannabis Dispensary may operate between the hours of 8:00 a.m. and 8:00 p.m., up to seven (7) days per week or as approved as part of a Conditional Use Permit. Upon license renewal, the City may impose more restrictive hours of operation due to site-specific conditions or as the result of excessive and extraordinary calls for service, as determined by the City's Police Department. The basis for any restriction on the hours or operation shall be specified in the permit.
5. Secured Access. A Commercial Cannabis Retail Dispensary shall be designed to prevent unauthorized entrance into areas containing Cannabis or Cannabis Products. Limited access areas accessible to only authorized personnel shall be established.
6. Product Storage. Commercial Cannabis and Cannabis Products that are not used for display purposes or immediate sale shall be stored in a secured and locked room, safe, or vault, and in a manner reasonably designed to prevent diversion, theft, and loss.

7. Cannabis Paraphernalia. No dispensary shall sell or display any cannabis related paraphernalia or any implement that may be used to administer Commercial Cannabis or Commercial Cannabis Products unless specifically described and authorized in the Conditional Use Permit. The sale of such products must comply with the City's zoning code and any other applicable state regulations.

8. On-site Physician Restriction. Commercial Cannabis Retail dispensaries shall not have an on-site or on-staff physician to evaluate patients and provide a recommendation for Medical Cannabis.

9. Site Management. The Commercial Cannabis Retail operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises during business hours if directly related to the patrons of the subject retailer. For purposes of this subsection, "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in nuisance activities to cease those activities, unless personal safety would be threatened in making the request.

10. Permit Display. All Commercial Cannabis Retail dispensaries shall maintain a copy of the valid operating license issued by the City on display during business hours and in a conspicuous place so that the same may be readily seen by all persons entering the facility.

11. Storefront Entrance & Accessibility. The storefront entrance of a Commercial Cannabis Retail dispensary shall be ADA accessible and placed in a visible location that provides an unobstructed view from the public right of way.

E. On-Site Consumption. In general, On-Site Consumption of cannabis and cannabis products by customers or employees is prohibited. If permitted, the consumption of Cannabis and Cannabis Products shall be subject to the following requirements:

1. Patients. Qualified Patients, as defined by state law, shall not be permitted to consume medical cannabis on the site of a Commercial Cannabis Retail dispensary except as permitted in accordance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law and as follows:

i. Conditional Use Permit applications for a Commercial Cannabis Retail business shall include a statement as to whether the use will include on-site consumption by patients of Medical Cannabis and Medical Cannabis Products.

ii. If on-site consumption will be included, the application shall describe the operational plan and specific extent of such provision, security protocols, and how the consumption will comply with the requirements set forth in this Chapter and state law. Specifically, any on-site consumption shall be subject to the following conditions: (1) Access to the area where cannabis consumption is allowed is restricted to persons 21 years of age or older; (2) Cannabis consumption is not visible from any public place or non-age restricted area; (3) sale or consumption of alcohol or tobacco is not allowed on the premises.

2. Employees. Employees of a Commercial Cannabis Retail facility who are qualified patients may consume Medical Cannabis or Medical Cannabis Products on-site within designated spaces not visible by members of the public, provided that such consumption is in compliance with Chapter 5, Article 6 (Smoking Pollution Control) of the Hayward Municipal Code and state law.

3. Signage and Public Notice. The entrance to a Commercial Cannabis Retail dispensary shall be clearly and legibly posted with a notice indicating that smoking, vaping, and consumption of cannabis and cannabis products is prohibited on site, except as permitted in accordance with Chapter 5, Article 6 of the Hayward Municipal Code (Smoking Pollution Control) and state law.

F. Delivery Services. In addition to the requirements established in this Chapter for Commercial Cannabis Retail Dispensaries, the delivery of Medical and Non-Medical Cannabis and Cannabis Products shall be subject to the following requirements:

1. An Administrative Use Permit shall be required for Commercial Cannabis Delivery Only businesses, pursuant to the land use and development regulations contained within Chapter 10, Article 1 (Zoning Ordinance), as amended. If the delivery service is ancillary to a Commercial Cannabis Retail Dispensary, a Conditional Use Permit that identified both uses shall be required.

2. A Commercial Cannabis Retail Dispensary shall not conduct sales exclusively by delivery.

3. All applications for Commercial Cannabis Retail dispensary shall indicate a statement as to whether the proposed use will include delivery of Cannabis and Cannabis Products to customers or qualified patients.

4. If delivery services will be provided as part of the Commercial Cannabis Retail operations, the application shall describe the operational plan and specific extent of such service, security protocols, and how the delivery services will comply with the requirements set forth in this Chapter and state law.

5. Delivery vehicles shall not contain identifiable markings that associate the delivery service with the cannabis business.

6. Commercial Cannabis Delivery Only businesses shall not store or sell cannabis or cannabis products on site.

10-1.3608 Special Events

A. Temporary special events that involve onsite cannabis sales to, and consumption by persons 21 years of age or older shall not be allowed unless the Commercial Cannabis Business obtains a special event permit from the City pursuant to the adopted Rules and Regulations for Food Vendors and the Rules and/or the Regulations for Special Event Organizers, as applicable, and, demonstrates that it possesses a local cannabis business permit and state license for retail cannabis sales.

B. Permit Required. Applications for a special event that includes cannabis shall be considered a Temporary Use, per Chapter 10, Article 1 (Zoning Ordinance) and shall obtain an Administrative Use Permit, pursuant to the zoning district and location of the event.

10-1.3609 Findings

In addition to the required findings contained in Section 10-1.3125 (Administrative Use Permit) and Section 10-1.3125 (Conditional Use Permit), every land use application requiring discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

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.

10-1.3610 Grounds for Permit Revocation or Modification

In addition to the permitting requirements contained in Chapter 6 (Businesses, Professions and Trades), the reviewing authority may require modification, discontinuance or revocation of a Conditional Use Permit or Administrative Use Permit for a Commercial Cannabis

Business permit if the review authority finds that the use is operated or maintained in a manner that it:

- A. Adversely affects the health, peace or safety of persons living or working in the surrounding area;
- B. Contributes to a public nuisance; or
- C. Has resulted in excessive nuisance activities including disturbances of the peace, illegal drug activity, diversion of Commercial Cannabis or Commercial Cannabis Products, public intoxication, smoking in public, harassment of passerby, littering, or obstruction of any street, sidewalk or public way; or
- D. Violates any provision of the Hayward Municipal Code or condition imposed by a City issued permit, or violates any provision of any other local, state, regulation, or order, including those of state law or violates any condition imposed by permits or licenses issued in compliance with those laws.

Section 7. Amend Chapter 10 (Planning, Zoning and Subdivisions), Article 1 (Zoning Ordinance), to add the following Definitions, in alphabetical order, to Section 10-1.3500 (Definitions), Section 10-24.500 (Definitions and Rules of Interpretation) and Section 10-25.600 (Definitions) to read and provide as follows:

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972, and amended by the California Control, Regulate and Tax Adult Use of Marijuana Initiative, and as defined by other applicable state law. “Cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.

“Commercial Cannabis Business” means an entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

“Cannabis Delivery” means the commercial transfer of Cannabis or Cannabis Products to a customer, including Medical Cannabis or Cannabis Products, to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code. “Delivery” also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables clients or patients to arrange for or facilitate the commercial transfer by a permitted Commercial Cannabis Retail dispensary.

“Edible Cannabis Product” means a cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products

set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

“**Greenhouse**” means a permanent enclosed structure for the propagation and growing of plants, constructed with a translucent roof and/or walls.

“**Marijuana**” See “**Cannabis**”.

“**Medical Cannabis**” or “**Medical Cannabis Product**” means cannabis or a cannabis product, respectfully, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code, by a medical cannabis patient in California who possesses a physician’s recommendation.

“**Microbusiness**” means a commercial cannabis business holding a license issued by the State Bureau of Cannabis Control for 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 pursuant to Business and Professions Code sections 26050 and 26070.

“**Premises**” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“**Commercial Cannabis Cultivation**” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of Cannabis.

“**Commercial Cannabis Distribution**” means the procurement, sale, and transport of medical and non-medical adult recreational use Cannabis and medical and non-medical adult recreational use Cannabis Products between Commercial Cannabis Businesses.

“**Commercial Cannabis Manufacturing**” means the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or independently by mean of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“**Commercial Cannabis Manufacturing - Level 1**” means the manufacturing of cannabis products using nonvolatile solvents, or no solvents. A Commercial Cannabis Manufacturing Level 1 Operator shall only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail facility.

“**Commercial Cannabis Manufacturing - Level 2**” means the manufacturing of cannabis products using volatile solvents. A Commercial Cannabis Manufacturing Level 2 Operator shall

only manufacture cannabis products for sale by a permitted Commercial Cannabis Retail dispensary. For purposes of this section, “volatile solvents” shall include ethanol and all solvents described in paragraph (3) of subdivision (d) of Section 11362.3 of the Health and Safety Code, as such section may be amended.

“**Medical Marijuana**” See “**Medical Cannabis**”.

“**Commercial Cannabis Operator**” or “**Operator**” means the person or entity that is engaged in the conduct of any commercial medical or non-medical adult recreational Cannabis use.

“**Commercial Cannabis Retail Dispensary**” means a facility where Commercial Cannabis or Commercial Cannabis Products are offered, either individually or in any combination, for retail sale, including an establishment that delivers medical and non-medical adult recreational use Cannabis or medical and non-medical adult recreational use Cannabis Products as part of a retail sale.

“**Commercial Cannabis Testing Laboratory**” means a laboratory, facility, or entity in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

- (1) Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state.
- (2) Licensed by the Bureau of Cannabis Control.

Section 8. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held

the ___ day of, ___ 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____, 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT:

COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE:

ATTEST: _

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

ITEM #9 – PH 17-091

Comments

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October 16, 2017

The Mayor, Vice Mayor, City Council,
City Manager, City Attorney for the City of Hayward
Attn: City Clerk's Office – Miriam Lens
Email: Miriam.lens@hayward-ca.gov
Hayward City Hall 777 B Street
Hayward, CA 94541
Submitted via Electronic Mail

RE: Comments for the Record of and Consideration at the October 17, 2017, Meeting of the Hayward City Council on Agenda Item PH 17-091 (“Comments for the Record”).

Dear Honorable Mayor, Vice Mayor, City Council, and Staff:

First and foremost, we wanted to thank the City of Hayward (the “City”) staff and the Council for their time and effort to date. Crafting the right Ordinance takes time and diligence, to that end for your consideration and to serve as a starting point for continued discussions we have drafted these solution driven comments. The current iteration of the Ordinance before the Council is overall well-crafted but remains vague in one respect, failing to provide concise development standards and balance community safety and patient / customer access; specifically, the failure to revise and restrict the definition of “parks” and distinguishing sensitive uses contained within larger non-sensitive use parcels.

For background, Green Wise Consulting (“Green Wise” or the “Firm”) provides legal services to clients in the cannabis industry. One of the primary services that Green Wise provides to clients is its “solutions driven approach” to local cannabis regulations. Green

Wise’s “solutions driven approach” involves the Firm drafting complete, custom ordinances and regulations for local governments based on a comprehensive understanding of the unique circumstances facing the particular municipality. As a result, Green Wise represents both cannabis businesses and local governments—*e.g.*, the City of Hollister—in the development of local ordinances to regulate and permit cannabis businesses. The Firm has extensive experience working with and for local governments in the State of California (the “State”) on cannabis regulations.

I. Failure to Properly Revise and Restrict Setback with regard to Sensitive Use Receptors -- Parks and Cannabis Businesses.

On July 18th of this year, the Council meet to discuss the cannabis issue setting a clear intention to Staff of the progressive and expansive brush they wished to address this issue. Ultimately, the Council chose to increase the number of potential cannabis businesses and several council members expressed support for allowing cannabis uses in the commercial areas of the City. Council member Mendall stated many of the proposed cannabis activities are consistent with other land uses currently permitted or conditionally permitted in the commercial areas. Council member Lamnin echoed Council member Mendall’s comments mentioning specifically the City’s two major hubs Tennyson Street and Downtown.

Subsequently, the Planning Commission heard the cannabis item on September 14, 2017, at which time Chairman Enders (supported by Commissioner Goldstein) provided direction to staff and Hayward Area Recreation and Parks District (“HARD”) the flexibility to define the child and youth recreation areas in order to “not group all parks and open spaces together” with the specified objective of distinguishing between parks where children recreate from others without such features (emphasis added). The proposal in front of the Council for consideration does not reflect the requested direction or the intent set by the Council in July for robust placement of cannabis businesses centrally located to Hayward residents along the City’s major commercial corridors including downtown.

A. The Language as Proposed Fails to Satisfy the Direction Provided by Planning Commission and Simultaneously Eliminates Virtually all of the Downtown- CBD Corridor as an Option for Cannabis Businesses.

The land use ordinances as proposed states:

10-1.3603 Commercial Cannabis Businesses.

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including any public parks, libraries and public open space areas. The distance shall be made in a straight line from the closest

boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

The language imposes a blanket provision severely limiting the viable commercial properties within the City in general but most importantly within the Downtown Corridor.

The proposed Regulatory Ordinance as stated below, attempts to provide additional flexibility in the process but ultimately continues to sidestep the directive provided by the Planning Commission to inventory the City's parks and recreational spaces and include the distinguishing definition within the Land Use Ordinance.

SEC. 6-14.13 OPERATING AND PERFORMANCE STANDARDS

(a)(1) All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054 and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children's playground(s) or similar use dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced following the issuance of a Conditional Use Permit from the Planning Commission 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 a commercial cannabis business. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

The pathway for a variance to reduce the otherwise required 600-foot buffer is concerning for several reasons. Initially, the variance is relegated to the last phase of the land use entitlement process -- Conditional Use Permit *after* an Applicant would have invested significant time and expense in the City's stipulated merit based process. The proposed pathway would curtail virtually *all* capital investments --- promising only unfettered instability by way of an unsecured and undefined "alternative distance measurement." What is clear is the City's desire for knowledgeable and well-capitalized operators to ensure first-rate and compliant operations, yet fiscal responsibility and general business acumen would prevent investment given the delayed and unreliable nature of proposed process.

As will be elaborated below the distance measurement from boundary line to boundary line is unduly burdensome running counter to the expressed desires of the Planning Commission and the Council.

B. The Existing Hayward Municipal Code Contains Language to Distinguish “City Parks” and “Playgrounds” for Purposes of Applying the Requested 600-foot Buffer.

The Firm provided the attached Memorandum “Sensitive Use Receptor “City Park” versus “Playground” for 600—Foot Buffer Zone Related to All Commercial Cannabis Business” to City Staff following the Planning Commission hearing (See, Exhibit 1). As detailed in the memo there exists a distinction between “City Park” and “playground” in the Hayward Municipal Code (“HMC”) setting the stage for a well-reasoned land use policy.

There are various parks located within the City limits that are classified as “City Parks” and are not under the management of HARD. It was recommend that the City impose no restriction on those “non-active” City Parks. Non-Active parks for purposes of the cannabis ordinance would be those absent any features, which would foster, encourage or attract children’s recreation. Alternatively, playgrounds or “active parks” are those clearly designed to be a recreational area for children containing traditional playground requirement and/or sporting fields.

For ease of reference, included with these comments is a complete inventory matrix of the City’s Parks (HARD, City of Hayward Parks, and East Bay regional Park District) broken down and classified by the following features – (a) Play Area, (b) Picnic Tables, (c) BBQ, (d) Hiking Trails, (e) Tennis Courts, (f) Ball Fields, (g) Basketball Courts, (h) Swimming, (i) Soccer Fields, and (j) Community Center (See, Exhibit 2 and 3).

C. Playgrounds “Active Parks” Located on Larger Parcels with Non-Active Park Features – Children’s Playground at Giuliani Plaza on Veteran’s Memorial Plaza.

The Veteran’s Memorial Plaza (located at 22737 Main Street – within the Downtown – CBD) is zoned as a Central City Commercial (“CC-C”) and is not generally a “sensitive use” as it pertains to where children congregation in line with the distinctions discussed above. The total parcel is 2.03 acres covering an entire square city block. The parcel includes uses such as banks, retail stores, medical facilities and restaurants. None of these uses are sensitive uses with respect to the draft Ordinance. In fact, only a small portion, approximately 7,200 square feet in size amounting to *less than ten percent* (8.5%) is designated as the Children’s Playground at Giuliani Plaza. Moreover, the Children’s Playground is completely enclosed with perimeter fencing providing natural separation from the large parcel where the uses are openly comingled. (See, Exhibit 4).

While this combined use of a parcel is unusual within the City boundaries, it serves as prime example of why a “one-size fits all” approach to a buffer on parks is counterintuitive. Furthermore, the Children’s Playground at Veteran’s Memorial Plaza is an example of the far-reaching implications of imposing a broad definition of “sensitive use” – including diminishing the ability to have the best location with the best operator to serve the needs of the community, and to provide an aesthetically pleasing integration of

a cannabis business into the fabric of quintessential businesses located in the major commercial hubs of the City.

II. The Firm's Solution Driven Approach Recommendations.

The intent of these comments is not to simply identify issues but rather to provide solutions and alternatives for the Council's consideration. As it pertains specifically to Veterans' Memorial and the downtown central business district, it is recommended that the buffer zone be measured from the actual park/playground sensitive use to the to the property boundary of the closest cannabis facility. The buffer zone measurement should **NOT** be measured from the property line of the entire parcel containing the playground as currently proposed. The Veterans' Memorial Building is a perfect example of why a modification to the measurement rhetoric is imperative. **Bottom Line:** the playground, which is clearly identifiable accounts for a disproportionate amount of the entire parcel, less than 10%. The community of Hayward would be better served with setbacks from the boundary of the use, and not the boundary of the parcel.

A. For its Cannabis Business Land Use Ordinance, the City Should Create a Tailored Parks Sensitive Use Buffer Definition and Measurement; For the Council's Consideration and as a Starting Point for Discussion – Draft Language.

As illustrated in Exhibit X, the effects of a 600-foot buffer from the entire parcel of land containing Veterans' Memorial Building has significant impacts on the Hayward Downtown CBD – virtually eliminating most, if not all (cannabis proprietaries are scarce prior to burdensome sensitive use buffers) of downtown. All of the parcels of land outlined in red on Exhibit 5 would be prohibited under the wider buffer drawn from the property line (the blue ring). This buffer application runs counter to the City Council's expressed desire to welcome cannabis retail businesses to downtown Hayward. Alternatively, applying the 600-foot buffer from the boundary of the Children's Playground at Giuliani Plaza (the yellow ring) would preserve the potential for those properties. It is therefore recommended that, in the Downtown CBD *in particular*, the City adopt an ordinance applying buffers only to playgrounds, as discussed above, and avoid extending buffers to the border parcels of land that may contain such sensitive uses.

With this context, below is alternative draft language for the Land Use Ordinance which if utilized would negate staff's variance language contained in the Regulatory Ordinance while not removing the City's ability to impose additional restrictions through the land use entitlement process.

10-1.3603 Commercial Cannabis Businesses.

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall:

- 1. Comply with the sensitive use requirements contained in Section 26054(b) of the California Business and Professions Code;*

2. *Be subject to a 600-foot minimum setback from any public library and any playground under the management of the Hayward Area Recreation & Park District. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the sensitive land use is located. With the exception that within the Downtown CBD the 600-foot minimum setback shall be measured from the closest boundary line of the property on which the Cannabis Business is located to the closest area designed to be used by children that has play or sports equipment installed, has been designated or landscaped for play or sports activities, or has any similar facility related specifically to children's recreation.*

B. Recommendation Regarding the Flawed and Immeasurable Findings

The Draft Findings as proposed will leave the City vulnerable to potential bad operators and/or litigation from denied applications. In large part due to the vagueness of the language which by its nature discourages developments given the lack of clarity, and increases a risk of investment, which will stymie development and the deployment of cannabis businesses within the City. In particular, findings Number 1 and Number 3 add negligible, if any significant value, and are hard to define, quantify or set consistent standards for development.

The proposed finding Number 1 is not quantifiable. The Finding states:

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; and*

The Land Use Resolution that will be voted on to support the changes to the code already determines that businesses that meet the design requirements satisfy concerns related to public health, safety or general welfare. The Sensitive Use setbacks (as discussed above) can be written in a manner that makes it precise and clear as to the standards for set backs. Therefore, no additional findings are required. If the operator meets the requirements, then the application is deemed complete and the approving body can focus on the aspects that are defined in Findings Number 2 and Number 4, which are certain and clearly definable.

The Firm enjoys well over 20 years of combined experience obtaining regulatory permits for a variety of businesses and uses. The one consistent for all projects is the clearer the regulatory and design elements; the better an applicant can provide specifically what is required. When the language is vague including undefined terms such as “not detrimental to public health, safety, or general welfare” the results are applicants left wondering what is detrimental? By whose standards? And what if the reviewing body changes does that mean that the definition of detrimental can change? Large investments of capital improvements are required to meet the rigorous design and operational requirements therefore clear and obtainable benchmarks are essential.

Second, the third finding is duplicative of what is required for a conditional use permit, and therefore unnecessary. Duplicity leads to confusion, a lack of new or better information and a chaotic application procedure that is unduly burdensome on the planning staff and a waste of valuable city resources.

III. Conclusion

We respectfully request that you review these comments, the recommendations and the accompanying materials with great consideration. We believe the information provided will assist in ensuring that the Ordinance and associated application process is clear and unambiguous, that staff resources are used efficiently and that the applicants can move forward in a timely fashion to obtain the proper entitlements and begin taxable operations.

We will be available both prior to and at the hearing to answer any questions you may have. Please, feel free to contact either Pamela Epstein at (520) 904-1482 (pamela@gwepro.com) or Charnel James at (530) 219-1833 (charnel@gwepro.com).

Thank you for your time and thoughtful consideration.

Respectfully Submitted,

/s/

Pamela N. Epstein, Esq., LL.M.

/s/

Charnel James, Esq.,

- Enclosures:
- A. Exhibit 1 – Green Wise Memo to Staff “Sensitive Use Receptor “City Park” versus “Playground” for 600—Foot Buffer Zone Related to All Commercial Cannabis Business”
 - B. Exhibit 2 – City of Hayward Park Inventory Matrix
 - C. Exhibit 3 – Goggle Earth Park Inventory
 - D. Exhibit 4 – Maps of Veteran’s Memorial Plaza and Children’s Playground Giuliani Plaza
 - E. Exhibit 5 – Color-coded Buffer Zone Map



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MEMORANDUM

TO: City of Hayward

DATE: September 20, 2017

RE: **Sensitive Use Receptor “City Park” versus “Playground” for 600-Foot Buffer Zone related to All Commercial Cannabis Business**

Background

City staff recently issued a revised draft of the City’s proposed cannabis ordinance, which provides for a sensitive use buffer of 600 feet from parks in addition to the previously included buffers for other sensitive uses as defined by Section 26054(b) of the California Business and Professions Code. The additional sensitive use buffer was applied in an all-encompassing blanketed fashion without taking into consideration distinguishing park features.

Direction Issued

The City’s Planning Commission held a meeting on September 14, 2014, in which the proposed draft cannabis ordinance was presented for review and discussion. The Planning Commission requested that staff provide clarification with regard to the definition of

parks and offer a distinction between parks where children recreate versus those that simply represent public open space.

Discussion

I. City of Hayward Municipal Code - “City Park” vs. “Playground”

The Hayward Municipal Code (“HMC”) currently provides a distinction between a “City Park” and a “playground.”

The HMC defines “City Park” as:

“Portuguese Park, Giuliani Plaza, Newman Park, Library Park, City Hall Plaza, and any other park or open space within city limits that is not under the management of the Hayward Area Recreation & Park District. City Hall Plaza includes the pathways, green space and rights-of-way located on the property bounded by “B” Street to the North, Watkins Street, to the East, Montgomery Avenue to the West and the City Walk Condominiums to the South.” Article 14, Sec. 4-14.00

The City’s definition does not include any area or structure that would be considered a playground (further defined below), as it would be under the management of the Hayward Area Recreation and Parks District (“HARD”). The result: a “City Park” is tantamount to open space which **does not** include any play structures specifically attractive to children or any open space that would be intentionally attractive to children (or families) to play any sporting activities.

Essentially, the City has framed its definition of a “City Park” as open space areas that are not intentionally designed to attract children for recreational purposes. A City Park can be classified not to include a playground or as a “non-active” park a term of art utilized by other jurisdiction in the state when defining “parks” in relation to cannabis uses (further discussed herein).

The HMC defines “playground” as:

“Any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.”

Clearly, the City’s definition of playgrounds provides an expressed designation for these areas to be utilized for the purpose of children’s recreation by incorporating play structures such as swings, slides, jungle gym, etc. or designed/landscaped grassy areas suitable for sporting activities such as soccer, football and/or baseball.

II. Existing HMC Language to Distinguish Between “City Parks” and “Playgrounds” for Purposes of Applying the Required 600-foot Buffer

There existing distinction between “City Park” and “playground” currently present in the HMC provides a clear pathway to allow for a well-reasoned land use policy that ensures the health and safety of City residents, specifically in areas where children recreate. In culling out parks which focus on areas, which actively attract children’s recreation the City will be able to achieve the dual objective of protecting sensitive uses and crafting sound cannabis policy to the benefit of the entire community.

A. City Parks

There are various parks located within the City’s limits that are classified as “City Parks” and are not under the management of the Hayward Area Recreation and Parks District. It is recommended that the City impose no restrictions on these “non-active” City Parks. Non-Active parks for purposes of the cannabis ordinance would be those absent any features which would foster, encourage or attract children’s recreation thereby clearly falling outside of the intent behind imposing such a buffer.

B. Playgrounds

Alternatively, playgrounds or “active parks” are those clearly designed to be a recreational area for children containing traditional playground equipment and/or sporting fields. It is recommend the City apply a 600-foot buffer between these “active parks” / playgrounds and cannabis businesses.

1. Methodology to Address Playgrounds or “Active Parks” Located on Larger Parcels with Non-Active Park Features – Example Children’s Playground at Giuliani Plaza

The Children’s Playground at Giuliani Plaza (located on the corner of D Street and Mission Blvd.) is unique in that a playground is located on the same parcel/tract of land as the City of Hayward Veterans’ Memorial Building (located at 22737 Main Street). See “*Hayward Buffer Analysis Map PDF 3*” (**Exhibit A**).

The HMC *already establishes* a clear distinction between the Children’s Playground and the remainder of the parcel. Specifically, with regard to the playground’s hours:

“These provisions shall not apply to the Children’s Playground located at Giuliani Plaza which is regulated by the Hayward Area Recreation and Parks District.” Article 14, Sec. 4-14.10(a). HMC Article 14, Park Hours.

The Hayward Area Recreation and Parks District, is tasked with managing *only* the Children’s Playground emphasizing a discernable difference between the park and the larger parcel on which it is located. Moreover, the Children’s Playground contains

traditional recreational playground structures (i.e. swings and slides) and a perimeter fence whereas the rest of the parcel is absent these features. In light of the foregoing, the Children’s Playground at Giuliani Plaza is unequivocally distinguishable and therefore should be classified separately from the Veterans’ Memorial Building even though the park and the building share the same tract of land.

With regard to devising appropriate setbacks for the true park/playground sensitive use receptor area, it is recommend that the buffer zone be measured from the actual playground itself to the to the property boundary of the closest cannabis facility. The buffer zone measurement should NOT be measured from the property line of the entire parcel containing the playground and the Veterans’ Memorial Building (to the property boundary of any nearby cannabis facility) in light of the fact that the playground accounts for only a small well defined area of the parcel and not the entire tract of land, which is a significantly larger parcel.

As illustrated in Exhibit A, the effects of a 600-foot buffer from the entire parcel of land containing Veterans’ Memorial Building has significant impacts on the Hayward Downtown CBD – virtually eliminating most of downtown from consideration by cannabis operators. All of the parcels of land outlined in red on Exhibit A would be prohibited under the wider buffer drawn from the property line (the blue ring). This buffer application runs counter to the City Council’s expressed desire to welcome cannabis retail businesses to downtown Hayward. Alternatively, applying the 600-foot buffer from the boundary of the Children’s Playground at Giuliani Plaza (the yellow ring) would preserve the potential for those properties. It is therefore recommend that, in the Downtown CBD *in particular*, the City adopt an ordinance applying buffers only to playgrounds, as discussed above, and avoid extending buffers to the border of larger parcels of land that may contain such playgrounds.

III. Examples of Other California Jurisdictions Distinguishing Between Parks and Playgrounds when Establishing Sensitive Use Buffer Related to Cannabis Operations.

Various jurisdictions have provided a distinction between an “active park” and a “non-active park” or treated each park in the jurisdiction differently depending its characteristics.

A. City of Pleasant Hill

The City of Pleasant Hill has developed a proposed draft Cannabis Zoning Ordinance, which distinguishes between an “active park” vs. “non-active park”. The language in the proposed draft ordinance defines “active park” as follows:

“Medical cannabis retailers are prohibited from establishing or locating within _____ feet, of a park that is equipped with active recreational facilities such as play equipment or playing fields. For the purpose of this section, all distances shall be measured from the outer extents of the cannabis retailer’s business premises (whether

leased or owned) excluding parking facilities and common areas to the nears property lines of each affected parcel.”

In this instance, the City’s rationale for the distinction is that “active parks” are where children are present thus warranting a buffer between an active park and a cannabis dispensary. The City did not establish a buffer requirement for non-active parks.

B. City of Bellflower

The City of Bellflower cannabis ordinance distinguishes between the various types of parks within its borders (i.e. parks designated as pedestrian walkways vs. parks used for recreational purposes). The ordinance implements a setback requirement for parks used for recreational purposes only. The language reads as follows:

“It is unlawful for a conditional use permit to be issued for any parcel that is: Within 300 feet of any parcel containing a religious facility; park (except those designated as primarily a pedestrian walkway rather than for recreational purposes) state- or county-licensed child daycare facility; youth center; or licensed drug or alcohol rehabilitation facility.”

IV. Proposed Draft Language

As an alternative to the existing draft language and in line with the information contain herein the following draft language is proposed:

10-1.3603 Commercial Cannabis Businesses.

B. Required Setbacks. All Commercial Cannabis businesses operating within the City of Hayward shall:

- 1. Comply with the sensitive use requirements contained in Section 26054(b) of the California Business and Professions Code;*
- 2. Be subject to a 600-foot minimum setback from any public library and any playground under the management of the Hayward Area Recreation & Park District. The 600-foot minimum setback shall be measured from the closest boundary line of the property on which the Cannabis Business is located to the closest area designed to be used by children that has play or sports equipment installed, has been designated or landscaped for play or sports activities, or has any similar facility related specifically to children’s recreation.*

Conclusion

There is precedent in the HMC for distinguishing between “City Parks” and “playgrounds.” Other municipalities have applied this distinction to their cannabis ordinances, in some cases adopting “active” and “non-active” terminology to describe

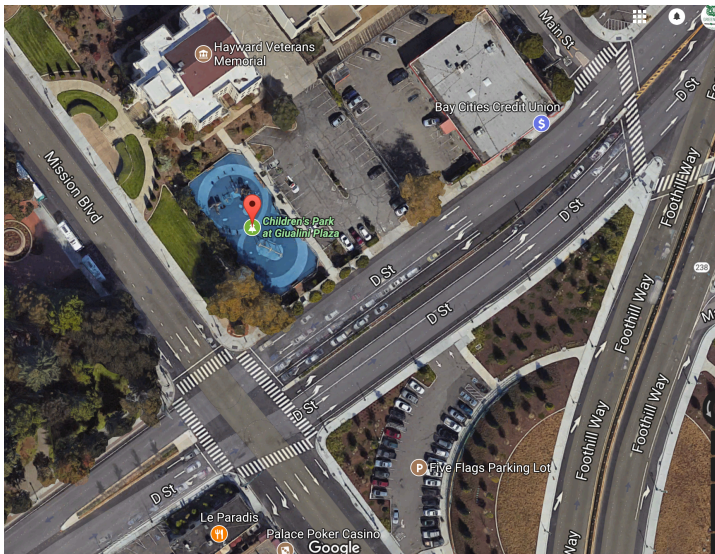
the different parks. The City is well within its purview to maintain the distinction that already exists in the HMC and to apply a 600-foot buffer only to “playgrounds” or “active parks.”

In addition, HMC actively distinguishes between the Children’s Playground at Giuliani Plaza and the remainder of the large parcel on which it sits both spatially and operationally. The City is well equipped to treat the Children’s Playground as a separate and distinct location thereby applying the 600-foot buffer from the boundary of the playground, rather than from the broader parcel boundary. In limiting the sensitive use buffer to the actual “active park” area the City will be able to avoid unintended restrictions upon substantial portions of the Downtown CBD consistent with Council direction.

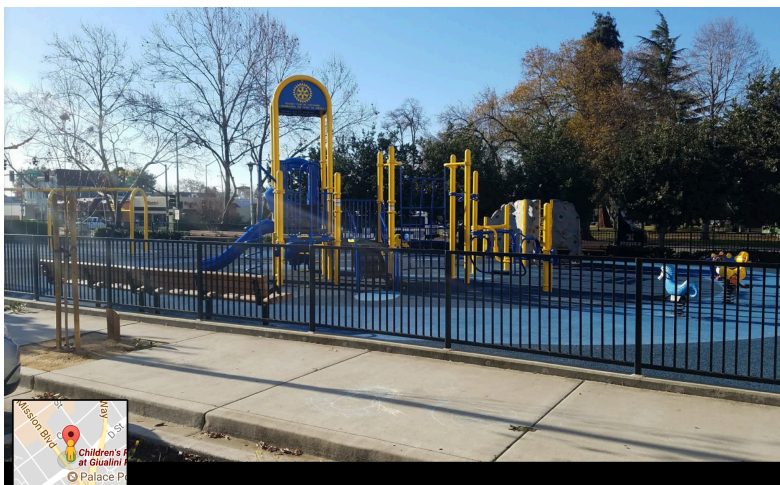
Exhibit 3 – Maps of Veteran’s Plaza & Children’s Playground G Giuliani Plaza



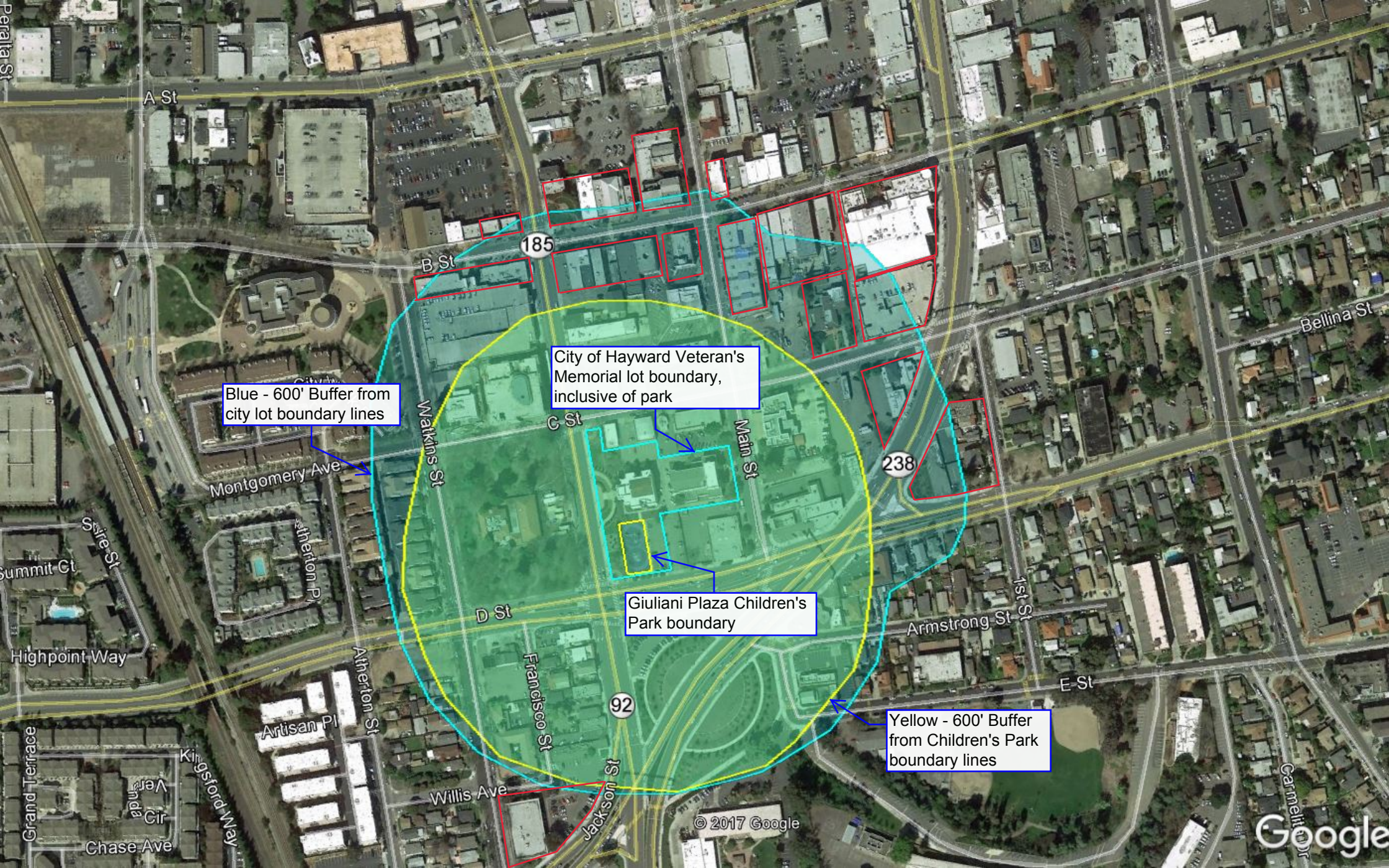
Map Depicting Parcel



Map Depicting Playground Area



Children's Park at Gialini Plaza is fully fenced with it's own ingress, egress, separate from Hayward Veteran's Memorial



Blue - 600' Buffer from city lot boundary lines

City of Hayward Veteran's Memorial lot boundary, inclusive of park

Giuliani Plaza Children's Park boundary

Yellow - 600' Buffer from Children's Park boundary lines