



SUBJECT

Application to Amend Chapter 10, Article 1 (Zoning Ordinance), Section 10-1.3603(B) related to a Proposed Modification of the Required Setbacks for Commercial Cannabis Businesses from certain sensitive land uses; and Chapter 10, Article 1 (Zoning Ordinance), Section 10-1.3607(C).1 related to a Reduction of the Overconcentration Buffer from 1,000 feet to 500 feet for Commercial Cannabis Retail Dispensaries of the Hayward Municipal Code in the City of Hayward, Requiring Approval of a Zoning Text Amendment, Application No. 201900727.

RECOMMENDATION

That the Planning Commission recommend to the City Council approval of the proposed Zoning Text Amendments (Attachment II) to Chapter 10, Article 1, Section 10-1.3600, Cannabis, of the Hayward Municipal Code related to the setback requirements for commercial cannabis businesses and the over-concentration buffer for retail dispensaries in the City of Hayward, based on the required Findings (Attachment III).

SUMMARY

Pursuant to HMC Section 10-1.3600¹, the City requires a 1,000-foot separation between commercial cannabis retail dispensaries and a 600-foot separation between all commercial cannabis businesses and sensitive land uses that include schools, day care centers and youth centers. The proposed text amendments would reduce the over-concentration buffer between retail dispensaries from 1,000 feet to 500 feet and additionally provide the Planning Commission the ability to reduce the 600-foot buffer for commercial cannabis uses from sensitive land uses, if two additional findings are made.

BACKGROUND

On November 8, 2016, the voters of the state adopted Proposition 64, the Adult Use of Marijuana Act (AUMA), which legalized adult cannabis use, possession and cultivation for non-medicinal purposes and created a regulatory framework for non-medicinal cannabis businesses. The intent of MCRSA and AUMA was to establish a comprehensive regulatory system for cultivation, production and sale of cannabis and cannabis products, thereby weakening the illicit market for cannabis.

On June 15, 2017, the State enacted Senate Bill 94, the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated provisions of MCRSA into the regulatory framework of the AUMA, thereby creating a unified regulatory scheme for

¹ Cannabis Land Use Ordinance: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1Z0OR_S10-1.3600CA

medicinal and adult use cannabis. MAUCRSA specifically authorizes local jurisdictions to adopt and enforce local ordinances to regulate cannabis businesses licensed pursuant to state law, including local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to MAUCRSA.

On October 30, 2017² and November 28, 2017³, respectively, the City Council adopted Ordinance 17-14 and 17-15, which enacted the regulatory and land use ordinances authorizing cannabis businesses in the City, subject to compliance with the local and state regulations. Since 2017, several municipalities have adopted similar land use and regulatory ordinances but have modified or eliminated the State's buffering recommendations in an effort to focus more on the quality of cannabis operators within a mixed-use environment, where the strict observation of land use buffers would limit the areas available to establish these businesses. While the existing Ordinance requires a minimum separation from sensitive land uses and other retail dispensaries, the City has adopted an RFP process that already provides for an independent and comprehensive evaluation of the cannabis operators prior to filing any land use applications.

On January 15, 2019⁴, City Council directed staff to process a text amendment to reduce the over-concentration buffer from 1,000-foot to 500-feet. While this reduction could result in several dispensaries locating in closer proximity to one another, it would expand the number of sites in the downtown area that are available to accommodate retail dispensaries.

Public Outreach. On February 15, 2019, a Notice of Public Hearing for the Planning Commission meeting was sent to interested stakeholders and published in The Daily Review newspaper.

DISCUSSION

Over-Concentration Buffer for Retail Dispensaries. The purpose of the over-concentration buffer is to limit the proximity of retail cannabis dispensaries from one another to mitigate potential cumulative land use impacts associated with traffic, noise and public safety for those adult-only uses. The proposed text amendment would reduce the over-concentration buffer for retail cannabis dispensaries from 1,000 feet to 500 feet. When the City Council adopted the cannabis land use ordinance in November 2017, there was a requirement that approved retail dispensaries recognize a 1,000-foot buffer between dispensaries to minimize potential over-concentration of these uses within the downtown area. At the time the land use ordinances were adopted, it was not known where specific dispensaries would be located, however, it was discussed that even with a 1,000-foot buffer requirement, a significant number of parcels could accommodate a dispensary within the downtown area.

² October 30, 2017 Council Minutes <https://hayward.legistar.com/MeetingDetail.aspx?ID=570110&GUID=1F62F795-56FA-4667-9BD1-E5FDA22CB8C5&Options=info&Search=>

³ November 28, 2017 Council Minutes <https://hayward.legistar.com/MeetingDetail.aspx?ID=573134&GUID=C82D348A-0412-4741-854C-23697F2AE444&Options=info&Search=>

⁴ January 15, 2019 Council Minutes <https://hayward.legistar.com/View.aspx?M=E3&ID=655077&GUID=C658C300-8AAA-4581-94DC-28AC5D713F7D>

Following the issuance of the Request for Proposals (RFP) in December 2017, the City selected three applicants to operate retail dispensaries in the City. When the Council reviewed the business proposals in July 2018, two applicants, Jiva Life and Hayward Station, identified possible locations downtown and one applicant, Aunty Honey's, did not. Since the Council's initial review and selection of these proposals, all three applicants have submitted planning applications to operate retail dispensaries. While all three applications are incomplete and pending resubmittal, all three applications are within 1,000-feet of one-another and within the buffer adopted last year. The proposed text amendment would reduce the distance separation required from each retail dispensary, but the applicants would still be subject to the sensitive land use requirements discussed below and required to obtain a Conditional Use Permit, which would assess any environmental, physical or safety impacts related to the use.

Buffer from Sensitive Uses. Another proposed text amendment would provide a consistent application of the required buffer from commercial cannabis businesses and additionally provide the Planning Commission with flexibility to reduce the 600-foot buffer from all sensitive land uses, if additional findings of necessity are made. Currently, cannabis operators can apply for a Conditional Use Permit if they desire to locate within 600 feet of parks, libraries and open space areas that contain children's playgrounds only if the Planning Commission can make findings of necessity to demonstrate that the proposed location is suitable and demonstrate that appropriate measures have been taken to mitigate any safety impacts. The proposed amendments would uniformly extend that provision to include the other sensitive land uses that primarily serve children and provide a consistent land use standard throughout the City.

The existing 600-foot buffer requirement between commercial cannabis businesses and sensitive land uses is based on a State recommendation to minimize possible exposure of cannabis uses from areas that primarily serve children and minors. The setback requirement is from the sensitive land uses described in California Business and Professions Code Section 26054 and California Health and Safety Code Section 11362.768, unless the local jurisdiction establishes an alternative setback requirement. These uses include kindergarten, any schools (grades 1 through 12), day care centers, and youth centers, which includes both public and private facilities, businesses and clubs that primarily serve youth. Additionally, the City requires a 600-foot buffer from other public areas where children congregate, including public parks, libraries and designated open space areas. Public parks and open space areas that do not contain children's playground or similar amenities are exempt from this requirement.

Per Section 10-1.3603.B⁵, the Planning Commission has the ability to reduce the buffer around parks and open space areas upon making two findings of necessity. In order to approve a reduction from the 600-foot buffer, the Planning Commission must issue a Conditional Use Permit and find that: 1) the public convenience and necessity will be served by an alternate distance requirement; and 2) alternative measures have been taken by the applicant to assure public health and safety are in place with respect to a commercial cannabis business. Staff is recommending this flexibility be broadened and uniformly applied to all other sensitive land

⁵ Commercial Cannabis Setback Requirement: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA_S10-1.3603COCABU

uses that primarily involve children, including schools, day care centers and youth centers in order to provide consistency throughout the development review process. As part of the regulatory toolkit established by the State of California and the land use ordinances adopted by the City in 2017, staff believes that the current regulatory framework is sufficient to ensure that any impacts related to sensitive land uses are evaluated and minimized as part of a Conditional Use Permit process. Additionally, as part of the current RFP process, all commercial cannabis businesses are required to submit a business plan, which is reviewed and scored by an independent, outside consultant who determines whether or not the commercial cannabis operator has met several of the city's objectives related to best practices for the cannabis industry.

POLICY CONTEXT AND CODE COMPLIANCE

Permitted Zoning Districts. The zoning districts that administratively or conditionally permit the commercial cannabis uses would remain unchanged. For most commercial cannabis activities, including distribution, manufacturing and cultivation, the City's Industrial District is the only district where those uses are administratively or conditionally permitted. For retail operators, cannabis dispensaries are conditionally permitted in downtown and isolated areas around the City zoned General Commercial (CG), Central Business (CB), Central City Commercial (CC-C), Central City Residential (CC-R), and Center City Plaza (CC-P). As currently proposed, any commercial cannabis activity which is located within 600 feet of a sensitive land use would be required to obtain a use permit by the Planning Commission upon making additional findings of necessity, regardless of zoning district or land use activity. The proposed text amendments would provide applicants with more options when locating their business in the City, but it also adds a higher level of discretionary review by the Planning Commission on Use Permit applications near sensitive use areas that otherwise could have been processed administratively at staff level. Copies of the Cannabis Land Use Maps that reflect the 600-foot land use buffers from sensitive land uses is included as Attachment IV.

Per Section 10-1.3425(a)⁶, the Planning Commission may recommend approval of or deny a text amendment, reclassification, or pre-zoning to the City Council. Recommendations for approval shall be based upon all the following findings:

1. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward;
2. The proposed change is in conformance with all applicable, officially adopted policies and plans;
3. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified; and
4. All uses permitted when property is reclassified will be compatible with present and potential future uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

Staff does not believe the proposed text amendments would heighten or exacerbate any impacts associated with cannabis uses or operations as any activity would be subject to a

⁶ Zoning Text Amendment Process: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3400AM

thorough environmental and impact analysis as part of the discretionary planning process. Detailed findings on the proposed text amendments are included as Attachment III.

Hayward 2040 General Plan. The proposed zoning amendments contained herein are consistent with the goals and policies of all elements of the *Hayward 2040 General Plan*, including the following goals and policies:

LU-5.2 Flexible Land Use Regulations

The City shall maintain flexible land use regulations that allow the establishment of economically productive uses in regional and community centers.

LU-5.6 Adaptive Reuse, Renovation or Redevelopment

The City shall support the adaptive reuse, renovation or redevelopment of community and regional shopping centers that are no longer viable due to changing market conditions, demographics, or retail trends. The City shall consider alternative land uses if market conditions limit the feasibility of commercial uses.

LU-6.1 Land Uses

The City shall encourage employee-intensive uses, such as professional office, corporate campuses, research and development, traditional and specialized manufacturing, throughout the Industrial Technology and Innovation Corridor.

ED-1.6 Advances and Specialized Manufacturing

The City shall encourage the establishment and expansion of advanced and specialized manufacturing businesses to counter declining employment trends in traditional industrial manufacturing.

ED-1.11 Local Serving Retail

The City shall encourage the establishment and expansion of commercial businesses that increase local spending within Hayward and provide needed goods and services to local residents and businesses.

ED-3.2 Fast Growing Industries

The City shall monitor industry and market trends to identify fast-growing industries, and coordinate with local businesses within those industries to proactively assist with potential business expansion plans.

ED-6.2 Land Use Certainty

The City shall strive to enhance land use certainty for businesses by identifying and removing unnecessary regulatory barriers that discourage private-sector investment.

Commercial Cannabis Permits. As part of the Commercial Cannabis Business⁷ regulatory framework approved by the City, cannabis operators are required to obtain multiple approvals through a two-step process at the local level in addition to State licensing. First, an applicant is required to obtain approval of a Commercial Cannabis Business Permit by the City to assure that all regulatory requirements are met. Second, the applicant is required to obtain

⁷ Commercial Cannabis Businesses: https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU

the necessary land use entitlements, that consider the location, size and types of proposed uses allowed, consistent with the Zoning Ordinance standards. Any cannabis business operating in the City pursuant to City-issued permits must also obtain a cannabis license from the State. Failure to obtain the State license would be grounds for revoking the City's permit.

Commercial Cannabis Permits issued by the City are good for one year and must be renewed annually following the completion of a mandatory safety inspection and demonstrated compliance with all local and State regulations, including any conditions of approval adopted as part of a Use Permit process.

ENVIRONMENTAL REVIEW

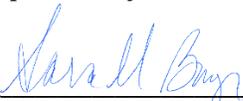
The proposed text amendments are exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed Zoning Text Amendment to the Hayward Zoning Ordinance would reduce the over-concentration buffer between retail dispensaries to 500 feet and require additional findings for commercial cannabis uses locating within 600 feet of sensitive land uses. Commercial cannabis operators would still be subject to the RFP review and selection process and subject to the land use entitlement process, which would evaluate applications on a case-by-case basis for environmental impacts pursuant to CEQA.

NEXT STEPS

Following Planning Commission review and recommendation, this item will be forwarded to the City Council for a first reading and consideration on March 19, 2019. If approved, the proposed text amendments would become effective in April 2019.

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