

**CITY OF HAYWARD PLANNING DIVISION
PROPOSED CANNABIS RETAIL DISPENSARY
HAYWARD STATION, 1004 B STREET
CONDITIONAL USE PERMIT APPLICATION NO. 201806005**

FINDINGS FOR APPROVAL

Conditional Use Permit

Pursuant to Hayward Municipal Code Section 10-1.3200, The Planning Commission or other approving authority may approve or conditionally approve an application when all the following findings are made:

1. *The proposed use is desirable for the public convenience or welfare;*

The proposed retail cannabis dispensary is desirable for the public convenience and welfare in that it would result in establishment of a cannabis retail dispensary in a currently vacant and underutilized commercial space in Downtown Hayward. Cannabis retail sales are a burgeoning retail category that would contribute positively to the sales tax base in Hayward and attract a regional clientele to the area. Despite the growing demand for these products, there are relatively few locations that provide boutique cannabis and cannabis related products in the immediate area. Establishment of a cannabis retailer in a prominent historic building in Downtown Hayward would bring retail consumers to not only shop at Hayward Station, but also patronize surrounding businesses and restaurants, which would contribute further to the sense of activation of the commercial core thus benefitting the City and neighborhood.

2. *The proposed use will not impair the character and integrity of the zoning district and surrounding area;*

The proposed commercial cannabis dispensary will occupy an existing building that has been vacant and underutilized for years. The subject building's relatively large size and prominent location at a major intersection in Downtown Hayward and the lack of basic maintenance and investment of the site and adjacent parking lot has resulted in a significant, negative impact on the surrounding neighborhood. Occupation of the currently vacant structure and proposed façade and site improvements at the adjacent parking lot would signal increased investment in Downtown Hayward. Further, establishment of a new, unique retail use in the vacant building will activate the corner likely resulting in increased pedestrian traffic and patrons to the area and a positive impact on the adjacent properties and Downtown neighborhood, in general.

While the proposed retail use would result in activation of a vacant space with a retail use, it would be inappropriate to display the age-restricted cannabis products in a retail storefront as called for in the applicable CC-C (City Center – Commercial) and CC-P (City Center – Plaza) districts and future Downtown Main Street with Required Shop Frontage Downtown Specific Plan designations. To ensure that the proposed use would not impair the character and integrity of the applicable zoning districts, specific conditions of approval would require that

etched glass be utilized to obscure street level views into the retail space and that all areas above the etched glass be kept clear and transparent to allow in light and views into the upper windows of the tenant space thus displaying the prominent interiors and a view into the well-designed historic building. In addition, the proposed commercial use would meet the applicable parking standards for commercial uses in the applicable districts if a reciprocal parking agreement is recorded to allow for exclusive parking on the adjacent parking lot, and if the parking lot improvements include resurfacing, repainting and lighting.

3. *The proposed use will not be detrimental to the public health, safety, or general welfare; and*

The proposed cannabis manufacturing use will not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, will operate within the permit requirements and regulations established by State, County and local laws. The applicant has provided an Odor Plan to ensure that cannabis odors cannot be detected outside of the building, and a detailed Security Plan that includes installation of security cameras inside and outside of the building; positioning of security guards at all entrance; use of ID scanners to verify patron age; robust commercial locks on all points of ingress and egress and alarm system; compliance with a State-mandated track and trace program to prevent diversion of cannabis; a records retention program; and identification of a local contact to handle all safety and security issues in an immediate manner.

The proposed dispensary is also subject to the City's Cannabis Ordinance, which contains operating and performance standards for establishments that handle cannabis and cannabis related products. The applicant's Business and Security Plan were reviewed and evaluated by an independent consultant and determined to include procedures and protocols to ensure public safety and those security measures were incorporated into the conditions of approval for the project. Further, the applicant and all employees associated with the business are subject to an extensive background check by the City's Police Department.

4. *The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.*

Retail uses, such as a cannabis retail dispensary, are consistent with the *Central City – Retail and Office Commercial* land use and Downtown Core land use designations. While the proposed use would contribute positively to the tax base and would attract a regional clientele to the Downtown area thus meeting Economic Development Goals and Policies, the display of cannabis products in a prominent manner and in a traditional storefront setting is not appropriate in that cannabis and related products are highly sensitive due to their recent legalization, and in that it is only available for purchase by individuals that are 21 and older (18 and older with a medical marijuana card).

To address inconsistencies between General Plan policies requiring open shopfront displays and the sensitive nature of the use, the proposed business would incorporate design solutions including installation of etched glass that would extend seven feet above the sidewalk to limit

views of products from the street, and the areas above the etched glass would be kept free to coverings, tinting or display cases to ensure views into the upper windows of the tenant space. With these design solutions, the storefront will have an exclusive and high-end look to the ground floor retail while retaining the tall, open glazing that is a major characteristic of the historic building thus ensuring compliance with the following General Plan Goals and Policies:

- *Land Use Policy LU-2.1, Downtown Arts and Entertainment.* The City shall encourage private-sector investment in Downtown to transform it into a safe, vibrant, and prosperous arts and entertainment district that offers enhanced shopping, dining, recreational, and cultural experiences and events for residents, families, college students, and visitors.
- *Land Use Policy LU-2.2, Downtown Activities and Functions.* The City shall maintain the Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions.
- *Land Use Policy LU-2.3, Downtown Pedestrian Environment.* The City shall strive to create a safe, comfortable, and enjoyable pedestrian environment in the Downtown to encourage walking, sidewalk dining, window shopping, and social interaction.
- *Land Use Policy LU-2.4, Downtown Retail Frontages.* The City shall require retail frontages and storefront entrances on new and renovated buildings within the “retail core” of Downtown Hayward, which includes properties along B Street between Watkins Street and Foothill Boulevard, and Main Street between A Street and C Street. This policy does not apply to historic building originally designed without retail frontage or storefronts.
- *Land Use Policy LU-2.16, Uses to Attract the Creative Class.* The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward including:
 - Restaurants and cafes;
 - Art studios and galleries;
 - Entertainment and cultural venues;
 - Housing and live-work units;
 - Exercise and physical fitness facilities;
 - Office space and business incubators; and
 - Community-operated workspaces where people with common interests can meet, collaborate, and develop their business ideas and products.
- *Economic Development Goal ED-1.* Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for local residents.
- *Economic Development Policy ED-1.4.* The City shall establish business attraction efforts that focus on small and medium-sized businesses within emerging and growing business sectors.

- Economic Development Goal ED-2. Cultivate a culture of entrepreneurship to encourage and support local business start-ups.

Cannabis Ordinance

In addition to the required findings contained in 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;*

The proposed commercial cannabis dispensary will not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, will operate within the permit requirements established by the City and to obtain the necessary State permits. The proposed project site is a vacant commercial building in Downtown Hayward which is the only geographic area in Hayward where commercial cannabis dispensaries are permitted with a use permit. Establishment of a cannabis retailer in a prominent historic building in Downtown Hayward would bring retail consumers to not only shop at Hayward Station but also patronize surrounding businesses and restaurants, which would contribute further to the City's tax base and to a sense of activation of the commercial core.

By design, the structures and businesses within Downtown Hayward are located in close proximity to each other and may result in location of incompatible uses or sensitive uses within the minimum distance buffers. However, as described in the accompanying staff report and, in the finding related to alternative distances below, the proposed project would incorporate a robust Safety and Security Plan including but not limited to on-site security guards, cameras at the entrances and parking lot, employee background checks, a limitation on loitering and nuisances, and the etched design along storefronts to assure public health and safety within the vicinity of the subject site.

2. *Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;*

Physical and operational safeguards are in place to ensure this cannabis retail dispensary will operate at the proposed location without impacts to other properties. The proposed project includes an Odor Mitigation Plan and robust Security Plan including but not limited to installation of cameras inside and outside of the building and in the parking lot, provision for on-site security guards, ID scanners, and employee background checks among other safety and security measures.

As part of the initial RFP process, the applicant's business plan and the specific location under consideration with this use permit was reviewed and scored by an independent, outside consultant who determined this operator would meet the City's objectives related to best practices for the cannabis industry. Further, according to the proposed Conditions of Approval and by Ordinance, cannabis permits shall be renewed annually providing the City

with an opportunity to determine if the use is causing disproportionate impacts to City services or operating in a manner that is unsafe or out of compliance with the approved business plan or the approved conditions of approval for the project.

3. *The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and*

The proposed commercial cannabis dispensary will occupy an existing building that has been vacant and underutilized for years. The subject building's relatively large size and prominent location at a major intersection in Downtown Hayward and the lack of basic maintenance and investment resulted in a significant, negative impact on the surrounding neighborhood and immediately adjacent properties. Occupation of the currently vacant structure and façade and site improvements at the adjacent parking lot would signal increased investment in Downtown Hayward. Further, establishment of a new, unique retail use in the vacant building will activate the corner likely resulting in increased pedestrian traffic and patrons to the area and a positive impact on the adjacent properties and Downtown neighborhood, in general.

To ensure that the proposed use is designed to be aesthetically compatible with the surrounding area, specific conditions of approval would require that etched glass be utilized to obscure street level views into the retail space and that all areas above the etched glass be kept clear and transparent to allow in light and views into the upper windows of the tenant space displaying the prominent interiors and providing a view into the well-designed historic building. In addition, the adjacent commercial parking lot would be resurfaced, restriped and lighting would be installed to ensure safety and aesthetic compatibility with the upgraded development.

4. *The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial or commercial uses.*

The applicant is proposing to lease a currently vacant, dilapidated commercial space in Downtown Hayward. It is likely that sales of cannabis and cannabis related products to the public will result in some impact on public services but that those impacts can be minimized and managed by strong and present on-site management, adherence to the comprehensive Security and Safety Plan and conditions of approval prohibiting loitering and on-site consumption. In addition, the applicant is subject to an annual review and inspection of the proposed manufacturing use by the City's Code Enforcement Division, Police Department and Fire Department as part of the cannabis permit renewal. Further, as conditioned, any excessive calls for service, including nuisance and code violations, may result in the revocation of the commercial cannabis permit and/or the conditional use permit.

5. *The required 600-foot setback for sensitive uses may be reduced 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 the commercial cannabis business.*

It is essential to note when considering appropriate locations for commercial cannabis dispensaries that Downtown Hayward is the only area within the city limits where these uses may be permitted with an approved use permit and a total of three dispensaries may be established. There are sensitive uses that serve youth within 600 feet of the project site including High Scores Arcade, an interactive museum of classic arcade games approximately 290 feet east of the project site; and Stellar Prep, a tutoring center for high school aged children approximately 400 feet west of the project site. By design, the structures and businesses within Downtown are located in close proximity to each other making it difficult to maintain minimum distances between cannabis businesses and between cannabis businesses and sensitive uses. Allowing flexibility in the minimum distance requirement between the subject business and the nearby sensitive uses is warranted in this instance to ensure that the subject building, which has been vacant and dilapidated for years, will be cleaned up, improved and activated which will have positive impacts by attracting a regional clientele who will visit Hayward Station and patronize surrounding businesses. As conditioned, staff believes that the alternative measures outlined in the Safety and Security Plan and the design measures to obscure views of the cannabis and cannabis products would assure public health and safety.

Environmental Review

1. The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1), Existing Facilities, in that the proposed use would occupy an existing commercial structure that was designed to accommodate retail uses. As proposed and conditioned, the proposed use will not result in any significant effects related to traffic, noise, air quality and water quality.

The proposed project includes exterior modifications to a structure that is identified as an individual local historic resource listed on the California Register and which appears eligible for listing on the National Register. According to a memo prepared by an architectural historian and conditions assessment specialist with Garavaglia Architecture, dated October 29, 2018, the proposed alterations which include removal and replacement of doors to ensure ADA-compliance, removal and replacement of ATMs and replacement with glazing to match the existing building, and miscellaneous repairs to damaged areas of the building would not alter or damage the surrounding historic and features of the building. In conformance with the recommendations of the report, the final building permit plan set, will be reviewed for compliance with the City's local Historic Resource Ordinance and the Secretary of the Interior Standards prior to the approval of building permits. Therefore, the proposed exterior modifications to the existing building would be exempt from CEQA pursuant to Section 15331 (Class 31), Historical Resource/Rehabilitation, and no further environmental review is necessary.