



## **SUBJECT**

Proposed Commercial Cannabis Retail Dispensary with Ancillary Retail Delivery within an existing building located at 1147 B Street (Assessor Parcel No. 427-0011-021-00), Requiring Approval of Conditional Use Permit Application No. 201806127. Esther Lopez (Applicant); Gregory Varr (Property Owner).

## **RECOMMENDATION**

That the Planning Commission recommend that the City Council approve the Conditional Use Permit application for the proposed commercial cannabis retail dispensary with ancillary retail delivery use, based on the analysis set forth in this report and the required Findings (Attachment II), and subject to the Conditions of Approval (Attachment III).

## **SUMMARY**

The applicant, Aunty Honeys, is seeking Conditional Use Permit approval and a reduction of the 600-foot sensitivity buffer to establish a commercial cannabis retail dispensary with ancillary retail delivery within a vacant building located at 1147 B Street. The proposed use would provide cannabis and cannabis-related products to the members of the public that are 21 years and older for recreational use, and 18 years and older for medical use, as allowed by the State. The proposed project includes a security plan, odor control plan and improvements to the retail tenant space and the parcel.

## **BACKGROUND**

In 2015, the State of California enacted a comprehensive regulatory framework (AB 243, AB 266, SB 643) for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery and testing of medicinal cannabis in California. The legislation was collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA).

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

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, creating a unified regulatory system for medicinal and

adult use cannabis. MAUCRSA specifically authorized 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 one or more types of businesses licensed pursuant to MAUCRSA.

On October 30, 2017<sup>1</sup> and November 28, 2017<sup>2</sup>, respectively, the City Council enacted regulatory and land use ordinances authorizing cannabis businesses within the City of Hayward subject to compliance with local and state regulations. At their October meeting, the Council also established a request for proposal process by which the City would select commercial cannabis businesses. The process involved four stages to help differentiate applicants who meet the City's desired set of qualifications. These stages include:

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

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

On March 19, 2019<sup>3</sup>, the City Council adopted Ordinance Nos. 19-06 and 19-07, reducing the overconcentration buffer between retail dispensaries from 1,000 feet to 500 feet; and, provided Planning Commission the ability to waive or reduce the 600-foot buffer between commercial cannabis uses and sensitive uses, subject to special findings. The regulations were intended to decrease distance requirements in the Downtown area where lots are smaller and uses are closer to each other by design. Although the proposed project meets the 500-foot overconcentration buffer, the project site is in proximity of two sensitive land uses and as such, additional findings are required to be made as part of the Conditional Use Permit.

Public Outreach. On November 30, 2018, an initial Notice of Application Receipt for the project application was sent to property owners, residents, and businesses within a 300-foot radius of the project site.

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<sup>1</sup> October 30, 2017 City Council Minutes

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

<sup>2</sup> November 28, 2017 City Council Minutes

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

<sup>3</sup> March 19, 2017 City Council Minutes

<https://hayward.legistar.com/DepartmentDetail.aspx?ID=30850&GUID=ABB40C93-B4A0-406D-809B-03936402537F&Mode=MainBody>

Following Notice of Receipt of Application, the City received two items of written correspondence on the project: one email from a member of the public who expressed concern with the dispensary and the possibility that it could result in “risky” behavior; and a letter from the Hayward Chamber of Commerce, who expressed support for the proposed cannabis dispensary in downtown Hayward. Following this correspondence, the applicant reached out to local businesses in the area and provided them a written letter describing the proposed day to day operations of the dispensary.

On January 7, 2020, a Notice of Public Hearing for the Planning Commission meeting was sent to property owners, residents, and businesses within 300-feet of the project site and published in The Daily Review newspaper. No additional public feedback has been received since the Notice was sent.

## **PROJECT DESCRIPTION**

Existing Conditions. The .41-acre parcel currently has two commercial structures, one structure is about  $\pm$  2,300 square feet (sq. ft.) and the other structure is about  $\pm$  3,578 sq. ft. Both structures front B Street and are separated by a shared driveway approach, which provides access to the common delivery area located to the rear of the parcel. Per the County assessor, the structures were constructed of a masonry material in 1955.

Currently, one of the buildings is vacant, and the other building is divided and occupied by a Thai food restaurant and a Barbershop. As proposed, Auntie Honeys would occupy the  $\pm$  3,578 sq. ft. vacant commercial building located at 1147 B Street, previously a dry-cleaning business. Surrounding land uses include a combination of commercial, office, and service uses. Including a church, a chapel, a nail salon, other retail uses, restaurants, cafes and vacant tenant spaces.

Proposed Project. As proposed, the retail dispensary with ancillary delivery would occupy an existing  $\pm$  3,578 square foot building located at 1147 B Street. The proposed retail dispensary would sell and deliver cannabis related products such as edibles, oils and concentrates for both recreational and medical use and operate between the hours of 6a.m. to 10 p.m., seven days a week. If approved, the hours for delivery service would run concurrently with the dispensary hours of operation.

As shown in the floorplan, two-thirds of the tenant space would be open to the public, and the rear third of the tenant space would be utilized as an inventory control room, office, and storage. The public entrance would be along the B Street frontage, and the vendor entrance would be located to the rear of the building, only accessible by way of the private rear yard and by way of a security fence. Additionally, there would be a front desk for customers to check-in, which would be setback from the retail area and a series of display cases to minimize visibility of the products from the entrance and storefront windows.

The applicant is also proposing several exterior modifications, which include the installation of a new security camera system, security lighting, a new trash enclosure, replacement of the existing fence fronting on B Street, replacement of the existing awning, new paint for the exterior walls, new charcoal filtration system, addition of a security fence to the rear of the

building, and a proposed mural on the right side of the building. A copy of the site and building plans are included (Attachment IV) and a copy of the proposed business/operating plan is included (Attachment V).

Parking and Loading. Pursuant to Chapter 6 of the Development Code. Division 2.2.070(f) additional parking is not required for commercial uses under 5,000 sq. ft<sup>4</sup>. However, the site has access to on-street parking and is immediately adjacent to Municipal Parking Lot #4, which provides customers with four hours of free parking.

The applicant is proposing to make some minor parking lot improvements on-site that include the striping for two stalls to park delivery vehicles when they are not in service. Staff has included several conditions of approval that indicate at no times shall the delivery vehicles be stationed on public right-of-way (Condition # 7); and to prohibit delivery or delivery retail vehicles stationed on site overnight (Condition# 9).

Local Hiring and Training. Per the business proposal submitted on January 2018, Aunty Honeys has committed to prioritizing the hiring of local Hayward residents. Specifically, the business would like to hire 19 staff members, including a Director of Security, Director of Compliance, Director of Wellness, Community Manager, two Relations Managers, Quality Assurance Manager, Inventory Manger, Operations Manager, Beautification Manger, two community service agents, four budtenders, and three security guards.

Prior to beginning work, all employees would be required to complete a five-module training course. Trainings to include security and diversion prevention, sanitation and safety, labeling and packaging, transportation, and inventory. Once employed, employees would be required to complete several cannabis trainings such as: patient-focused certification, diversity training, and safety and health in the cannabis industries.

Security Plan. The applicant submitted a detailed security plan to ensure public and product safety. According to the security plan, a minimum of two guards would be on site during the hours of operation. One security guard would be stationed at the main entrance to check identification cards for all individuals entering the establishment to ensure that they are 21 years or older (and 18 years or older with a medical cannabis card). The second security guard would walk the premise to deter loitering or consumption on site or within the adjacent municipal parking lot.

Other proposed security measures include 360 view cameras located within the interior and exterior of the building. The site would also have an alarm system, motion detection lighting, and a Security Plan, which addresses shipping, receiving, transactions, product storage, and inventory procedurals. All proposed security measures have been reviewed and deemed appropriate by the Hayward Police Department.

Odor Control Plan. Pursuant to the odor control plan submitted by the applicant, the proposed dispensary would incorporate fans and a carbon filter system, reducing the possibility of

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<sup>4</sup> Downtown Main Street Division 2.2.070(f)  
<https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf>

detectable cannabis odor. Furthermore, per State regulations, Auntie Honeys would only receive cannabis products in final package form, meaning the product would be bagged and sealed at a separate location. No cannabis products sold at the dispensary would be exposed to open air thereby reducing the possibility of detectable cannabis odor.

Pursuant to the Conditions of Approval, the proposed fans and filtration system must be included in the building permit application submittal. If approved, the applicant has committed to visually inspect all fans and filters each week to ensure proper functionality. The applicant would also replace all carbon filters on a quarterly basis. Additionally, the applicant would be required to maintain records of repairs and replacement for at least three years, to be made available to local or state authorities upon request.

**Community Benefits.** As part of the RFP review and selection criteria, the applicant committed to provide a community benefit that would encourage community building and to provide support to vulnerable populations by way of referrals, to counselors specializing in mental health, domestic violence, drug abuse, and rehabilitation placement. Additionally, Auntie Honeys has pledged to support local organizations promoting environmental health, and community outreach, such as the Downtown Street Team. Staff has included a condition of approval requiring the applicant provide specific details of their Community Benefits program and to coordinate implementation of the Community Benefits program with City staff within six months if approved (Condition # 12).

## **POLICY CONTEXT AND CODE COMPLIANCE**

**Hayward 2040 General Plan.** The project site is designated City Center – Retail and Office Commercial (CC-ROC) in the *Hayward 2040 General Plan*<sup>5</sup>. Allowable uses include retail, dining and service uses, entertainment and recreational uses and office and residential uses above ground floor commercial uses. As a retail use, commercial cannabis dispensaries would be consistent with the allowable uses in the CC-ROC land use designation.

The following General Plan Policies apply to the subject site, and to the establishment of such businesses in Hayward:

- **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-2.16, 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.

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<sup>5</sup> Hayward 2040 General Plan  
<https://www.hayward2040generalplan.com/>

- 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.

Further discussion of the consistency between the proposed use and policies related to Downtown retail is included in the Staff Analysis section below and in Attachment II, Findings.

Downtown Specific Plan (DTSP). The proposed cannabis dispensary and retail delivery business would be established in the Downtown (Urban) Neighborhood Area. Per the DTSP, the *Urban Neighborhood* Area should function as a gateway to the Downtown Core. The vision is for that area to evolve to include a combination of higher intensity urban buildings that are compatible in scale with existing taller buildings along Foothill Boulevard. The following Downtown Specific Plan policies apply to the subject site, and to the establishment of such businesses in Hayward:

- Policy Land Use 3 Opportunity Sites: Encourage the development and improvement of opportunity sites that have the potential to attract developer interest in the Downtown and generate more economic activity.
- Policy Community Development 6 Public Art: Promote the creation and funding of public art that contributes to the cultural experience of visiting the Downtown.

Zoning Ordinance. The project site is located within the Downtown Main Street (DT-MS) zone and is subject to the requirements set forward by the Downtown Specific Plan(DTSP), the Hayward 2040 General Plan, as well as the adopted Cannabis land use ordinance, and the regulatory framework for Commercial Cannabis Businesses<sup>6</sup>.

Pursuant to Chapter 6 of the Development Code, Division 2.3 (Use Table) of the DTSP, Commercial Cannabis Retail Dispensaries are allowed in the DT-MS Zone subject to Conditional Use Permit. Additionally, Section 10-1.3603(B)<sup>7</sup> of the Hayward Municipal Code (HMC) requires all commercial cannabis businesses operating within the City of Hayward be subject to a 600-foot minimum setback from youth centers, sensitive land uses, and similar areas dedicated toward children activities. The required 600-foot setback may be reduced as part of the issuance of a Conditional Use Permit 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. In addition to the general findings in the City's Zoning Ordinance, the project is subject to four additional cannabis findings pursuant to Section 10-1.3609 of the HMC:

<sup>6</sup> Hayward Commercial Cannabis Businesses Ordinance  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH6BUPRTR\\_ART14COCABU](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU)

<sup>7</sup> Hayward Municipal code Section 10-1.3603 (Commercial Cannabis Business)  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.3600CA\\_S10-1.3603COCABU](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA_S10-1.3603COCABU)

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
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation; and
3. The cannabis operation is designed to be safe, secure 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.

Further analysis related to the cannabis findings is included in Staff Analysis below and in Attachment II, Findings.

**Mandatory Buffers.** Pursuant to HMC Section 10-1.3607(c)(1), to avoid overconcentration of commercial cannabis retail dispensaries, such business shall be a minimum of 500 feet from any other such business. The proposed location satisfies this minimum distance requirement from the entitled cannabis dispensary (Hayward Station) approved at the corner of Main and B Streets.

**Sensitive Uses.** Pursuant to HMC Section 10-1.3603(B), commercial cannabis businesses are subject to a minimum 600-foot minimum setback from sensitive land uses, including schools (grades K through 12), day care centers, youth/recreation centers, designated open space areas, and parks which contain a children's playground. For this site, the applicant has requested an alternate distance requirement. As the proposed location if approved, would be situated within the 600-foot radius of two sensitive land uses. The Kumon learning center located at 22628 Foothill Boulevard (±200 feet away) and the Kid's Breakfast Club located at 22542 2nd Street (±300 feet away). Further analysis and discussion of the reduction of distance between the proposed use and nearby sensitive uses is included in Staff Analysis below and in Attachment II, Findings.

**Commercial Cannabis Permits.** An applicant is required to obtain approval of a Commercial Cannabis Business Permit by the City to assure that all regulatory requirements are met. The applicant has satisfied this task.

The applicant must also obtain the necessary land use entitlements, which must be consistent with the Zoning Ordinance standards, which are the subject of this application. Following entitlement, the applicant will be required to 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 valid 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 this Conditional Use Permit.

## STAFF ANALYSIS

Based on the applicant's proposal, staff believes that the Planning Commission can make the required Findings to recommend City Council approval of the Conditional Use Permit to allow for the establishment of a commercial cannabis retail dispensary and retail delivery at the proposed site, including a reduction of the sensitive land use buffer, subject to conditions of approval as outlined below. Retail uses, such as a cannabis retail dispensary, are consistent with the CC-ROC land use and Downtown Core designations.

Staff believes that establishment of a cannabis retail dispensary and retail delivery at 1147 B Street would be beneficial in that the site has been vacant for years. The building's state of disrepair has resulted in a disproportionate impact on the surrounding neighborhood and signals a lack of investment in the area. The proposed site improvements as well as the establishment of a new, unique retail use in the vacant building would improve the appearance of the building and activate that location. Hopefully, translating to positive impact on the adjacent properties and Downtown neighborhood. Establishment of a cannabis retailer near Downtown Hayward would bring retail consumers to not only shop at Auntie Honeys, but also patronize surrounding businesses and restaurants, which would further contribute to the sense of activation of the City's commercial core.

This is the second of three proposed cannabis retail dispensaries anticipated in the Downtown area. The first retail dispensary approved in the City of Hayward is Hayward Station, located at 1004 B Street.

Characterized by a commercial core along B Street, the City's Downtown area has multiple small lots with buildings built to the street edge. By design, the businesses within Downtown are near each other making it difficult to maintain minimum distances between cannabis businesses and other uses which may be considered sensitive. However, attractive downtowns are often created and rooted in the mixing of uses that appeal to people of all ages, desires, and in the excitement of those uses and individuals connecting in the public realm. As previously noted, there are two sensitive uses within 600 feet of the project site, including The Kumon Learning Center, an after-school tutoring center for children 3-5, and The Kids Breakfast Club, a breakfast center that provides free breakfast and activities for children when schools are not in session.

Per HMC Section 10-1.3603(B), the deciding authority may waive the minimum distance requirements provided that public convenience and necessity would be served by an alternative distance and provided adequate safety controls are in place to assure public health and safety. As noted above, an alternative distance requirement would be necessary because of the layout and nature of the Downtown area, and to allow a variety of uses near each other. As conditioned, staff believes that the on-site security guards, the numerous cameras at the entrance, and the queuing area fronting B Street along the proposed store-frontage would assure public health and safety. In addition to the consultant review of the business plan, the Hayward Police Department, Code Enforcement Division and Fire Department have reviewed the project proposal with the Planning Division staff ensuring the use would operate in a safe manner. Conditions of Approval are included to ensure that the proposed use and operations of the cannabis business would provide a safe and secure environment for the surrounding



neighborhood and mitigate potential impacts to adjacent properties (Conditions of Approval 5 through 26).

Per the Conditions of Approval and by Ordinance, cannabis permits shall be renewed annually providing the City an opportunity to revoke a permit if determine not compatible upon approval, or if the applicant does not adhere to the City's requirements. Thus, the applicant has an interest in complying with the Conditions of Approval, the approved business plan, security plan, odor minimization measures, and to maintain a safe establishment.

### **ENVIRONMENTAL REVIEW**

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.

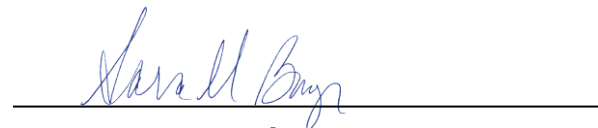
Additionally, per the historic evaluation prepared by Richard Patenaude, AICP, the site is not considered historic nor contains any historic significance. Thereby, the proposed project does not require additional review for historic significance in accordance with the California Environmental Quality Act (CEQA).

### **NEXT STEPS**

Pursuant to HMC Section 10-1.3250(a), the Planning Commission may refer a Conditional Use Permit application to the City Council with or without a recommendation. Given the unique location of the business, staff recommends that the Planning Commission recommend approval of the project, subject to the attached conditions of approval, and refer the application to the City Council for a final decision.

Prepared by: Edgar Maravilla, Associate Planner

Approved by:

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Sara Buizer, AICP, Planning Manager

A handwritten signature in blue ink, appearing to read "Laura J. Simpson", is written over a horizontal line.

Laura Simpson, AICP, Development Services Director