



SUBJECT

Proposed Cannabis Cultivation Use Located at 3166 Diablo Avenue (Assessor Parcel No. 439-0075-039-00) Requiring Approval of Conditional Use Permit Application No. 201805426. Hidden Farms (Applicant); Ancile Development Holdings LLC (Property Owners).

RECOMMENDATION

That the Planning Commission approve the Conditional Use Permit application for the proposed cannabis cultivation facility, 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, Hidden Farms, is seeking approval of a Conditional Use Permit (CUP) to occupy an 8,100 square-foot industrial building, located at 3166 Diablo Avenue, for the operation of a commercial cannabis cultivation facility. The proposed project includes site upgrades and minor modifications to the existing building to enhance security and storage for the cultivation of cannabis.

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 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, 2017¹ and November 28, 2017², respectively, the City Council enacted regulatory and land use ordinances authorizing cannabis businesses within the City of Hayward subject to compliance with local and state regulations. At 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, Hidden Farms, was one of the eleven companies selected for a commercial cannabis permit, specifically for cannabis cultivation.

Public Outreach. On October 29, 2018, a Notice of Application Receipt for the project was sent to property owners, and businesses within a 300-foot radius of the project site.

Following the Notice of Application, the City received correspondence from two members of the public related to the proposed use: one letter from a business located on Diablo Avenue who did not object to the project but highlighted the importance of having a functional Odor Mitigation Plan to mitigate nuisance odors related to cannabis cultivation activities; and the other was an email from another business owner on Diablo Avenue who expressed concerns that the proposed cultivation business could negatively affect their property values and make it difficult for mainstay businesses to compete for commercial/ industrial spaces on Diablo Avenue. Shortly after receiving these letters, the applicant reached out to local businesses in the area and provided a more detailed explanation of the proposed day to day operations of the proposed cultivation use.

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 correspondence has been received following publication of this notice.

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

² November 28, 2017 City Council Minutes
<https://hayward.legistar.com/MeetingDetail.aspx?ID=573134&GUID=C82D348A-0412-4741-854C-23697F2AE444&Options=info&Search=>

PROJECT DESCRIPTION

Existing Conditions. The project is located on a .55-acre parcel located at 3166 Diablo Avenue. The site currently contains a two-story industrial building, which was constructed in 1979, and parking area. The existing building was developed and demised sharing a common wall with the adjacent property at 3156 Diablo Avenue. Per City's records, the industrial building has been vacant for over two years.

Surrounding land uses include a combination of industrial uses, offices, operation centers, administrative offices, and businesses conducting wholesale and warehousing. The project site is zoned Industrial General (IG) and contains a land use designation of Industrial Corridor (IC) in the *Hayward 2040 General Plan*.

Proposed Project. As proposed, the building would be occupied by a commercial cannabis cultivation facility containing approximately 8,100 square feet. As shown in the floorplan (Attachment IV Sheet A-1.1), the proposed two-story cultivation facility would be partitioned into 17 different rooms. The first floor would consist of seven cultivation rooms ranging in size from 669 sq. ft. to 769 sq. ft. (totaling 5,020 Sq. ft.), a shipping and receiving warehouse area (749 sq. ft.), a reception center (not open to the public), an employee break room, an office, and two restroom facilities. The second-floor mezzanine area would be partitioned into four rooms, including three storage rooms, and an office. As proposed, the business would operate seven days a week, from 9 a.m. to 5 p.m.

Proposed exterior modifications include the installation of a new security camera system, security lighting, a new trash enclosure, new paint to the building, addition of an odor filtration system, construction of a security fence, and minor modifications to the existing roll up doors located to the rear of the building and fronting Diablo Street.

Additionally, new parking lot striping will be added for 14 stalls, including seven stalls at the front of the building and seven stalls in the rear of the building. A new landscaped area fronting on Diablo Avenue would also be installed by a landscape architect. A copy of the site and building plans are included as Attachment IV and a copy of the proposed business and operational plan are included as Attachment V.

Security Plan. The applicant submitted a detailed security plan to ensure public and product safety. According to the security plan, a minimum of one security guard would be on site during the hours of operation and during non-operating hours, a security guard would station on site as to be visible and periodically drive around Diablo Avenue.

Other proposed security measures include the installation of high definition 24-hr cameras to be located within the interior and exterior of the building. The site would also have an alarm system, security lighting, and a detailed Security Plan, which addresses shipping, receiving, transactions, product storage, and inventory procedures. All proposed security measures have been reviewed and deemed appropriate by the Hayward Police Department.

Product location data, surveillance video and inventory reports would be made available upon request. The applicant would also implement a comprehensive employee-training safety program so that each employee understands their role keeping the facility, themselves, and

products safe and secure. Additionally, the conditions of approval further stipulate that additional security measures may be required, consistent with Crime Prevention Through Environmental Design (CPTED) best practices. The proposed safety and security plan will be enforced and monitored by the City's Code Enforcement Division, the Building Division and the Hayward Police Department.

Odor Control Plan. Based on the operational plan submitted by the applicant, all cultivation production rooms, and cannabis storage rooms would have constant fresh air brought in through HEPA filters from roof mounted fans. Additionally, each cultivation room would exhaust into the common hallway, which would be served by the building's exhaust fan. Specifically, the buildings exhaust fan would be composed of two exhaust outlets each equipped with a three-stage carbon filter. Furthermore, the cultivation rooms, and storage areas would be designed as to create a negative pressure environment when doors are opened. This would be created by using the mechanical system to pull air into the rooms, as to not allow pressure to push odors out.

Pursuant to the Odor Mitigation Strategies, each room would be coated with a Polyurethane cell foam to prevent odors from penetrating through the wall. In addition, all cultivation production rooms would be exterior rated with air seals and equipped with a self-closing door system. Pursuant to the City's Cannabis Ordinance, the proposed Odor Mitigation Plan must be signed by a licensed engineer once submitted for construction to ensure the system is designed, developed, and reviewed by a subject matter expert.

Sustainability Plan. Pursuant to Section 10-1.3606(D)³ of the HMC, the applicant is required to provide a Sustainability Plan that incorporates best practices and site-specific improvements, including water conservation, reductions in air emissions and recycling. The Sustainability Plan was review and deemed appropriate by the Environmental Services Division. A summary of the sustainable components is detailed below.

Solar: If approved, Hidden Farms would negotiate a contract with a solar company to install solar powered panels, as to be a more sustainable solar operated cannabis cultivation facility. Additionally, to conserve electricity, the lights in the cultivation rooms would be operated during non-peak hours, and the applicant would utilize energy-efficient appliances, and install LED energy-efficient lighting.

Water Usage: To conserve water, Hidden Farms would use a drip irrigation system to be controlled by an electric timer. Specifically, the business would operate on 811 gallons of water per day. Of said water use, only 15 percent of the water (112 gallons) would become wastewater. To further conserve water, Hidden Farms would install a system to reclaim approximately 97 percent of all the water released by the air-conditioning system and the dehumidifiers.

Organic Waste: As proposed, Hidden Farms would create an onsite organic composting area. The compose would be used for the fertilization and cultivation of other plants. Organic

³ Section 10-1.3606(D) Commercial Cannabis Cultivation

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.3600CA_S10-1.3606COMENDICAMA

material that cannot be composted on site would be hauled by Gaiaca, a cannabis waste management company licensed by the State of California.

Community Benefits. As part of the RFP review and selection criteria, the community benefit component for cannabis operators was a part of the business plan submitted to the City and impacted the screening and scoring criteria when selected. As proposed, the applicant would like to develop an ongoing program (Project Wreckless), an interactive program that would teach underserved youth how to rebuild a vehicle. Hidden Farms would coordinate with local schools, the police department, community residents, and interested nonprofit organizations to gather support and organizational assistance to create the project.

Staff has included a condition of approval that requires the applicant provide specific details of their Community Benefits program and coordinate the implementation of the Community Benefits program with City staff within six months from approval. Additionally, the applicant is subject to annual review and verification on the implementation of the approved Community Benefits program prior to permit renewal.

Local Hire and Employee Training. Per the operation proposal, Hidden Farms has committed to paying living wages of at least \$17.76 per hour about \$7 more than the State mandated minimum wage (Attachment IV pg. 24). Hidden Farms envision hiring 12-14 employees. All employees would be subject to a background check. Once hired, all employees would be trained on security measures, fire safety, first aid, and evacuation procedures.

POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan. The project site is designated Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*⁴. The Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of traditional manufacturing and information- and technology-based uses. Allowable uses include professional offices, corporate campuses, research and development, warehousing and logistics, manufacturing, and biotechnology. As proposed, a commercial cannabis cultivation facility would be compatible and consistent with the IC land use designation. The following General Plan policies apply to the project site and the proposed cultivation use:

- *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
- *Land Use Policy LU-6.2.* The City shall encourage the conversion of obsolete industrial and warehouse distribution space to a productive use, such as advanced manufacturing, professional office centers, corporate campuses, research and development parks, and flex space.

⁴ 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 are included in the Staff Analysis section below and in Attachment II, Findings.

Zoning Ordinance. Per the Zoning Ordinance, the proposed cannabis cultivation facility would be located in the General Industrial (IG) Zone. As shown, the project adheres to the recently approved Industrial Design District Guidelines (IDDG), by upgrading and restriping the parking lot, additional landscaping throughout the site, and removal of the loading dock fronting on Diablo Avenue. The project is also subject to the requirements set forth by the adopted Cannabis land use and regulatory ordinances, which apply to all Commercial Cannabis Businesses⁵.

In addition to the general findings in the City's Zoning Ordinance for Use Permits, the project is subject to four additional cannabis findings as listed below:

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 contained in Attachment II, Findings.

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. As proposed, there are no known sensitive uses located within 600 feet of the project site.

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.

⁵ Commercial Cannabis Businesses Ordinance

https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH6BUPRTR_ART14COCABU

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 approve the Conditional Use Permit application to allow for the establishment of a commercial cannabis cultivation use at the subject property. As proposed, the reuse of the existing industrial building would be consistent with the policies established in the City's Zoning Ordinance, General Plan and Commercial Cannabis Business regulations. Additionally, the establishment of the cannabis cultivation facility in Hayward provides significant economic development opportunity and growth potential for a relatively new and emerging industry in California.

Staff believes that establishment of a cannabis cultivation facility at 3166 Diablo Avenue would be beneficial in that the site has been vacant for two years. The proposed site improvements as well as the establishment of a new, unique cultivation facility in the vacant building would improve the appearance of the building and conform to current California Building Code as adopted by the City of Hayward, California Fire Code as adopted by the City of Hayward, and all local City of Hayward requirements.

Overall, industrial cultivation uses, such as a cannabis cultivation facility, is consistent with the IC General Plan land use designation. Additionally, the proposed project meets all the development regulations of the IG zoning district and adheres to the newly adopted Industrial District guidelines by improving the exterior façade of the building and the addition of new site improvements and landscaping.

As part of the regulatory toolkit established by the State of California and the land use ordinances adopted by the City, staff believes that the physical and operational safeguards are in place to ensure the cultivation operation can operate at the proposed location without impacts to other properties. As part of the initial RFP process, the applicant's business plan was reviewed and scored by an independent, outside consultant who determined this operator would meet several of the city's objectives related to best practices for the cannabis industry.

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 to ensure the use can be operated in a safe manner and all appropriate Conditions of Approval to ensure that the proposed use and operations of the cannabis business would provide a safe and secure environment for the employees and mitigate potential impacts to adjacent properties. Conditions of approval have been included that

require the applicant adhere to the approved business plan, including a comprehensive list of security, odor and noise measures. Additionally, Commercial Cannabis Permits are renewed annually, providing the City an opportunity to revoke a permit if determined that the applicant does not adhere to the City's requirements and conditions of approval.

ENVIRONMENTAL REVIEW

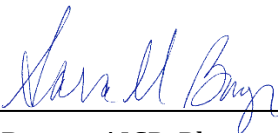
The proposed project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 for existing facilities. In that the project only involves interior and site improvements for an existing 8,100 sq. ft. industrial building to be used as a cultivation facility. Therefore, as conditioned, would create little to no impacts on the environment. Therefore, no environmental review is necessary.

NEXT STEPS

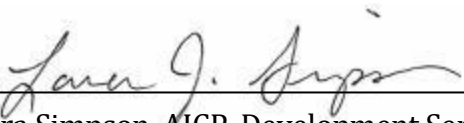
If the Planning Commission approves the Conditional Use Permit, then a 10-day appeal period would commence from the date of decision. If no appeal is filed, then the decision will be deemed final. If an appeal is filed within the 10-day time frame, then the application will be heard by the City Council for final disposition.

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Approved by:



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