



DATE: March 3, 2020

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT: Cannabis Retail Dispensary - Aunty Honeys: Adopt a Resolution Approving the Proposed ±3,578 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 and Exempt from the California Environmental Quality Act (CEQA) Pursuant to Section 15301 (Class 1); Esther Lopez (Applicant); Gregory Varr (Property Owner)

RECOMMENDATION

That Council adopts a Resolution (Attachment II) approving the Conditional Use Permit application for the proposed commercial cannabis retail dispensary with ancillary retail delivery use, based on Planning Commission's recommendation and the analysis set forth in this report and the findings and conditions of approval outlined in the resolution.

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, 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 the October meeting, the Council also established a request for proposals 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 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, Auntie Honeys, was one of the three companies selected for a commercial cannabis retail dispensary permit.

On March 19, 2019³, 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 City Council 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

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=>

³ March 19, 2017 City Council Minutes

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

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.

On January 23, 2020, the Planning Commission held a public hearing and voted 5-1-1 to recommend City Council approve the project.⁴ Several members of the public attended the meeting and spoke in favor of the proposed dispensary, and one member of the public spoke against the project.

DISCUSSION

Existing Conditions. The 0.41-acre parcel currently has two commercial structures: one structure is about ± 2,300 square feet (sq. ft.) and the other structure is about ± 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, Aunty Honeys would occupy the ± 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 ±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 9 a.m. to 8 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:

- New security camera system
- Security lighting
- Trash enclosure
- Replacement of the existing fence fronting on B Street
- Replacement of the existing awning
- New paint for the exterior walls

⁴ January 23, 2019 Planning Commission
<https://hayward.legistar.com/Calendar.aspx>

- New charcoal filtration system
- Addition of a security fence to the rear of the building
- A proposed mural on the right side of the building.

A copy of the site and building plans are included (Attachment III) and a copy of the proposed business/operating plan is also included (Attachment IV).

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. ft⁵. 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. Pursuant to the parking study conducted for the City's Downtown Specific Plan (approved in 2019), Municipal Parking Lot #4 was occupied at 50 percent or less of its capacity during peak weekday periods. An additional parking study for Municipal Parking Lot #4 was prepared by Advance Mobility Group (May 2019) on behalf of this project and determined the occupancy of the lot at 40 percent of its capacity (Attachment VI).

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:

- 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
- Three security guards.

All employees would be required to complete a five-module training course. Trainings would 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.

⁵ Downtown Main Street Division 2.2.070(f)
<https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf>

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 procedural. 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 detectable cannabis odor. Furthermore, per State regulations, Aunty 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, Aunty 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 to 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).

Hayward 2040 General Plan. The project site is designated City Center – Retail and Office Commercial (CC-ROC) in the *Hayward 2040 General Plan*⁶. 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.

⁶ Hayward 2040 General Plan
<https://www.hayward2040generalplan.com/>

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.
- 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 Attachment II.

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 Businesses⁷.

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

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 a Conditional Use Permit. Additionally, Section 10-1.3603(B)⁸ 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:

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 are included in Attachment II.

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 that 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, an after-school tutoring center for children, is located (±200 feet away) at 22628 Foothill Boulevard. The Kid's Breakfast Club, a breakfast center that provides free breakfast and activities for children when schools are not in session, is located (±300 feet away) at 22542 2nd 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

⁸ 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

are near each other, making it difficult to maintain minimum distances between cannabis businesses and other uses that 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.

Per HMC Section 10-1.3603(B), the deciding authority (City Council in this instance) 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. Also, cannabis dispensaries are only allowed in Downtown and any proposed dispensary would more than likely require a reduction of minimum distances 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 to ensure 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).

Further analysis is included in Attachment II.

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 and 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.

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 does it contain any historic significance. Thereby, the proposed project does not require additional review for historic significance in accordance with the California Environmental Quality Act (CEQA).

ECONOMIC IMPACT

The proposed project will result in revitalization and activation of a currently vacant and underutilized property located in the Downtown Main Street Zone. Establishment of a cannabis retail dispensary in this location would provide a regional draw for customers who would likely patronize local surrounding businesses, resulting in increases in sales tax revenues. Additionally, the business would provide 19 new jobs, and efforts would be made to hire local Hayward residents, resulting in a projected \$500,000 in payroll to employees.

STRATEGIC ROADMAP

This agenda item supports the Strategic Priority of Grow the Economy. Specifically, this item relates to the implementation of the following project:

Project 2, Part 2b: Engage owners and encourage activation of vacant sites.

FISCAL IMPACT

The proposed project will include significant investment in an existing, vacant commercial space that would generate revenues related to provision of building permits for tenant improvements, annual renewal of the cannabis permit, and sales tax revenues. Cannabis businesses are required to pay a local seven percent tax rate on gross receipts.

According to the projection plan submitted by the applicant, the projected three-year revenue at the time of submission for the business was estimated at approximately \$6 million in sales. Should these projections be accurate, and revenue on that amount collected, this would generate approximately \$420,000 in cannabis tax revenues over the same time period.

While there would likely be some impact on public services, the proposed project includes a robust security plan, which should reduce the need for public services. Further, annual renewal of the cannabis permit would allow the City to determine if the business results in a negative or disproportionate impact to City services and to adjust conditions for renewal accordingly.

PUBLIC CONTACT

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.

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.

Following the Planning Commission hearing, the City received three items of written correspondence on the project. Two emails from members of the public who expressed concern with the location of the dispensary, and one email in support of the project (Attachment VII).

On February 21, 2020 a Notice of Public Hearing for the City Council meeting was sent to property owners, residents, and businesses within 300-feet of the project site and published in The Daily Review newspaper.

NEXT STEPS

If the Conditional Use Permit is approved by the City Council, the applicant will apply for a State cannabis license, and may submit a building permit application for tenant improvements while the State is processing the cannabis permit. Following completion of tenant improvements and issuance of a State cannabis license, the use may be established.

Prepared by: Edgar Maravilla, Associate Planner

Recommended by: Laura Simpson, AICP, Development Services Director

Approved by:

A handwritten signature in black ink, appearing to read 'Kelly McAdoo', written over a horizontal line.

Kelly McAdoo, City Manager