



## SUBJECT

Proposed Cannabis Microbusiness with Delivery, Distribution, and Manufacturing Activities Located at 23287 Foley Street, Unit B (Assessor Parcel No. 439-0036-104-00) Requiring Approval of Conditional Use Permit Application No. 201901361. Farhad Doctor (Applicant); Liang Xianghua (Property Owner).

## RECOMMENDATION

That the Planning Commission approve the Conditional Use Permit for the proposed cannabis microbusiness to allow delivery, distribution and manufacturing uses 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, Sticky Thumb, is seeking approval of a Conditional Use Permit (CUP) to occupy an approximately 3,300 square-foot tenant space within an existing industrial building, located at 23287 Foley Street, Unit B, for the operation of a cannabis microbusiness facility that includes delivery, distribution, and manufacturing activities. The proposed project includes upgrades and modifications to the existing tenant space to enhance security and allow for the safe operation of cannabis activities.

## BACKGROUND

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 (RFP) 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

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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=>

The RFP process commenced on December 8, 2017. 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 City staff, the City Manager recommended to the 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, Sticky Thumb, was one of the eleven companies selected for a commercial cannabis permit, specifically for a cannabis microbusiness.

Public Outreach. On March 18, 2019, an initial Notice of Application Receipt for the project application was sent to 78 addresses including property owners, tenants, and businesses within a 300-foot radius of the project site.

As of the date this staff report was written, Planning Division staff has been contacted by five nearby businesses [Attachment VI]. They expressed concerns about odor, traffic, crime, a need for additional security measures and increased police presence, and a potential reduction in property values if the proposed business is allowed to operate. In addition, a couple of the businesses questioned whether the area is zoned for cannabis uses. Shortly after receiving these neighborhood concerns, the applicant reached out to these neighbors with a letter addressing some of these issues and inviting them to a meeting to further discuss their issues [Attachment VII]. None of the neighbors attended this meeting.

On May 1, 2020, a Notice of this Public Hearing for the Planning Commission meeting was sent to property owners, residents, and businesses within 300-feet of the project site as well as published in The Daily Review newspaper.

## **PROJECT DESCRIPTION**

Existing Conditions. The project is located on a 0.53-acre parcel located at 23287 Foley Street. The site is zoned General Industrial (IG) and has a land use designation of Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*.

The site currently contains an approximately 12,480 square foot industrial building with two tenant spaces, which was originally constructed in 1985, and a parking area. Surrounding land uses include a range of industrial uses, including warehousing, manufacturing, and contractors.

Proposed Project. As proposed, the existing building would be occupied by a cannabis microbusiness with delivery, distribution, and manufacturing activities. The project plans and Business Plan [Attachments IV and V] provide details on the proposed operation, logistics and floor plans. The proposed microbusiness would occupy Unit B, which is approximately 3,300 square feet. As shown in the floorplan, the facility would be partitioned into six different rooms – a warehouse area for loading, unloading, and storage; a light manufacturing area; a delivery office; a distribution office; an employee break area; and a restroom. No changes are proposed to the exterior of the building, other than the installation of some security cameras, which is discussed further below.

As detailed in the Business Plan, the proposed microbusiness will provide safe and secure delivery of cannabis products from their facility directly to customers through an online ordering system and via phone orders. No members of the public will be permitted entry to the facility. Some of the delivered product will be produced in the manufacturing component of the facility, where Sticky Thumb intends to use a rosin extraction process. This involves a press and small amounts of heat to extract a sticky concentrate from cannabis buds. The manufacturing process is solventless and does not involve any chemicals or hazardous materials. The remainder of delivered product will be sourced from other licensed cultivators and manufacturers via Sticky Thumb's distribution component. The delivery component will operate from 9:30 a.m. to 9:30 p.m. seven days a week, with the last order taken at 8:59 p.m. The manufacturing and distribution components will operate Monday through Friday from 9:30 a.m. to 4:00 p.m.

Safety and Security Plan. As part of their Business Plan, the applicant included a detailed Safety and Security Plan to ensure public and product safety. According to the Plan, and as conditioned, a minimum of one security guard will be on site at all times during hours of operation. Other proposed security measures include the installation of an alarm system and high definition 24-hour cameras located in the interior and exterior of the building. The company's fleet of vehicles will be outfitted with interior cameras and a money drop box as well as a built-in lock box for product to be stored.

Surveillance videos and inventory reports will be made available to the City upon request. The applicant has also specified that an employee-training program will be implemented so that each employee understands their role in keeping the facility, themselves, and the products safe and secure. The Safety and Security Plan provides further detail about the numerous additional security measures that will be taken with each component of the microbusiness. All proposed security measures have been reviewed and deemed appropriate by the Hayward Police Department.

Environmental Plan. The Environmental Plan included in Attachment V contains the required Odor Mitigation Plan and Sustainability Plan. To control odor, Sticky Thumb will install an air-scrubbing system with charcoal filters to prevent the emission of any cannabis odors. HEPA filters will also be installed in all vents. As conditioned, the final version of the Odor Mitigation Plan shall be certified by a professional engineer or industrial hygienist and shall include operational processes and maintenance plans, staff training procedures, and details about proposed engineering controls and systems.

The Environmental Plan also includes a number of sustainability measures for the proposed facility. This includes the use of Toyota Priuses in its vehicle fleet, LED lighting, and a purchasing and reuse plan that favors recycled and organic office products. In addition, the applicant's chosen rosin extraction method uses low levels of electricity that is less energy and resource intensive than other common methods of cannabis extraction. The Environmental Services Division has reviewed the Environmental Plan and deems it appropriate.

## POLICY CONTEXT AND CODE COMPLIANCE

Hayward 2040 General Plan. The project site is in an area designated as Industrial Technology and Innovation Corridor (IC) in the *Hayward 2040 General Plan*<sup>3</sup>. The Corridor is expected to grow as an economic and employment center and evolve to achieve a healthy balance of traditional manufacturing and warehousing and newer information- and technology-based uses. Allowable uses include professional offices, corporate campuses, research and development, warehousing and logistics, manufacturing, and biotechnology.

The proposed cannabis microbusiness would support the following *Hayward 2040 General Plan* goals and policies:

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

Zoning Ordinance. The project site is located within the General Industrial (IG) zoning district.<sup>4</sup> The IG district conditionally permits the establishment of a cannabis facility with manufacturing activities with approval of a Conditional Use Permit.<sup>5</sup> As the project makes use of a tenant space within an existing building, no exterior changes are proposed as part of this application.

The Planning Commission may conditionally approve a Conditional Use Permit with a cannabis use that includes manufacturing when all of the required Findings pursuant to Sections 10-1.3225 and 10-1.3609 of the Hayward Municipal Code are met. The required Findings are listed below:

### *Conditional Use Permit Required Findings*

- The proposed use is desirable for the public convenience or welfare;
- The proposed use will not impair the character and integrity of the zoning district and surrounding area;
- The proposed use will not be detrimental to the public health, safety, or general welfare; and
- The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved.

<sup>3</sup> Hayward 2040 General Plan: <https://www.hayward2040generalplan.com/>

<sup>4</sup> Section 10-1.1600 (Industrial Districts) of Hayward Municipal Code:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.1600INDI](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.1600INDI)

<sup>5</sup> Section 10-1.3200 (Conditional Use Permit) of Hayward Municipal Code:

[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=CD\\_ORD\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.3200COUSPE](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=CD_ORD_CH10PLZOSU_ART1ZOOR_S10-1.3200COUSPE)

*Cannabis Required Findings*

- 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;
- Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation;
- The cannabis operation is designed to be safe, secure, and aesthetically compatible with the surrounding area; and
- 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 the Staff Analysis section below and contained in Attachment II, Findings.

Commercial Cannabis Permits. An applicant is required to obtain approval of a Commercial Cannabis Permit by the City to ensure that all regulatory requirements are met.<sup>6</sup> The applicant has satisfied this requirement.

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 Council are valid for one year and must be renewed annually following the completion of a mandatory safety inspection and demonstration of compliance with all local and State regulations, including any Conditions of Approval of this Conditional Use Permit.

**STAFF ANALYSIS**

Staff has reviewed the project application and believes that the Planning Commission can make the required Findings to conditionally approve the establishment of the proposed cannabis microbusiness with delivery, distribution, and manufacturing activities at the subject property. As mentioned previously, the proposed use is located within the City's industrial area, surrounded by a mix of industrial uses including warehousing, manufacturing, and contractors. With approval of a Conditional Use Permit, the proposed project is consistent with the General Industrial Zoning District, as well as the goals and policies of the City's General Plan, which calls for a diverse mix of industrial uses, including those associated with new technologies and emerging industries.

As part of the initial RFP process to obtain their Commercial Cannabis Permit from the City Council, 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. Planning Division staff has further determined that

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<sup>6</sup> Chapter 6, Article 14 (Commercial Cannabis Businesses) of the Hayward Municipal Code:  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PLZOSU\\_ART1ZOOR\\_S10-1.1600INDI](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PLZOSU_ART1ZOOR_S10-1.1600INDI)

potential nuisances associated with the facility will be mitigated with the implementation of the proposed Business and Operations Plan, Safety and Security Plan, and Environmental Plan, as well as the attached Conditions of Approval.

The Hayward Police Department, Code Enforcement Division, and Fire Department have reviewed the project proposal with Planning Division staff to ensure the proposed microbusiness can be operated in a safe manner. As conditioned, the proposed use would provide a safe and secure environment for employees and mitigate potential impacts to adjacent properties. The conditions require the applicant to adhere to the approved plans, including the comprehensive list of security, odor, noise, and sustainability 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 categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class I for existing facilities in that the project involves the use of a tenant space within an existing structure. Therefore, no environmental review is necessary.

### **NEXT STEPS**

If the Planning Commission approves the Conditional Use Permit, then a 10-day appeal period will 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.

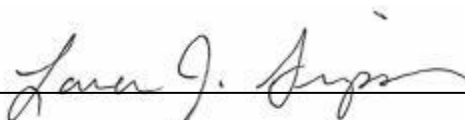
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