

**CITY OF HAYWARD PLANNING COMMISSION
PROPOSED COMMERCIAL CANNABIS RETAIL DISPENSARY
WITH ANCILLARY DELIVERY USE
“JIVA LIFE” AT 22701 FOOTHILL BOULEVARD AND 1055 C STREET
CONDITIONAL USE PERMIT APPLICATION NO. 201906312**

FINDINGS FOR APPROVAL

CONDITIONAL USE PERMIT

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

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

The proposed retail cannabis dispensary with ancillary delivery would be desirable for the public convenience and welfare in that it would result in establishment of a cannabis retail delivery and cannabis retail dispensary in a vacant and underutilized commercial building within the Downtown Main Street (DT-MS) Zone. Cannabis retail sales are an increasing retail category that could contribute positively to the sales tax base in Hayward and attract a regional clientele to the area. There are relatively few locations that provide boutique cannabis and cannabis related products in the immediate area. Establishment of a cannabis dispensary and retail delivery within the DT-MS Zone would bring retail consumers to not only shop at this proposed establishment, but also patronize surrounding businesses and restaurants, leading to a sense of activation of the commercial core, thus benefitting the City and neighborhood.

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

The proposed commercial cannabis dispensary with ancillary delivery would occupy an existing building that has been vacant and underutilized for years. The subject building's lack of basic maintenance and investment of the site has resulted in a negative visual impact on the surrounding neighborhood. Occupancy of the vacant structure and proposed façade and site improvements would signal increased investment in the DT-MS Zone. Further, establishment of a new, unique retail use in the vacant building would activate the site possibly resulting in increased pedestrian traffic and patrons. Leading to more eyes on the streets and to a positive impact on the adjacent properties and the Downtown neighborhood.

To ensure that the proposed use would not impair the character and integrity of the applicable zoning district, the proposed dispensary would have an intake area fronting B Street to function as a buffer between public right of way and the cannabis retail display area.

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

The proposed cannabis dispensary with ancillary delivery would not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, would operate

within the permit requirements and regulations established by State, County and local laws. The applicant has provided an Odor Mitigation Plan to ensure that cannabis odors cannot be detected outside of the building, and a detailed Security Plan that includes installation of security cameras inside and outside of the building; positioning of security guards at all entrance; use of ID scanners to verify patron age; robust commercial locks on all points of ingress and egress and alarm system; compliance with a State-mandated track and trace program to prevent diversion of cannabis; a records retention program; and identification of a local contact to handle all safety and security issues. Additionally, all retail delivery vehicles would have a State-mandated GPS tracking system, video and voice recording cameras, and no distinguishable signage shall be allowed on the delivery vehicles.

The applicant's Business and Security Plan was reviewed and evaluated by an independent consultant and determined to include procedures and protocols to ensure public safety. Additionally, the applicant and all employees associated with the business are subject to an extensive background check by the Hayward Police Department.

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

Per Chapter 6 of the Downtown Specific Plan, Division 2.3, retail uses, such as a cannabis retail dispensary and retail deliver, are conditionally allowed uses in the DT-MS Zone. The proposed use would contribute positively to the tax base and could attract a regional clientele to the Downtown area meeting Economic Development Goals and Policies. However, the City's General Plan also calls for retail shopfront displays. In this case, due to the sensitivity of the product being retailed, the location would have a transparent front façade, but the frontage will not display cannabis or cannabis products, still activating the street in similar fashion as a shopfront display. Ensuring compliance with the following General Plan Goals and Policies:

- Land Use Policy LU-2.1, Downtown Arts and Entertainment. The City shall encourage private-sector investment in Downtown to transform it into a safe, vibrant, and prosperous arts and entertainment district that offers enhanced shopping, dining, recreational, and cultural experiences and events for residents, families, college students, and visitors.
- Land Use Policy LU-2.2, Downtown Activities and Functions. The City shall maintain the Downtown as a center for shopping and commerce, social and cultural activities, and political and civic functions.
- Land Use Policy LU-2.3, Downtown Pedestrian Environment. The City shall strive to create a safe, comfortable, and enjoyable pedestrian environment in the Downtown to encourage walking, sidewalk dining, window shopping, and social interaction.
- Land Use Policy LU-2.4, Downtown Retail Frontages. The City shall require retail frontages and storefront entrances on new and renovated buildings within the "retail core" of Downtown Hayward, which includes properties along B Street between Watkins Street and Foothill Boulevard, and Main Street between A Street and C Street. This policy does not apply to historic building originally designed without retail frontage or storefronts.

- Land Use Policy LU-2.16, Uses to Attract the Creative Class. The City shall encourage the development of uses and amenities to attract creative-class professionals and businesses to Hayward.
- Economic Development Goal ED-1. Diversify the economic base of Hayward to support a robust and stable economy with a diverse range of employment, shopping, and cultural opportunities for local residents.
- Economic Development Policy ED-1.4. The City shall establish business attraction efforts that focus on small and medium-sized businesses within emerging and growing business sectors.
- Economic Development Goal ED-2. Cultivate a culture of entrepreneurship to encourage and support local business start-ups.

CANNABIS ORDINANCE

In addition to the required findings contained in Section 10-1.3125 (Conditional Use Permit), every land use application requiring discretionary review for cannabis and cannabis products shall be required to make the following findings prior to issuance:

- 1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted;**

The proposed commercial cannabis dispensary would not be detrimental to the public health, safety or general welfare in that the facility, as conditioned, would operate within the permit requirements established by the State and by the City. Per the City's Land Use requirements, retail cannabis dispensaries in conjunction with retail delivery are only geographically allowed in the Downtown areas, by way of a Conditional Use Permit.

Establishment of a cannabis retailer in a building located in the Downtown area would bring retail consumers to not only shop at this proposed establishment, but also patronize surrounding businesses and restaurants. Further contributing to the City's tax base, and there would be more eyes on the street, leading to an increase sense of activation.

By design, the structures and businesses within the Downtown area are near each other and may result in location of sensitive uses within the minimum distance buffers. However, as described in the accompanying staff report. and in the finding related to alternative distances below. The proposed project would incorporate a robust Safety and Security Plan. Including but not limited to on-site security guards, cameras, security lighting, employee background checks, Conditions of Approval related to loitering and nuisances, and a reception area fronting the building to function as a buffer between public right of way and the retail display area. Thus, assuring public health and safety within the vicinity of the subject site.

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

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

As part of the initial RFP process, the applicant's business plan for was reviewed and scored by an independent, outside consultant who determined this operator would meet the City's objectives related to best practices for the cannabis industry. Furthermore, per the proposed Conditions of Approval and by Ordinance, cannabis permits shall be renewed annually. Providing the City, a yearly opportunity to reevaluate the proposed business, and ensure compliance with the approved business plan, the conditions of approval, and all pertinent City regulations.

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

The proposed cannabis delivery and retail dispensary would occupy an existing building that has been vacant for years. The subject building's lack of basic maintenance and investment has resulted in a divested building at a prominent corner in Downtown and along a major arterial through Hayward along Foothill Boulevard. Occupancy of the vacant structure along with the façade and site improvements would signal increased investment in the Downtown area. Further, establishing a new, unique retail use in the vacant building would activate the area likely increasing pedestrian circulation and patrons to the area. Having a positive impact on the adjacent properties and Downtown neighborhood.

To ensure that the proposed use is designed to be aesthetically compatible with the surrounding area, specific conditions of approval would require that the building maintain a buffer between the public right of way and the cannabis retail area. In addition, the applicant would demolish the old and rotted portions of the building, repaint the building, add storefront windows facing the street frontage with a contemporary design approach incorporating a new metal awning, add security cameras, and security lighting to ensure safety and aesthetic compatibility with the surrounding area.

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

As proposed, the applicant would lease a currently vacant commercial space in the Downtown area that would undergo a significant remodel. As conditioned, the proposed use would not place a burden on public services disproportionate to other commercial uses in the Downtown area. As conditioned, the applicant is required to adhere to the comprehensive Security and Safety Plan and conditions of approval, which prohibit loitering and on-site consumption. In addition, the applicant is subject to annual safety inspections, financial audits and conditions of

approval review. Requiring inspection of the proposed cannabis retail use by the City's Code Enforcement Division, Police Department and Fire Department, as part of the cannabis permit renewal. Further, as conditioned, any excessive calls for service, including nuisance and code violations, may result in the revocation of the approval.

5. The required 600-foot setback for sensitive uses may be reduced if it is found that the public convenience and necessity will be served by an alternate distance requirement, and that alternative measures to assure public health and safety are in place with respect to the commercial cannabis business.

Per the City's land use regulations, retail cannabis dispensaries are only allowed within the Downtown Area limits by way of a Conditional Use Permit. However, due to eclectic land uses currently located in the Hayward Downtown area, meeting the required 600-foot buffer from sensitive uses would be nearly impossible. Specifically, the proposed site would be within the 600-foot radius of four parcels with sensitive land uses including: the Kumon Learning Center located at 22628 Foothill Boulevard (±440 feet away), Team Brewer Karate Fitness located at 22683 Main Street (±443 feet away), High Scores Arcade located at 1051 B Street (±450 feet away), and the Children's Park at Giuliani Plaza (±466 feet away).

By design, the structures and businesses within Downtown are in close proximity to each other making it difficult to maintain minimum distances between cannabis businesses and sensitive uses. Allowing flexibility in the minimum distance requirement between the subject business and the nearby sensitive uses would be warranted in this instance to ensure that the subject building, which has been vacant and dilapidated for years, will be cleaned up, improved and activated. Leading to positive impacts by attracting a local and regional clientele who would visit Jiva Life and patronize surrounding businesses. As conditioned, staff believes the measures outlined in the Safety and Security Plan for the operation of the dispensary along with the design measures incorporated around the exterior of the building to obscure visibility of the cannabis and cannabis products would assure public health and safety.

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. As proposed and conditioned, the proposed use will not result in any significant effects related to traffic, noise, air quality and water quality.

Per the memo prepared by Richard Patenaude AICP, the site is not historic or of historic significance. Thereby, the proposed project does not require additional review for historic significance in accordance with the California Environmental Quality Act (CEQA).