

ORDINANCE No. 21-04

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA AMENDING ARTICLE
14 OF CHAPTER 6 OF THE HAYWARD MUNICIPAL CODE REGARDING
COMMERCIAL CANNABIS BUSINESSES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 14 of Chapter 6 of the Hayward Municipal Code is hereby amended to read as follows:

ARTICLE 14
COMMERCIAL CANNABIS BUSINESSES

SEC. 6-14.11 PERMIT REQUIRED.

- (a) It is unlawful for any person to own, conduct, operate or maintain, any commercial cannabis business in the City of Hayward without a valid commercial cannabis business operating permit issued pursuant to this Article.
- (b) The City Council may, by resolution, direct the City Manager to call for applications from any parties interested in obtaining a commercial cannabis permit.
- (c) The City Council may, by resolution, establish a limit on the number of permits to be issued pursuant to this Article.
- (d) A permit issued pursuant to this Article does not authorize the permittee to operate a commercial cannabis business until the permittee has obtained appropriate land use approvals pursuant to the Hayward Zoning Ordinance, obtained an appropriate cannabis license from the State, paid all applicable fees, charges, taxes and deposits, and complied with other applicable state and local laws and regulations.
- (e) A permit issued pursuant to this Article does not confer a property interest or vested right to receive a future permit pursuant to this Article.
- (f) A permit issued pursuant to this Article shall be valid for one (1) year from the date the permittee receives land use approval and shall be accompanied by the payment of an annual permit fee in an amount established by resolution of the City Council.
- (g) No permit issued pursuant to this Article shall be sold, transferred, or assigned by the permittee or by operation of law, to any other person without prior approval of the City, pursuant to the limitations outlined in Section 10-1.3604 of the Hayward Municipal Code. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment without prior approval of the City shall constitute a violation of this Article and result in immediate revocation of the permit and the permit shall thereafter be null and void. A new owner of a commercial cannabis business must submit a new application for a permit in accordance with this Article.
- (h) This Article does not apply to the individual use, possession or cultivation of medical cannabis or cannabis for adult use as regulated by state law.

SEC. 6-14.12 PRELIMINARY DETERMINATION OF ELIGIBILITY / SCREENING

Prior to applying for a Commercial Cannabis Permit, applicants shall be screened as part of the preliminary determination of eligibility using the criteria listed below.

- 1) Applicants shall complete a Pre-Application Form, that includes the following information:
 - (a) Applicant Information: contact name, company name, mailing address, phone number, email, etc.
 - (b) Property Owner(s) Information: contact name, company name, mailing address, phone number, email
 - (c) Proposed Location: site address, zoning district, parcel number, total property size in acres or sq. ft., lot dimensions
 - (d) Site Control: proof of property ownership, or a notarized letter of the property owner's willingness to lease or sell the property
 - (e) Prescreening Fee. Applicants shall pay the Preliminary Determination of Eligibility and Initial Screen fee prior to the submittal of any concurrent land use application.

- 2) Applicants shall be subject to LiveScan/Background Checks
 - (a) A Live Scan Background Check shall be conducted for each applicant to determine eligibility to be issued a permit pursuant to this Article. An applicant is not eligible to be issued a permit if they have suffered a felony conviction involving fraud, deceit, or embezzlement. Background checks shall only be used to determine whether an applicant was convicted of a crime that excludes them from local licensing.
 - (b) With the exception of a felony conviction involving fraud, deceit, or embezzlement, evidence of rehabilitation may be used in determining whether a person should be licensed to operate a cannabis business if their conviction directly relates to the operation of a business. Convictions directly relating to the operation of the business shall be those specified in Business and Professions Code section 26057(b)(4), with the exception of a felony conviction involving fraud, deceit, or embezzlement.
 - (c) Any changes or transfers in ownership shall be subject to the review and authorization by the City pursuant to Section 10-1.3604(e) of the Hayward Municipal Code.

- 3) Applicants shall submit a Business and Operating Plan that includes the following information:
 - (a) Summary Project Description (4-page max): Market opportunity, business model, including a description of day-to-day operations, description of the products sold, description of how operations will conform with applicable state and local laws, expertise of owners and staff, and implementation plan (schedule of anticipated first-year startup activities and capitalization)

- 4) Applicants shall Complete an Interview with City Staff that will include the following:
- (a) The applicant shall demonstrate a good understanding of the proposed business model and market opportunity. This includes a detailed discussion of day-to-day operations, a description of products and or services being sold, an explanation of community need and why the business the opportunity to be successful.
 - (b) The applicant shall demonstrate a sufficient understanding of applicable state and local laws and can provide a general description of how operations will conform with these regulations. (The Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), Hayward Ordinance 17-13 and 17-15, Alameda County Cannabis Ordinances)
 - (c) The applicant shall provide a schedule of anticipated first-year startup activities and has a general idea of costing for the various permitting stages of the business.

SEC. 6-14.13 COMMERCIAL CANNABIS BUSINESS PERMIT APPLICATION

- ~~(a)~~ The City Manager shall establish procedures for accepting and evaluating applications submitted pursuant to this Article.
- (b) Upon completing the evaluation of all applications, the City Manager or his/her designee shall prepare a report to the City Council and provide a recommendation regarding selection of permittees.
- (c) Applications shall include information required by the City including, but not limited to the following:
 - (1) Pre-application reference number, including date of approval and Planning Division contact
 - (2) A detailed description of the type of commercial cannabis business that includes proposed hours of operation/shift scheduling; type of specialized equipment to be used for cultivation or manufacturing; whether hazardous materials, including volatile solvents or gases are proposed to be used as part of the operation; how industrial waste will be disposed of; anticipated gross annual revenue; list of State licensed transportation and distribution providers serving the facility, if known; anticipated frequency of deliveries serving the facility; other pertinent information involving the operation of the facility.
 - (3) The applicant's full, true name, including all other names used presently or in the past, date of birth, valid California driver's license number, identification number or other form of government issued photo identification and Social Security number.
 - (4) The names, addresses, and contact information of all persons financially interested in the business, including officers, directors, and board members.
 - (5) The full, true name under which the business will be conducted.
 - (6) Management company name, contact person, mailing address and contact information (if business is managed by persons/entities other than the owner)

- (7) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the name, residence address, and telephone number of each of its current officers, directors, along with the amount of stock held.
- (8) If the applicant is a partnership, the application shall set forth the name, residence street address, and telephone number of each of the partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one (1) or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner. The applicant, if a corporation or partnership, shall designate one (1) of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this Article and shall, at all times, meet all of the requirements set for permittees by this Article or the permit shall be suspended until a responsible managing officer who meets such requirements are designated. If no such person is found within ninety (90) calendar days after the permit's suspension, the corporation or partnership's permit is deemed canceled. If the corporation or partnership wishes to reapply for a permit, a new application shall be filed.
- (9) Local Ownership and Control. Applicants shall include a description of the extent to which the business will be locally managed and/or if the principal owners/employees reside in Hayward, CA or in Alameda County
- (10) Property Ownership. Applicants shall include the name, address and contact information for the property owner and landlord, is applicable.
- (11) Property Owner Consent. Proposed location(s) within the City where the business will be located including documentation showing that the property owner of the proposed location(s) consents to the operation of a commercial cannabis business at the location.
- (12) A detailed business plan that includes a project narrative, including business model, relevant cannabis and expertise of owners and staff, and implementation plan (schedule of anticipated first-year startup activities and capitalization).
- (13) Category of state cannabis license(s) the applicant holds or intends to apply for.
- (14) A summary of any regulatory actions currently pending or taken against the applicant, including issuance of notices of violation, citations, suspension or revocation of licenses, or similar actions, related to any business owned or operated by the applicant related to air quality, water quality, storage or use of hazardous chemicals, building code violations, or public health and safety violations. The name and location of the jurisdiction or agency, which took the action shall also be included.
- (15) Written authorization for the city, its agents, and employees to conduct a background investigation of the applicant and the responsible managing officer/employee of the commercial cannabis business, including submission of fingerprints for criminal background investigation.

- (16) Community benefits. Although not required, if an applicant is proposing a community benefit component as part of their normal business plan, the applicant should indicate how the proposed activities are intended to provide a public benefit to the City of Hayward and its residents. Applicants are encouraged to be creative, realistic, and specific in their proposals, and seek to align those proposals with the City's priorities and needs. Proposed community benefit could include neighborhood-specific benefits, installation of public art, health education and prevention approaches, quantification of economic benefits or community outreach examples.
- (17) Labor and employment practices. Applicants shall identify the proposed labor and employment practices for the business. At minimum, proposals should include the following: 1) a general description of the overall hiring plan, including a certification of a labor peace agreement in place, or the applicant's intention to negotiate one; 2) the extent of the applicant's commitment to local hiring; 3) a guarantee that the applicant will pay a living wage; 4) a guarantee that the applicant will not discriminate as part of hiring practices; and 5) the applicant will provide compensation and opportunities for continuing education and training for their employees.
- (18) A conceptual site plan with proposed interior and exterior building designs and layouts.
- (d) In addition to the information described in (c) above, each application shall be accompanied by a refundable deposit in an amount established by resolution of the City Council.
- (e) The City Manager or his/her designee shall review the applications to determine compliance with subdivision (c) of this section. Upon written notice that an application is incomplete, the applicant may submit additional information as requested by the City. Failure to submit requested information may be deemed an abandonment of the application resulting in no further action being taken by the City.
- (f) The City Manager or his/her designee shall investigate the truth of the statements set forth in the application to determine if an applicant is qualified to obtain a commercial cannabis permit. An application may be rejected if:
- (1) It is found to contain material misstatements or omissions;
 - (2) The applicant is determined to be ineligible or prohibited from obtaining a state cannabis license pursuant to state law.
 - (3) The applicant, or any of its officers, directors, or owners is found to have been convicted of any of the following offenses: A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code; A serious felony conviction, as specified in subdivision (c) of Section 119 2.7 of the Penal Code; A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8 of the Health and Safety Code.

- (4) The applicant, or any of its officers, directors, or owners, has been subject to fines, penalties, or otherwise been sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.
- (5) The applicant, or any of its officers, directors, or owners, has been sanctioned by a state licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities.

(g) If the City Manager or his/her designee determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the City Manager or his/her designee shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. The City Manager or his/her designee may consider the factors specified in section 5017(c) of Title 16, Division 42 of the California Code of Regulations when conducting the review described in this subsection.

(h) Applicants who are denied licensure shall be notified of the decision in writing. The notice shall include an explanation of the City's decision. An applicant may appeal the decision by submitting an appeal request to the City Manager within 30 days of receipt of the City's written decision. The appeal will be assigned to an independent hearing officer for decision. The independent hearing officer's decision will be the final administrative decision. The City Manager is authorized to promulgate regulations to implement this subsection. The City Council may amend the Master Fee Schedule to include a fee for the appeal described in this subsection.

(i) Permit Modifications. A permittee may submit a request to modify an existing Commercial Cannabis Permit that was previously issued by the City Council. The request shall be submitted on a form provided by the City Manager or his/her designee and include payment of a modification request fee, as established in the current Master Fee Schedule. The permittee may be required to submit additional documents or information deemed necessary to process the request, consistent with the submittal requirements of Section 6-14.12. Permit modification requests shall not be processed until all required documents, information, and fees have been submitted to the City. The permittee shall be responsible for obtaining approval for the proposed modification(s) from the applicable State licensing or regulatory agency or agencies and updating business organizational documents with the California Secretary of State, if applicable. The City shall provide written notification to the permittee when the requested amendment has been processed. Modifications to an existing Commercial Cannabis Permit issued by the City does not include any necessary modifications to a previously approved land use entitlement and all cannabis activities shall comply with the provisions established in Section 10-1.3600, Cannabis, as well as any other applicable regulations established by this Code.

(j) Temporary Permit. The City may, at its discretion, issue a Temporary Permit for a limited term, not to exceed six (6) months, to allow non-Commercial Cannabis operators to engage in Commercial Cannabis Activities, contingent on the following:

1. A Temporary Permit may not be issued unless an Applicant: (1) pays the Commercial Cannabis Permit Fee for each Commercial Cannabis activity, pursuant to the adopted Master Fee Schedule; (2) the Applicant receives authorization from the State to engage in commercial cannabis activity; (3) the Business Premises location passes an initial inspection by the City; (4) there are no fire or life safety violations at the Business Premises; (5) the Applicant is subject to the Pre-Screening Determination of Eligibility as specified in this Section; (6) the Applicant indemnifies the City on a form provided by the City; and (7) the proposed Temporary Permit complies with all the Commercial Cannabis land use regulations as specified in Section 10-1.3600 (Cannabis). These requirements do not apply to Temporary Approvals issued under the authority of Section 10-1.3600 (Cannabis).
2. Issuance of a Temporary Approval does not create a vested right in the holder to either an extension of the Temporary Approval, or to the issuance of a Commercial Cannabis Permit as described in this Ordinance. Temporary Approval authorizes the Applicant to conduct Commercial Cannabis Activities for a term not to exceed six (6) months but does not waive the obligation to comply with any other applicable requirements imposed by state or local law. A one-time extension, up to 90 days, may be granted if the extension is deemed necessary in order for the applicant to obtain the required local Permit and secure State licensing.
3. If at any time during the processing of a Temporary Permit Application it is discovered that an Application has been found to be inaccurate or if required information has not been submitted in accordance with the rules and regulations of this Section, upon notification to the Applicant, processing shall be suspended and shall not continue until the Application has been corrected or the required information provided.
4. The City may immediately suspend a Temporary Permit upon a determination that the commercial cannabis activity at the business premises poses an imminent threat to public health or safety, or if it is determined that the cannabis activity at the business premises was not previously authorized and approved by the City. The City's determination is final and not appealable.

SEC. 6-14.14 OPERATING AND PERFORMANCE STANDARDS.

Permittees shall operate in conformance with the following minimum standards, and such standards shall be incorporated into the conditions of approval for land use approval of the business pursuant to ~~the~~ Section 10-1.3600 of the Municipal Code (Zoning Ordinance).

SEC. 6-14.15 RECORDS AND INSPECTIONS.

- (a) Permittees shall maintain books, records, accounts and all data and information relevant to its operations and allow the City access to such records for purposes of conducting an audit or examination to determine compliance with this Article, the Hayward Municipal Code, and other local regulations, including compliance with local tax obligations. All books, records, accounts, and any and all relevant data shall be produced no later than twenty-four (24) hours after receipt of the City's request or within a reasonable time as authorized in writing by the City.

- (b) Permittees shall allow inspection by the City of any facility permitted pursuant to this Article to verify compliance with the requirements of this Article, the Hayward Municipal Code and the requirements of state law.
- (c) Annual Audit. Each Commercial Cannabis Business shall file with the City Manager or his/her designee an audit of its financial operations for the previous year of operation, complete and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles. Each Owner and/or operator of a Commercial Cannabis Business shall annually file the audit of its financial operations on the anniversary of the first day of its operations after the initial issuance of a Commercial Cannabis Permit. The audit shall include but not be limited to a discussion, analysis, and verification of each of the records required to be maintained pursuant to this Chapter. The information contained in the audit shall be made available in electronic format compatible with Microsoft Office programs and software and which can easily be imported into either Excel, Access or any other contemporary software designated by the city inspection body.
- (d) Inventory control and reporting system. All Commercial Cannabis Businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes until sold or distributed, as required by the State.
- (e) Consistent with Section 10-1.3600, Each operator of a Commercial Cannabis Business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of all employees currently employed by the Commercial Cannabis Business and shall disclose such register to any City official upon request.
- (f) Demographic Reporting. All cannabis businesses in Hayward shall submit a report to the City, to the extent allowed under state law, the demographic information on their workforce, including information on race, ethnicity, gender, income level, prior convictions, and veteran status. The City will collect demographic data on all applicants and for all application types in Hayward. This shall include, but not be limited to, information on race, ethnicity, gender, income level, prior convictions, and veteran status. The data will be used to inform future efforts to create more equity in Hayward's cannabis industry.
- (g) The City will collect data on law enforcement involvement related to cannabis law violations, including the violation type, race, ethnicity, and gender. This information will be consolidated and reported without individual identifying information and posted on the City's website annually.

SEC. 6-14.16 PACKAGING AND LABELING

Prior to the sale or the delivery of any edible cannabis or edible cannabis product the same shall be labelled and in tamper-evident packaging which at least meets the requirements of California Business and Professions Code sections 26120 et. seq. and similar state statutes, as the same may be amended from time-to-time or superseded or replaced by subsequent State legislation or by any department or division of the State of California. The City Council may impose additional packaging and labelling requirements on cannabis or cannabis products by ordinance or resolution.

SEC. 6-14.17 PERMIT RENEWAL.

- (a) A commercial cannabis permit must be renewed annually. Permittees may apply for renewal in writing no later than sixty (60) days before the expiration of the current permit. The application for renewal shall include:
 - (1) A statement updating information from the original permit application or certifying that the information contained in the original permit application is unchanged.
 - (2) Verification that the permittee has renewed or is in the process of renewing a previously issued state cannabis license and is otherwise in compliance with the requirements of state law.
 - (3) Authorization for updated criminal background checks.
 - (4) A renewal fee as established by the City Council.
- (b) As part of the renewal process permittees shall allow inspection of any permitted facility by Code Enforcement, the Building Official, Fire Marshall or their designees, Police Department, Planning Division, and other City officials to verify compliance with applicable building and safety regulations. Any violations noted shall be corrected within a reasonable time as determined by City staff.
- (c) As a condition to renewal of the permit, the permittee must pay any fees, charges, taxes or deposits required by this Article and applicable provisions of the Hayward Municipal Code.
- (d) Failure to correct violations or pay applicable fees, charges, taxes or deposits may result in denial of a permit renewal request.
- (e) Permits shall be renewed for a period of one (1) year.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Business and Professions Code section 26055(h) for the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity where the discretionary review in any such law, ordinance, rule, or regulation includes any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code; and, under Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. This Ordinance shall become effective thirty (30) days after adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 6th day of July 2021, by Council Member Wahab.

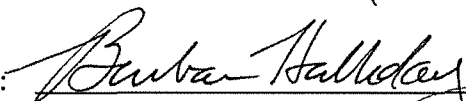
ADOPTED at a regular meeting of the City Council of the City of Hayward, held the 20th day of July 2021, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS: Andrews, Lamnin, Márquez, Salinas, Wahab, Zermeño
MAYOR: Halliday

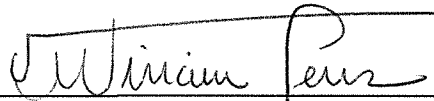
NOES: COUNCIL MEMBERS: None


ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

APPROVED: 
Mayor of the City of Hayward

DATE: July 24, 2021

ATTEST: 
City Clerk of the City of Hayward

APPROVED AS TO FORM: 
City Attorney of the City of Hayward