

ORDINANCE No. 17-__

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 14 TO 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 is added to Chapter 6 of the Hayward Municipal Code and is hereby enacted to read as follows:

ARTICLE 14

COMMERCIAL CANNABIS BUSINESSES

SEC. 6-14.00 FINDINGS AND PURPOSE. The City Council finds and declares as follows:

- (a) In 2015 the state 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).
- (b) 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.
- (c) The intent of MCRSA and AUMA was to establish a comprehensive regulatory system for cultivation, production and sale of cannabis and cannabis products, thereby weakening the illicit market for cannabis.
- (d) On November 8, 2016, the voters of the City of Hayward approved Measure EE authorizing the City Council to enact an ordinance imposing a general tax of up to 15% of gross sales of medicinal cannabis and adult use cannabis.
- (e) On June 15, 2017 the state legislature 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, thereby creating a unified regulatory scheme for medicinal and adult use cannabis.
- (f) Under MAUCRSA, beginning on January 1, 2018 the state will issue licenses for businesses to engage in cultivation, manufacturing, testing, distribution and retail sale of cannabis and cannabis products.
 - (g) MAUCRSA specifically authorizes 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 requirements related to reducing exposure to second hand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed pursuant to MAUCRSA.
 - (h) It is the intent of the City Council to authorize and regulate specific types of cannabis businesses licensed pursuant to state law.
 - (i) The purpose of this Article is to establish local regulations for permitting and operation of specified commercial cannabis businesses within the City of Hayward.
 - (j) This ordinance is necessary to protect the public health, safety and welfare of the citizens of the City of Hayward.

SEC. 6-14.10 DEFINITIONS. For the purpose of this Article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

“Applicant” means an individual, or if not an individual, the general partner, chief executive officer, chief advisor, or other person responsible for the ownership and operation of a business entity, who applies to obtain a permit under this Article.

“Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. *“Cannabis”* also means the separated resin, whether

crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (excepted the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this article “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety code.

“*Cannabis Product*” means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

“*Commercial Cannabis Business*” includes cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis or cannabis products as permitted by this Article.

“*Cannabis Testing Laboratory*” means a laboratory described in Section 26101 of the California Business and Professions Code holding a Type 8 license as described in Section 26050(a) of the California Business and Professions Code.

“*Cultivation*” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

“*Delivery*” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform owned and controlled by the retailer.

“*Distribution*” means the procurement, sale, and transport of cannabis and cannabis products between state licensees.”

“*Manufacture*” means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product.

“*Manufacturer*” means a person or entity that conducts the production, preparation, propagation, or compounding of cannabis or cannabis products

either directly or indirectly or by extraction methods, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages cannabis or cannabis products or labels or relabels its container.

“Medical/medicinal cannabis” or *“Medical/medicinal cannabis product”* means cannabis or a cannabis product, respectively, intended to be sold for use pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the California Health and Safety Code, by a medicinal cannabis patient in California who possesses a physician’s recommendation.

“Nursery” means a permittee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the propagation and cultivation of cannabis.

“Owner” means any of the following: (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a permit or a permittee, unless the interest is solely a security, lien, or encumbrance. (2) The chief executive officer of a nonprofit or other entity. (3) A member of the board of directors of a nonprofit. (4) An individual who will be participating in the direction, control, or management of the person applying for a permit.

“Person” includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.

“Sell,” “sale,” and *“to sell”* include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a state licensee to the state licensee from whom the cannabis or cannabis product was purchased.

“State Licensee” means a person or entity that has been issued a license pursuant to state law for commercial cannabis activity as defined by state law.

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 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. Any such sale, transfer, assignment, attempted sale, attempted transfer or attempted assignment shall constitute an 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 REVIEW OF APPLICATIONS

- (a) The City Manager shall establish procedures for accepting and evaluating applications submitted pursuant to this Article. The evaluation process shall include a method for scoring and ranking each application.
- (b) Upon completing the evaluation of all applications, the City Manager 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 Manager including, but not limited to the following:
- (1) 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.
 - (2) 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.
 - (3) The names and addresses of all persons financially interested in the business.
 - (4) The full, true name under which the business will be conducted.
 - (5) 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.

- (6) 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.
- (7) 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.
- (8) A security plan describing proposed security arrangements for the premises including, but not limited to: alarm systems; surveillance equipment; use of security personnel; lighting plans; plans for securing points of entry.
- (9) A summary of the applicant's relevant experience, if any, in operating permitted commercial cannabis businesses in other

jurisdictions, with contact information for references in those jurisdictions.

- (10) Category of state cannabis license(s) the applicant holds or intends to apply for.
- (11) 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.
- (12) 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.
- (13) Community benefit proposals.
- (14) 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 will 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 1192.7 of the Penal Code; A felony conviction involving fraud, deceit, or embezzlement; 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.

SEC. 6-14.13 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 Zoning Ordinance.

(a) Operations.

- (1) All Commercial Cannabis businesses operating within the City of Hayward shall be subject to a 600-foot minimum setback from sensitive land uses as described in California Business and Professions Code section 26054

and California Health and Safety Code Section 11362.768, including libraries, designated public open space areas and designated public parks that contain a children's playground(s) or similar use dedicated towards children activities, including but not limited to sports fields and swimming pools. The required 600-foot setback for public parks and open spaces may be reduced following the issuance of a Conditional Use Permit from the Planning Commission 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. The distance shall be made in a straight line from the closest boundary line of the property on which the Cannabis Business is located to the closest boundary line of the property on which the school or sensitive land use is located.

- (2) Cannabis or cannabis products, whether for medicinal or adult recreational use, shall only be sold to individuals authorized by state law to purchase such cannabis or cannabis products.
- (3) No person who is younger than the minimum age established by state law for the purchase, possession or consumption of cannabis and cannabis-related products shall be allowed on the premises of a permitted Commercial Cannabis Business.
- (4) Operate in a manner to prevent possible diversion of Medical and Non-Medical Cannabis and shall promptly comply with any track and trace program established by the State.
- (5) Permittees engaged in retail sales ~~may operate between the hours of 8:00a.m. and 8:00 p.m., up to seven (7) days per week or as~~ shall maintain hours of operation as specified approved as part of by a Conditional Use Permit.
- (6) Retail sales of cannabis that violate state or local law are expressly prohibited.
- (7) No cannabis odors shall be detectable outside of the facility.

- (8) Permittees shall employ only persons at least 21 years of age at any permitted facility within the City of Hayward.
 - (9) Subject to Section 10-1.3607 of this Code, consumption or ingestion of cannabis or cannabis products on the premises of a permittee, including outdoor areas and parking lots, is prohibited.
 - (10) Permittees shall provide the City Manager or his/her designee, and all residents, businesses and property owners within 100 feet of the permitted premises with the current name, phone number, secondary phone number and e-mail address of an on-site community relations staff person to whom notice of any operating problems associated with the premises may be reported. This information shall be updated as necessary to keep it current.
 - (11) Permittees shall have an on-site manager at each permitted facility within the City of Hayward who is responsible for overall operation during times that employees are conducting operations, and shall provide the City Manager or his/her designee with contact information for all such persons, including telephone number and email address. Permittees shall also provide the City with the name and contact information including phone number of at least one manager that can be reached 24-hours a day.
 - (12) Permittees shall take all reasonable steps to discourage and correct conditions that constitute a public or private nuisance in parking areas, sidewalks, alleys and areas surrounding a permitted facility. Such conditions include, but are not limited to: smoking; creating a noise disturbance; loitering; littering; and graffiti. Graffiti must be removed from property and parking lots under the control of the permittee within 72 hours of discovery.
- (b) Security.
- (1) Security surveillance IP video cameras shall be installed and maintained in good working order to provide coverage on a twenty-four (24) hour real-

time basis of all internal and exterior areas where Cannabis is cultivated, weighed, manufactured, packaged, stored, transferred, and dispensed.

The cameras shall allow for remote access to be provided to the Hayward Police Department. The security surveillance cameras shall be oriented in a manner that provides clear and certain identification of all individuals within those areas. IP cameras shall remain active at all times and shall be capable of operating under any lighting condition. Security video must use standard industry format to support criminal investigations and shall be maintained for sixty (60) days.

- (2) A professionally monitored security alarm system shall be installed and maintained in good working condition. The alarm system shall include sensors to detect entry and exit from all secure areas and all windows. Commercial Cannabis Businesses shall keep the name and contact information of the alarm system installation and monitoring company as part of the Commercial Cannabis Business's onsite books and records. Cannabis Operators shall also identify a local contact who will be responsible for addressing security and safety issues and shall provide and keep current that contact information to the Hayward Police Department as part of the permitting process.
- (3) All points of ingress and egress to a Commercial Cannabis Business shall be secured with Building Code compliant commercial-grade, non-residential door locks and/or window locks.
- (4) Permittees shall utilize **armed** security officers possessing a valid Department of Consumer Affairs "Security Guard Card" during hours of operation.
- (5) Security measures shall be designed to ensure emergency access is provided to the Hayward Police Department and Hayward Fire Department for all areas on the premises in the case of an emergency.

SEC. 6-14.14 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.

- (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.

SEC. 6-14.15 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 the Building Official, Fire Marshall or their designees, 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.

SEC. 6-14.16 ENFORCEMENT. A violation of this Article is declared to be a public nuisance which may be enjoined by civil action or pursuant to the procedures provided in this Code for abatement of nuisances. Additionally, any violation of this Article may be enforced subject to the provisions relating to administrative citations found in Chapter 1, Article 7.

SEC. 6-14.17 PERMIT SUSPENSION OR REVOCATION AND HEARING.

- (a) The City Manager may suspend or revoke a permit issued pursuant to this Article for failure to comply with any performance or operating standards set forth in this Article, or any other requirement of this Article or Code, or applicable local or state regulation. Such suspension or revocation shall only be made upon a hearing granted to the permit holder before an independent hearing officer upon no less than fourteen (14) days' written notice to the permit holder. The notice of suspension or revocation hearing shall generally state the grounds for the proposed action and the time and place of the hearing.
- (b) The hearing officer shall receive written and oral testimony and any other evidence he/she deems relevant to the issue of suspension or revocation. The hearing officer shall not be bound by the rules of evidence in conducting the hearing described herein. The hearing officer shall issue a written decision within 10 business days after the conclusion of the hearing. The decision of the independent hearing officer shall be final and conclusive.

SEC. 6-14.18 CITY MANAGER AUTHORITY. The City Manager may establish administrative regulations and policies to implement any provision of this Article.

SEC. 6-14.19 TAXES. The City Council may establish by resolution the tax rate to be imposed on all gross sales for all products associated with medical or adult use cannabis, from cultivation, distribution, manufacturing, and retailing of cannabis or cannabis products.

SEC. 6-14.20 FEES. The City Council may establish by resolution any fees that shall be charged for administration and implementation of this Article. The adoption of such fees shall not prevent the City from recovering enforcement costs not specified in such resolution.

SEC. 6-14.21 NON-CONFORMING USES. No use which purports to have engaged in cultivation, manufacturing, processing, distribution, testing, transportation, or sale of medical cannabis or adult use cannabis prior to the enactment of this Article shall be deemed to have been a legally established use pursuant to the provisions of the Hayward Municipal Code, Hayward Zoning Ordinance, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal non-conforming or other similar status.

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 ___ day of, _____ 2017, by Council Member _____ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the day of _____ , 2017, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward