

Item #18 LB 17-036

Commercial Cannabis Business in Hayward



CITY OF HAYWARD

Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

File #: LB 17-035

DATE: July 18, 2017

TO: Mayor and City Council

FROM: City Attorney and Interim Development Services Director

SUBJECT

Commercial Cannabis Businesses in Hayward: Discussion of Proposed Regulatory and Land Use Framework; Authorizing the City Manager to Begin Accepting Permit Applications; and Resolution Establishing Application Processing Fee for Commercial Cannabis Permits

RECOMMENDATION

That Council takes the following actions:

1. Provides comments and direction regarding the attached draft commercial cannabis regulatory ordinance, Attachment II.
2. Provides comments and direction regarding proposed text amendments to the Zoning Ordinance regarding cannabis land use regulations.
3. Authorizes the City Manager to begin accepting applications for commercial cannabis permits.
4. Adopts a resolution amending the Master Fee Schedule to establish an application processing fee for commercial cannabis permits, Attachment III.

ATTACHMENTS

ATTACHMENT I	Staff Report
ATTACHMENT II	Draft Cannabis Regulations
ATTACHMENT III	Resolution Amending Master Fee Schedule
ATTACHMENT IV	Survey Results
ATTACHMENT V	Land Use Buffer Map



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BACKGROUND

During the [March 21, 2017](#) City Council meeting, staff conducted a work session with the Council regarding the legal status of cannabis in California and its implications for the City of Hayward. Staff sought direction from the Council regarding the following questions:

1. Should cannabis businesses be permitted or prohibited in Hayward?
2. If cannabis businesses are permitted, should those businesses include both medical and adult recreational products?
3. If cannabis businesses are permitted, how many should be permitted, where should those businesses be located, and within what sort of regulatory framework?
4. If cannabis businesses are permitted, how should transactions be taxed under Hayward's voter-approved Measure EE?

The Council was generally in favor of allowing cannabis businesses in Hayward with a focus on uses that would be compatible with the Industrial zoning district. Council favored limiting the number of cannabis businesses initially and was open to considering more businesses in the future assuming positive outcomes from the initial businesses. Council and staff were mindful that Hayward had previously allowed a limited number of medical cannabis dispensaries that were unsuccessful for a variety of reasons. The Council emphasized the necessity of imposing the Measure EE tax approved by the voters on any newly permitted cannabis businesses.

Based on comments received from the Council during the work session, staff has prepared a draft regulatory ordinance that would establish a framework for the issuance of business permits for commercial cannabis operations and impose operational and performance standards upon commercial cannabis businesses.

Additionally, staff proposes to make text amendments to the Zoning Ordinance that would allow the following commercial cannabis activity and uses in the Industrial (I) Zoning District: cultivation; manufacturing; testing laboratories; transportation; delivery; and distribution (includes storage); subject to the approval of a Conditional Use Permit with special findings to be made by the Planning Commission for approval.

The proposed text amendments to the Zoning Ordinance (Attachment III) must be reviewed by the Planning Commission prior to consideration by the City Council. Since the proposed text amendments are primarily definitional in nature, a draft ordinance was not included with this report.

Staff seeks comments and direction on the draft regulatory ordinance and the proposed Zoning Ordinance text amendments. If the Council concurs with staff's recommendations, staff will proceed with preparing these items for formal consideration by the City Council and Planning Commission, respectively, in the fall.

DISCUSSION

A. Legal Developments

During the March 21, 2017 work session, staff provided background and relevant information regarding the state and local regulatory framework for the medical use and the adult recreational use of cannabis. At that time, the three key legislative developments with respect to cannabis were as follows:

- MCRSA (Medical Cannabis Regulation and Safety Act, AB 266, AB 243, SB 643), enacted January 1, 2016
- AUMA (Adult Use of Marijuana Act – Proposition 64), enacted November 9, 2016
- Measure EE (City of Hayward Cannabis Tax), enacted November 8, 2016

On June 15, 2017, the legislature passed Senate Bill 94, which was ultimately approved by Governor Brown. SB 94 repealed MCRSA and incorporated certain provisions from MCRSA related to licensing of medical cannabis businesses into the licensing framework contained in the AUMA. The purpose of SB 94 is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of medical cannabis and medical cannabis products and adult-use cannabis and adult-use cannabis products. The new consolidated regulatory framework is known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which is administered and enforced by the Bureau of Cannabis Control within the Department of Consumer Affairs.

The January 1, 2018 timeframe for state issuance of cannabis licenses remains in effect. Consequently, the City remains in the position of having to adopt local cannabis regulations to be effective before that date. Otherwise, the State regulations will govern and the City will have no local discretionary review abilities.

B. Draft Regulatory Ordinance

Staff has prepared a draft regulatory ordinance (Attachment II) for review and direction from the Council. The draft ordinance would create a regulatory framework for issuance of commercial cannabis business permits and impose specific minimum performance standards on those businesses. The key features of the proposed regulations include:

- Business permits may only be issued to persons/businesses holding specific state-issued cultivation, manufacturing, laboratory testing, distribution or microbusiness licenses. No retail or dispensary businesses will be allowed except for businesses holding state microbusiness licenses that allow small businesses to vertically integrate operations.
- No more than three (3) permits will be issued annually and each must be renewed after one year.
- Applications for permits will be accepted pursuant to a “request for proposals” type process.
- Applicants for permits must submit detailed operational/business plans, security plans, and submit to criminal background investigations as part of the application process.
- Permits will be issued pursuant to a lottery system involving all applications that are determined to be complete.
- In order to commence operation, a business must obtain the commercial cannabis business permit, conditional use permit, state cannabis license, and pay all required local fees.
- Permittees are subject to inspection of records and premises by the City to ensure compliance with local regulations.
- Violations of operating and performance conditions constitute a basis for potential revocation of a permit.
- Testing or research laboratories will not count against the three-permit limit.

If the Council is generally supportive of the proposed regulatory framework, staff recommends that the Council take the following actions during this meeting: (1) authorize the City Manager to begin accepting applications for commercial cannabis permits; and (2) adopt a resolution amending the Master Fee Schedule to add a \$2,000 cannabis permit application processing fee. These actions would allow staff to be better positioned to commence the full permitting process without undue delay once final regulations are adopted by the Council in the fall.

C. Proposed Land Use Regulations

Staff does not propose to develop a distinct framework for processing land use approvals for commercial cannabis businesses. The existing conditional use permit (CUP) process contained in the Zoning Ordinance is sufficient to undertake the processing of land use approvals under these circumstances. Staff proposes to make the following text amendments to the Zoning Ordinance in order to accommodate commercial cannabis uses: (1) amend the Zoning Ordinance to include land use descriptions of commercial cannabis businesses; (2) amend provisions related to the Industrial (I) District to identify commercial cannabis businesses as an allowed use subject to issuance of a conditional use permit (CUP); and (3) amend the Zoning Ordinance to include special findings that must be made by the Planning Commission in order to approve a commercial cannabis business land use. See Attachment V for a land use buffer map.

Special findings for cannabis uses are preferred because it would allow the City to evaluate site-specific locations and types of business operations on case-by-case basis. It would also provide greater flexibility for a proposed operator while maintaining some regulatory framework to minimize potential impacts. Staff is recommending four findings of approval be required prior to the issuance of a Conditional Use Permit for Cannabis:

1. The proposed cannabis use will not be detrimental to the public health, safety, or general welfare in that the cannabis operation is situated in an appropriate location where sensitive land uses will not be adversely impacted; and
2. Appropriate measures have been taken to address nuisances related to odor, noise, exhaust, and waste related to the cannabis operation; and
3. The cannabis operation is designed to be safe, secure and aesthetically compatible with the surrounding area; and
4. The cannabis operation will not place a burden on the provision of public services disproportionate to other industrial uses.

In addition to the special findings required for cannabis operations, the Development Services Department is currently evaluating the development standards for existing land uses in the Industrial District to ensure that minimum parking, setbacks and other design criteria are suitable for cannabis land uses.

D. Conforming Text Amendments

Additional Municipal Code revisions would be necessary to ensure consistency with any regulatory and land use regulations adopted by the Council, as well as to ensure consistency with the new requirements of State law. For example, revisions to Chapter 4, Article 1 (Public Nuisances) and Chapter 5, Article 6 (Smoking Pollution Control) are necessary. Revisions to both Municipal Code sections are currently being developed and will be presented to the City Council at a future meeting date concurrently with consideration of the proposed regulatory and land use ordinances. As staff continues to review the impact of state law on the Municipal Code, additional areas requiring revision may be identified.

E. Regulation of Personal Cultivation

AUMA/MAUCRSA allows cultivation of cannabis by persons aged 21 or older on private property for personal use. Local governments can impose reasonable regulations on indoor cultivation for personal use but cannot completely prohibit it. Local governments may completely prohibit outdoor cultivation for personal use. Staff recommends that the City Council consider prohibiting outdoor cultivation for personal use but not impose regulations with respect to indoor cultivation for personal use at this time. Staff will monitor service demands related to personal cultivation and will return to Council for further direction if additional regulations are required in order to protect public health and safety.

F. Tax Revenue

Hayward voters adopted Measure EE authorizing the City Council to impose a tax not exceeding fifteen percent (15%) of gross sales of adult use of recreational and medical cannabis. The tax would apply to the cultivation, distribution, manufacturing, business-to-business sales, as well as retail sales. During the previous work session, there was general interest from the Council regarding cannabis tax rates in neighboring jurisdictions. The tax rates are as follows:

- San Jose – 10%
- Pittsburg – 10%
- San Leandro – 6% through June 2019, 7% beginning July 1, 2019, and 8% on July 1, 2021.
- Oakland – 5% (medical marijuana)
- Berkeley – 2.5% (medical marijuana)

It is important to note that the taxes in San Jose, Berkeley and Oakland were all adopted in 2010 when Prop. 19 could have legalized recreational marijuana. The Berkeley and Oakland ballot initiatives include a 10% tax on recreational marijuana in the event Prop. 19 passed, which it did not.

G. Public Outreach

Following the March 21, 2017 work session, the Development Services Department began conducting Lean Empathy interviews to solicit feedback and public opinion on possible cannabis businesses operating in the City of Hayward. Staff interviewed nearly fifty (50) residents, business owners, employees, property owners and various stakeholders on their views of cannabis. Staff also created an on-line survey, and placed door hangers in key residential neighborhoods, along commercial corridors downtown, and within the Industrial area. Staff also solicited broader input from the general public by creating a cannabis webpage, which was on the City's main website and highlighted in The Stack newsletter (June 2017). The webpage provides answers to frequently asked questions, status updates on Ordinance adoption, and links to the survey. In total, over 2,100 stakeholders responded to the survey and have asked to receive information regarding progress towards the adoption of cannabis regulations.

Overall, the survey showed that a large majority of respondents (83%) support permitting cannabis businesses in Hayward and 78% indicated that both medical and recreational cannabis operations should be allowed. When asked about limiting the number of cannabis businesses, 52% of respondents believed the City should allow an unlimited number of businesses, while 13% said the City should only allow delivery businesses. See Attachment IV for a breakdown of survey results.

Given the relatively unknown land use, environmental and public safety impacts associated with the cumulative legalization of cannabis use in California, staff recommends the City Council pursue a more-cautious approach and initially limit the location and number of these businesses to allow the City an opportunity to evaluate the economic, environmental and public safety impacts of cannabis and cannabis-related businesses in Hayward.

SUSTAINABILITY IMPACTS

The conditional use permit process would identify and address sustainability impacts related to commercial cannabis businesses. It is generally accepted that commercial scale cultivation of cannabis requires significant amounts of water and power. Cultivation for personal use, whether indoor or outdoor, is not believed to create any unusual impacts on the use of water or power.

Impacts related to manufacturing uses such as production of edible cannabis products may not create impacts significantly different from other food production uses already in existence in the City. As stated above, the conditional use permit process will identify and address those issues on a case by case basis.

FISCAL IMPACT

If the Council were to permit cannabis businesses, it is anticipated that a significant cost would be associated with the administration of land use and regulatory ordinances depending on the number and type of businesses Council chooses to allow. As an example, staff would be required to process applications, prepare reports to the Planning Commission and City Council, review business plans, obtain background investigation results for proposed owners and employees, and interact with the State's cannabis regulators. Staff would also be involved in auditing financial records to determine if the City is accurately receiving funds resulting from the application of Measure EE. These staff functions would cover multiple departments and several full-time equivalent higher-level classifications, at the outset of operations in Hayward and subsequently to assure ongoing compliance. If the City were to allow three businesses to operate, staff costs could easily exceed \$300,000 annually. Some or possibly all of these administrative costs could be covered by City licensing fees approved as part of the Master Fee Schedule, but it would take at least two fiscal years of operations to identify true administrative costs. Staff recommends that the Council set an initial deposit of \$2,000 in the Master Fee Schedule. If staff charges exceed this amount, the applicant will be billed on a time and materials basis. After two years of experience with the staff charges associated with these types of applications, staff will return to Council to adjust the deposit amount as needed.

Oakland charges \$67,000 a year for each of its eight licensed retailers for administration, a total of \$500,000. Administrative fees are not the same as taxes, discussed below.

Additionally, law enforcement cost impacts would predictably increase, whether or not cannabis and marijuana businesses are allowed in Hayward, as discussed earlier in this report.

ECONOMIC IMPACTS

It is difficult to predict the potential tax revenue stream created by up to three (3) commercial cannabis businesses in Hayward. Different business types (i.e. Manufacturing vs. cultivation) may generate different levels of revenue. Staff will focus efforts on compiling data and information on this matter in order to assist the Council with determining the optimal tax rate to be imposed. Based on data from surrounding jurisdictions, an initial rate of between 6-10% may be optimal.

In late 2016, the University of the Pacific business school and law school authored a report studying the economic impact of a cannabis industry to the greater Sacramento area.¹ The report, among other things, analyzed the potential economic impact of various sectors of the cannabis industry and assumed a range of potential market models from strictly regulated local models to less regulated regional market models. Although the assumptions utilized in

¹ University of Pacific Study: <http://www.pacific.edu/Academics/Schools-and-Colleges/Eberhardt-School-of-Business/Centers-and-Institutes/Center-for-Business-and-Policy-Research/Custom-Studies/Cannabis-Sector-Analyses.html>

the report may not hold true for Hayward, the methodology will be useful to Hayward staff as staff moves forward with a more detailed economic impact analysis.

PUBLIC CONTACT

This legislative business item has been publicly noticed on the City’s website.

NEXT STEPS

If Council concurs with staff recommendations related to the proposed regulatory and land use ordinances, staff will proceed with preparing these items for formal consideration by the City Council and Planning Commission, respectively, in the fall. Additionally, upon direction from the Council, the City Manager will begin accepting commercial cannabis permit applications.

Prepared by: Michael G. Vigilia, Senior Assistant City Attorney
Jeremy Lochirco, Senior Planner

Approved by:



Kelly McAdoo, City Manager

ORDINANCE NO.

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 of 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 fo 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 licensee 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 license or a licensee, 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) No more than three (3) commercial cannabis permits for the operation of commercial cannabis businesses in the City shall be issued. Permits issued to cannabis testing laboratories shall not count against the permit limit established herein.
- (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 the annual business license tax required by Chapter 8 of this Code, paid all applicable fees and complied with other applicable state and City of Hayward 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 CONTENTS OF APPLICATION.

(a) Applications shall include:

- i. A detailed description of the type of commercial cannabis business to be conducted including an operational plan that describes: 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.
- ii. 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, Social Security number.
- iii. The names and addresses of all persons financially interested in the business.
- iv. The full, true name under which the business will be conducted.
- v. 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.
- vi. 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.

- vii. 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.
- viii. 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.
- ix. A summary of the applicant's relevant experience in operating commercial cannabis businesses in other jurisdictions within the last five (5) years, with contact information for references in those jurisdictions.
- x. Category of state cannabis license(s) the applicant holds or intends to apply for.

- xi. A summary of any regulatory actions taken against the applicant, including issuance of notices of violation, citations, suspension or revocation of permits, 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.
- xii. 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.
- xiii. Any other information required by the City to assist with evaluation of the applicant.

(b) In addition to the information described in (a) above, each application shall be accompanied by a non-refundable application processing fee in an amount established by resolution of the City Council.

SEC. 6-14.13 APPLICATION REVIEW

- (a) The City Manager or his/her designee shall review the applications to determine compliance with Section 6-14.12. Upon written notice that an application is incomplete, the applicant may submit additional information as requested by the City. Failure to submit requested information shall be deemed an abandonment of the application and no further action will be taken by the City.
- (b) Applications shall only be considered from persons or entities who hold or have applied for, or intend to apply for the following state cannabis licenses: Cultivation (Type 1A, 1C, 2A, 3A, 4); Manufacturer 1 (Type 6); Testing Laboratory (Type 8); Distributor (Type 11); Microbusiness (Type 12).
- (c) The City Manager or his/her designee shall conduct an investigation into 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:

- i. It is found to contain material misstatements or omissions;
- ii. The applicant is determined to be ineligible or prohibited from obtaining a cannabis license pursuant to state law.
- iii. The applicant is determined to have any pending or open regulatory actions including issuance of notices of violation, citations, suspension or revocation of permits, 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.

SEC. 6-14.14 PERMIT ISSUANCE.

- (a) Permits will be issued to three (3) applicants selected via a lottery system from among all applicants determined to be in compliance with Section 6-14.12 and 6-14.13 of this Article.
- (b) Permittees shall comply with the following:
 - i. Pay the annual permit fee as established by resolution of the City Council which shall be refunded if the applicant does not receive the necessary land use approvals.
 - ii. Comply with requirements for obtaining land use approval as set forth in the Zoning Ordinance including any required fees, charges or deposits.
 - iii. Comply with requirements of Chapter 8 of this Code related to payment of the annual business license tax.
 - iv. Comply with any other requirements of local law.

SEC. 6-14.15 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.

- i. No commercial cannabis business shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the permit is issued. The distance shall be measured via the path of travel from the door of the closest facility to the closest door of the other facility.
- ii. Commercial cannabis businesses shall only be located in the Industrial District as defined in the Hayward Zoning Ordinance, as may be amended from time to time.
- iii. Commercial cannabis businesses holding a state issued microbusiness license with an approved retail component shall only sell medical cannabis or medical cannabis products to individuals authorized by state law to purchase medical cannabis or medical cannabis products and adult use cannabis shall only be sold to individuals authorized by state law to purchase cannabis or cannabis products for adult use.
- iv. Commercial cannabis businesses holding a state issued microbusiness license with an approved retail component may operate no later than 8:00 p.m. daily unless it is determined by the City that a later hour will not affect public health, safety, or welfare. An authorized retail component of a business is prohibited from operating between the hours that the City determines the dispensary should close and 9:00 a.m. the next ensuing day unless further restricted by the City.
- v. Retail sales of cannabis that violate state or local law are expressly prohibited.
- vi. No cannabis odors shall be detectable outside of the facility.
- vii. Permittees shall employ only persons at least 21 years of age at any permitted facility within the City of Hayward.
- viii. Consumption or ingestion of cannabis or cannabis products shall

not be allowed in the facility, outdoor areas or parking areas of the business.

- ix. Permittees shall provide the Police Department and all residents, businesses and property owners within 100 feet 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 Facility may be reported. This information shall be updated as necessary to keep it current.
- x. Permittees shall have an on-site manager at each permitted facility within the City of Hayward who is responsible for overall operation at all times that employees are conducting operations, and shall provide the City 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.
- xi. 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.

- i. High definition security cameras or other technology that produces high resolution video and recording capabilities shall be installed and maintained in good condition, and the camera and recording system must be of adequate quality, color rendition and resolution to allow the identification of an individual. The cameras shall be in use twenty-four (24) hours a day, seven (7) days per week, and

shall cover the marijuana dispensing areas, storage areas, all doors and windows to the facility, parking areas and other areas as determined by the City Manager or his/her designee. The recordings shall be maintained at the for a period of ninety (90) days and made available to the Hayward Police Department for purposes of investigation of alleged crimes, promptly upon request without necessity of a warrant or subpoena.

- ii. Facilities must be equipped with an alarm system that is operated and monitored by a security company licensed by and in good standing with the California Department of Consumer Affairs. Alarms shall be maintained and in good working condition at all times.
- iii. Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry and also equipped with latches that may be released quickly from the inside to allow exit in the event of an emergency where required by fire prevention or building code regulations.
- iv. Any security guards employed by a permittee shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security personnel may not be armed.
- v. The business shall maintain adequate exterior lighting in parking areas.

SEC. 6-14.16 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, local regulations, including compliance with local tax obligations.
- (b) Permittees shall permit inspection by the City of any facility licensed pursuant to this Article for the purpose of verifying compliance with the requirements of this

Article, the Hayward Municipal Code and the requirements of state law.

SEC. 6-14.17 PERMIT RENEWAL.

- (a) A commercial cannabis permit must be renewed annually. Permittees shall apply for renewal in writing no later than sixty (60) days before the expiration of the current permit. The application for renewal shall include:
- i. A statement updating information from the original application or certifying that the information contained in the original application is unchanged.
 - ii. 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.
 - iii. Authorization for updated criminal background checks.
 - iv. Payment of a non-refundable renewal fee.
- (b) As part of the renewal process permittees shall allow inspection of any licensed facility by the Building Official, Fire Marshall or their designees, and other City staff 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 required by this Article and applicable provisions of the Hayward Municipal Code.
- (d) Upon completion of the necessary investigation and inspections and payment of the required fees, the City Manager or his/her designee shall issue a renewed permit to the permittee for an additional one (1) year period.

SEC. 6-14.18 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. 6-14.19 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 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. 6-14.20 CITY MANAGER AUTHORITY. The City Manager may establish administrative regulations and policies to implement any provision of this Article.

SEC. 6-14.21 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. 6-14.22 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).

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

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO.

Introduced by Council Member _____

RESOLUTION AMENDING THE MASTER FEE SCHEDULE
TO ADD A COMMERCIAL CANNABIS PERMIT APPLCATION PROCESSING FEE

BE IT RESOLVED that the City Council of the City of Hayward hereby amends the Master Fee Schedule and approves a commercial cannabis permit application processing fee in the amount of one thousand dollars (\$1,000). The fee shall take effect immediately upon adoption by the City Council.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2017

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

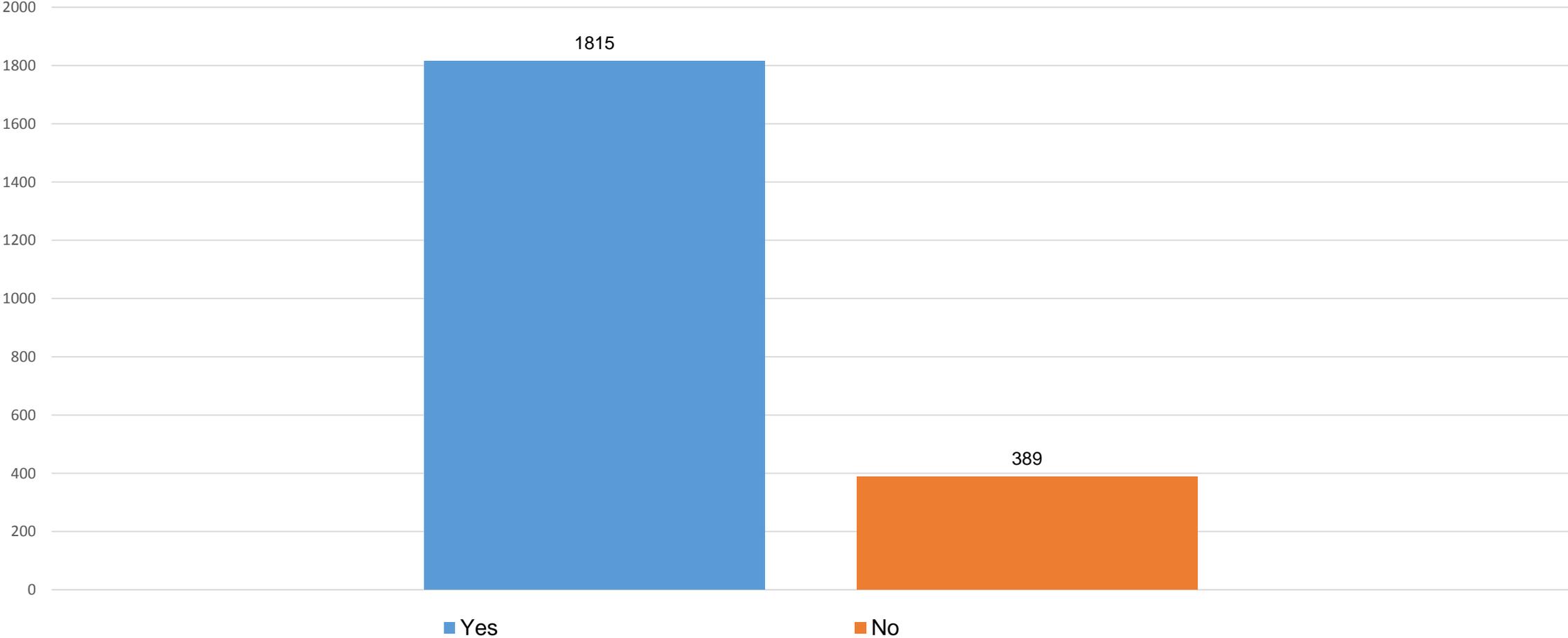
ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

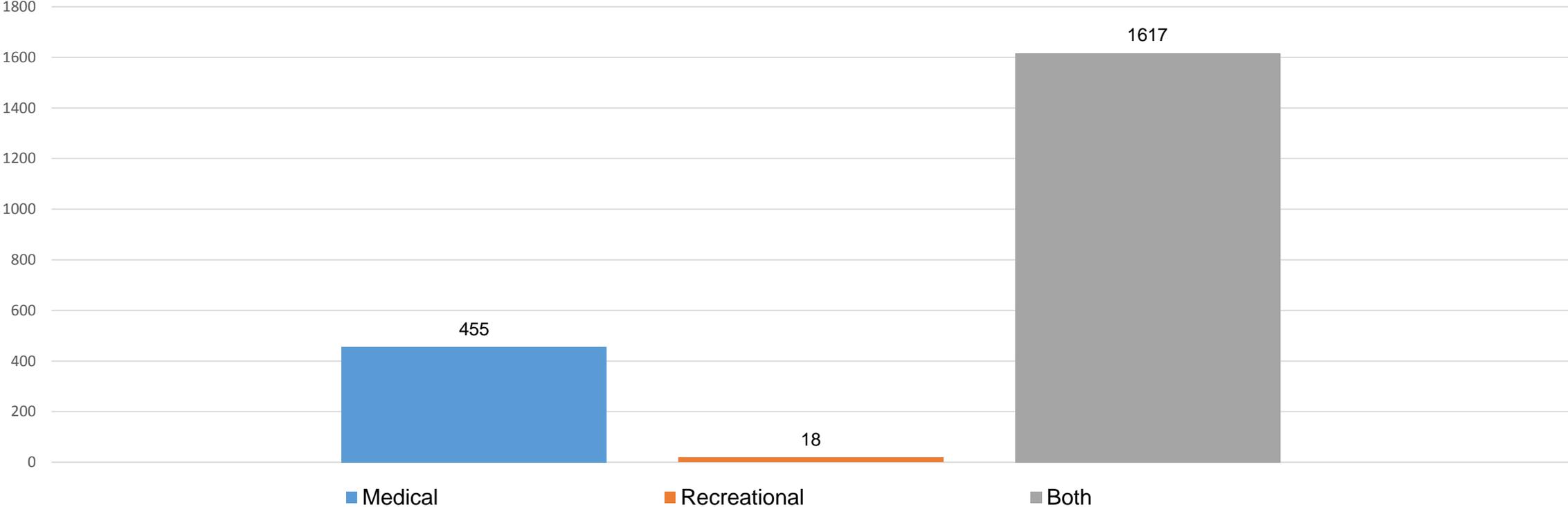
APPROVED AS TO FORM:

City Attorney of the City of Hayward

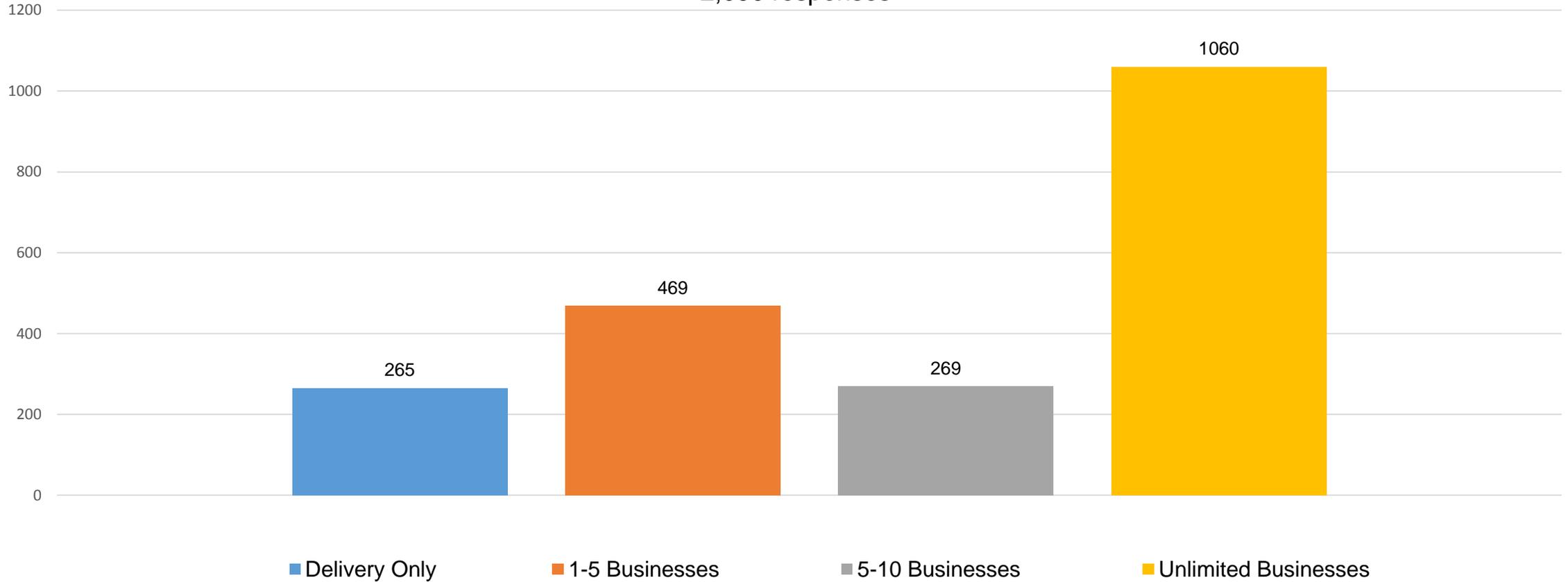
Should Hayward allow cannabis businesses in the City?
2,204 responses



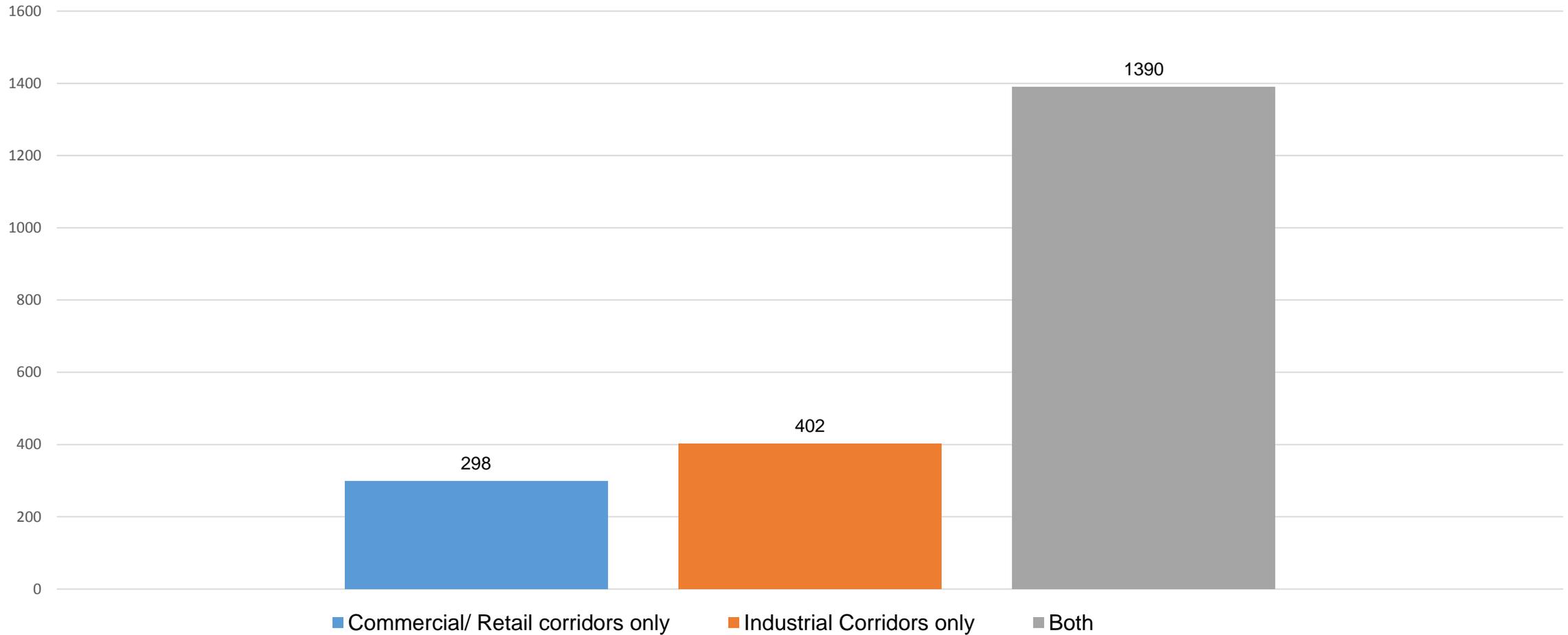
Which kind of businesses should the City allow?
2,090 responses



How many retail businesses should the City allow?
2,090 responses

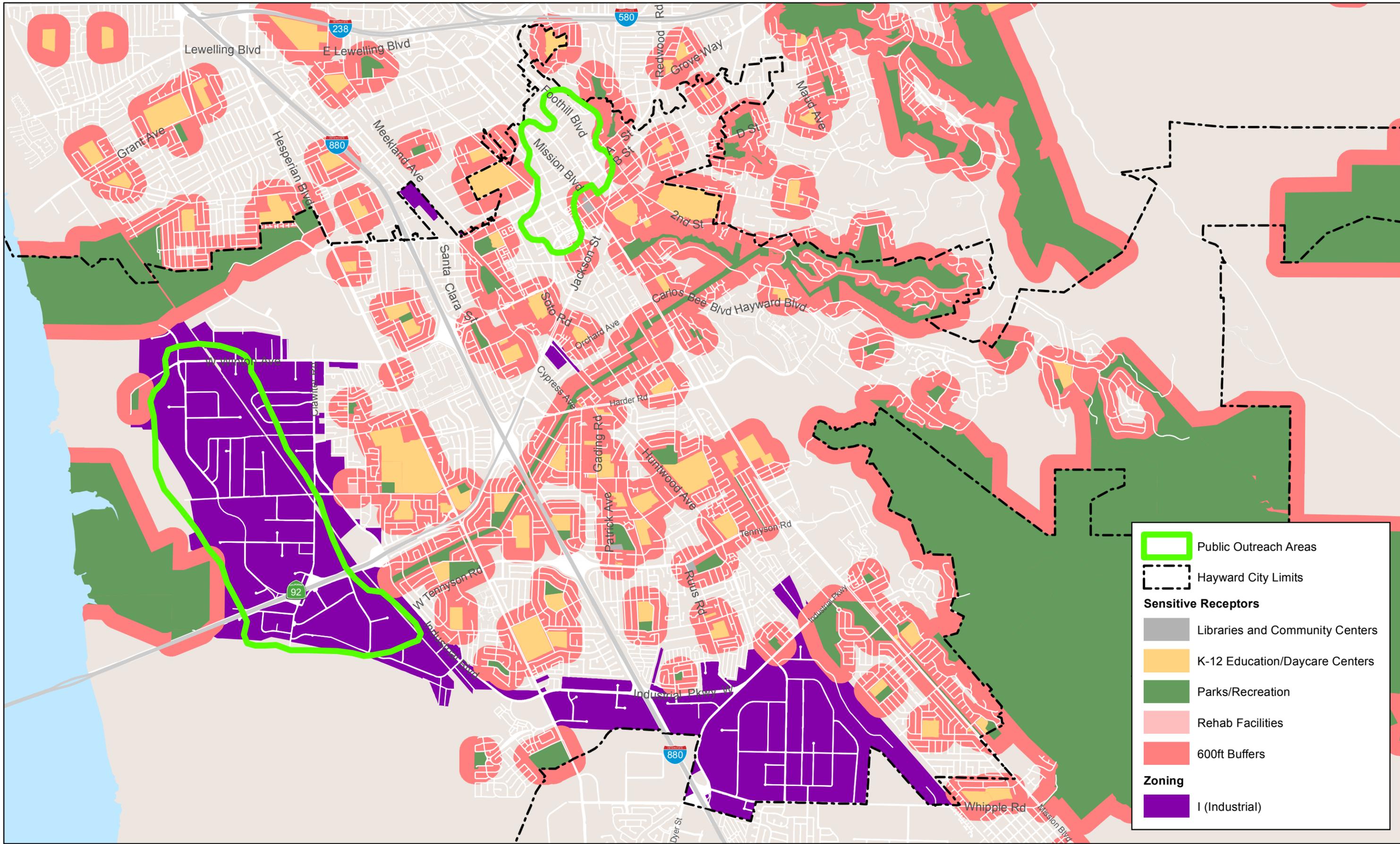


Where should the City allow them?
2,090 responses





Cannabis Buffer, Industrial Zoning and Public Outreach Map



Public Outreach Areas

Hayward City Limits

Sensitive Receptors

- Libraries and Community Centers
- K-12 Education/Daycare Centers
- Parks/Recreation
- Rehab Facilities

600ft Buffers

Zoning

- I (Industrial)