



Memorandum

To: Jeremy Lochirco, Principal Planner, City of Hayward
From: Jubran Kanaan, Ben Goossen, Eliza Johnston, ICF
Date: April 24, 2020 (Updated November 2020)
Re: **Task 1 Background Review Findings**

Summary

In December 2019, the Hayward City Council directed staff, supported by its consultants at ICF, to conduct a review of experience to date with the city's commercial cannabis program and develop recommendations for updating key elements of the program and the two related city ordinances. This work plan has five main components:

- Task 1. Conduct Background Review
- Task 2. Refine Processes for Licensing and Permitting
- Task 3. Strengthen Systems for Auditing and Compliance
- Task 4. Assess Organizational Requirements and Update Fee Schedule
- Task 5. Update Regulatory Ordinance and Land Use Ordinance

The first phase of this work (i.e., Task 1) was to conduct a brief background review of the status of Hayward's current program, as well as relevant local and statewide factors that might inform any proposed changes to Hayward's program. This current memo summarizes key findings from Task 1, and includes the following Sections:

1. A snapshot of the status of cannabis licensing and business activity in Alameda County and across California;
2. An update on the operational status of Hayward cannabis licensees;
3. A summary of feedback on Hayward's cannabis program received during interviews with cannabis licensees on Hayward's program;
4. A summary of feedback and priorities articulated by Hayward staff involved with implementing the program during a recent workshop; and
5. A scan of relevant practices and lessons learned in selected local jurisdictions.

Overall, the Task 1 review indicates that, while Hayward's progress in operationalizing its cannabis program has been slow, it is performing roughly on a par with many other jurisdictions in Alameda County and across California. That said, cannabis licensees in Hayward identified two significant areas of potential improvement for the city's cannabis program: (a) strengthening internal organizational capacities and coordination; and (b) streamlining the entitlement process for cannabis businesses. Moreover, the work session conducted with Hayward staff validated many of the concerns voiced by licensees, generated a range of initial ideas and recommendations for updating the city's program, and forged inter-departmental agreement to collaborate on refining and strengthening key systems over the coming year. Finally, our review of recent experiences of other local jurisdictions in updating their cannabis programs highlighted lessons (both positive and negative) and specific program innovations that can inform Hayward's update process going forward.



1. Cannabis Licensing and Regulated Business Activity across California

To provide comparative context for Hayward's progress to date in licensing cannabis businesses and having them achieve operational status, ICF conducted a brief review of the status of licensing and regulated business activity across the state. While comprehensive data on operational status was not widely available (and was available mostly for storefront retail businesses), this review found that the overall pace of licensing and legal business activity remains slow across many jurisdictions in California, including several neighboring cities in Alameda County.

Statewide Legal Sales Growth Slower Than Expected

Legal cannabis sales in the California increased by 91 percent last year, growing from \$1.5 billion in 2018 to \$2.8 billion in 2019. Although the sales growth since the adoption of the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) in 2017 has been substantial, it has been much slower than expected (Marijuana Business Daily, 2020). While the state remains the largest legal cannabis market in the world, current sales make up just a fraction of the overall market. The illicit cannabis market still accounted for roughly 80 percent of transactions statewide in 2019 (BDS Analytics, 2020).

When controlling for population, California lags other states with adult-use cannabis markets when it comes to per-capita cannabis sales through licensed retailers. In the second years of their programs, Colorado (\$99), Oregon (\$97), and Washington (\$89), all ranked ahead of California (\$70) in terms of per-capita retail cannabis sales (Schroyer & McVey, 2020). Additionally, California ranks sixth among states in per-capita cannabis tax revenue (\$15.9), trailing Washington (\$67.3), Colorado (\$60.1), Nevada (\$53.5), Alaska (\$38.83) and Oregon (\$31.75) (Davis, 2020).

The slow growth of California's legal cannabis industry has been attributed to several factors including the continued strength of the illicit market, the price difference between the illicit and legal markets, high taxes, local opposition to retail stores, and the large number of counties and municipalities in California that still prohibit commercial cannabis businesses.¹

Regulated Business Activity in Alameda County

Alameda County is an important cluster of commercial cannabis activity in the state, ranking sixth among California's 58 counties in terms of active state cannabis licenses. Of the 7,506 state licenses currently active in California, 6.2% of those (464) are held by businesses located in Alameda County, despite the County being home to only 4.2 percent of the state's population (California Cannabis Portal, 2020). To date, Alameda County's legal cannabis industry has been driven largely by markets in Oakland and Berkeley which, together, are home to 96 percent of active state licenses held in the county.

The growth of legal cannabis business activity in other cities in the county has thus far been slow. Of the fourteen incorporated cities in Alameda County, less than half allow any type of commercial cannabis activity. Even communities that have legal cannabis frameworks in place, such as Emeryville, San Leandro and Union City, have a small number of operational businesses in place. For instance, looking specifically at retail businesses in the region:

- **Emeryville** issued an RFQ for retail cannabis businesses in September 2017 and four of the first seven applicants were recommended to the City Council for licensing. Since that time, two of those firms have received the necessary operator and conditional use permits, however only one location is currently operational (City of Emeryville, n.d.).

¹ As of February 2020, approximately 61 percent of local governments do not allow any commercial cannabis activity (Marijuana Business Daily, 2020).



- **San Leandro** adopted an ordinance on April 1, 2019 enabling the city's three previously permitted medical cannabis dispensaries to conduct retail sales beginning in January 2020. Currently the city is not issuing additional dispensary licenses. The city has developed a conditional approval process for both cannabis product manufacturing businesses and testing laboratories. ICF is aware of only one approved conditional use permit for a product manufacturing business proposing to make cannabis infused kombucha and beverages. Cannabis delivery and distribution is not currently permitted. (City of San Leandro, n.d.).
- **Union City** allows the approval of up to three commercial cannabis permits for the categories of cultivation, manufacturing, distribution, testing, and medical dispensary. The city held two application periods for commercial cannabis use permits in 2018 and 2019. The city approved permits for two businesses. One business was approved for cultivation, manufacturing, distribution, and retail, while the other was approved for retail only. The city has also declared intent to award cultivation, distribution, manufacturer, and retailer permits to another company (Union City, n.d.). ICF is not aware that any of these approved businesses are currently operational.

In summary, progress in developing a robust regulated cannabis industry has been slow across the state and, while Oakland and Berkeley have led Alameda County to become an important center of commercial cannabis activity in the California, most other jurisdictions in the county have only a handful of commercial cannabis businesses currently in operation.

2. Status of Hayward Licensees

As in many of its peer cities in the region, the progress of Hayward cannabis licensees attaining operational status has been slow. In the two years since Hayward established its commercial cannabis program, the City Council has approved a total of 23 commercial cannabis licenses to applicants. The table below lists the businesses approved for Commercial Cannabis Permits in 2018-2019 and their current operational status.

Table 1: Status of Hayward Cannabis Licensees (as of November 2020)

	Company Name	Business Type	Date Approved	Current Status
1	Mijosa, LLC	Cultivation, Manufacturing	June 2018	App Incomplete
2	Empress Extracts	Cultivation	June 2018	App Incomplete
3	Hidden Farms, Inc.	Cultivation	June 2018	Approved
4	Stoned Age Edibles Co.	Manufacturing	June 2018	Operational
5	Green Haven, LLC	Delivery	June 2018	Approved
6	CBRA, Inc.	Distribution	June 2018	Failed to Submit App
7	Manifest, LLC	Distribution	June 2018	Approved
8	Vista Development Ent.	Distribution	June 2018	Revoked
9	Green Grizzly	Microbusiness	June 2018	App Incomplete
10	Sticky Thumb Delivery	Microbusiness	June 2018	Approved



	Company Name	Business Type	Date Approved	Current Status
11	American Holdings	Microbusiness	June 2018	Approved
12	Harrens Laboratory	Testing Lab	June 2018	Operational
13	Aunty Honey's	Retail	July 2018	Approved
14	Jiva Life	Retail	July 2018	Pending
15	Hayward Station	Retail	July 2018	Approved
16	Meristematic, Inc	Cultivation	May 2019	Failed to Submit App
17	CBRA, Inc.*	Delivery	May 2019	Failed to Submit App
18	Mijosa, LLC*	Distribution	May 2019	App Incomplete
19	BAS Research	Manufacturing	May 2019	Failed to Submit App
20	Empress Extracts*	Manufacturing	May 2019	Failed to Submit App
21	Gurpreet Singh	Manufacturing	May 2019	Failed to Submit App
22	Always on Time Consulting	Microbusiness	June 2019	Approved
23	Precision Apothecary	Microbusiness	June 2019	App Incomplete

* Applicants submitted multiple proposals and were chosen for additional licenses during Round 2.

Despite its strong ordinances and RFP process, Hayward has not yet had much success in realizing the economic potential of this emerging industry. As Hayward works to update its cannabis program and possibly launch a second RFP for new licensees, special attention should be paid to the barriers facing local businesses and refining key systems to increase the likelihood of future business success.

3. Feedback from Hayward Licensees

To better understand the status of Hayward's licensees and the main barriers that they are facing in getting their businesses up and running, ICF conducted interviews with a selection of current licensees. Licensees were asked to provide feedback on their experience with trying to establish a cannabis business in Hayward and offer suggestions for improving collaboration with the City.

The licensees interviewed were appreciative of the conscientiousness and helpfulness of City staff, and expressed understanding of the fact that there is a steep learning curve for the City as it figures out how to license and regulate this new industry. They also emphasized that there was now an opportunity to significantly improve the efficiency and timeliness of several important administrative processes. Key findings from these interviews are distilled and summarized below.

Business Licensing Processes

- Most licensees interviewed felt that the business licensing (RFP) process was fine overall and not too onerous. (For reference, one licensee stated that they spent \$60k total on business licensing process and over \$150k on land-use entitlement process so far).



- Some licensees perceived the City's refinements of its application and adjudication process in 2018-2019 (e.g., adjusting scoring thresholds, issuing licenses to the highest scoring applicants within each business type, conducting a second round of interviews) as arbitrary and unfair. To avoid this perception in future, Hayward should be clear, transparent, and consistent about the process for business licensing.
- It was suggested that Hayward consider requiring commercial cannabis license applicants who already have site control of an appropriate building in Hayward. This would very likely increase the number of businesses that become operational within a year of being granted a license.
- Licensees suggested that the updated licensing program (and revised ordinance) should include the ability to transfer ownership of cannabis businesses.

Land Use Entitlement Processes

- The main challenge articulated by all Hayward licensees interviewed was the City's onerous and drawn-out entitlement processes. A minority of licensees interviewed also stated that securing a building in an approved zone for cannabis business activities was challenging in Hayward.
- Multiple licensees stated that Hayward's licensing and entitlement process is too cumbersome and "front-loaded" with requirements. Several suggestions were made to reduce the amount of detail and documentation required of cannabis businesses at the earlier planning stages (e.g., CUP) and, rather, focus on those details once the businesses progress closer to the construction and operational stages.
- Multiple licensees stated that Hayward's entitlement process is extremely cumbersome and costly and, importantly, more demanding and detailed than other cities. Even licensees with significant past site development experience found it overly onerous compared with other jurisdictions. Licensees reported that were long delays in City responses and multiple rounds of back-and-forth iterations. Some licensees reported delays of over two months to receive responses.
- It was suggested that Hayward remove some of the detailed operational requirements (e.g., traffic analysis, stormwater plan, etc.) from the entitlement process and handle them later in the process (e.g., through inspections once the business is operational). These details add to an already front-loaded entitlement process. The process should focus more narrowly on land-use issues.
- Remove duplication with state requirements (e.g., product tracking, waste management, hours of operation, etc.) as these issues are already handled by state law.
- One licensee stated that the longest delays (30 business days) came from the Hayward Fire Department. They felt that the FD's requirement to hire a CA-certified FPE was excessive and stated that they made onerous and unusual requests of their FPE. Detailed plans for the location of smoke detectors, sprinklers, and CO alarms could be better handled later during building inspections, rather than at this early up-front CUP stage.
- In general, licensees felt that rather than requiring detailed operational plans in advance during to get CUP approval, the City might instead flag key issues as something that the licensee needs to address prior to inspection. And then the City can rigorously inspect and enforce those requirements during future building inspections and operational audits.
- The limited geography in which retail cannabis businesses are approved/zoned in Hayward has made it hard for some applicants to find a suitable building, and enabled landlords to try to gouge tenants with excessively high rents.



Organizational Capacity

- Businesses expressed concern that there is no single point of contact within Hayward government to help coordinate processing of business processes across all of the divisions involved in cannabis program implementation. Many delays and frustrations could have been mitigated by having a clear person designated as a central contact.
- There was frustration expressed that staff turnover has led to “handing off” of ongoing permitting activities to new staff and ensuing processing delays and inefficiencies.
- Licensees had particular praise for City staff that had prior experience regulating cannabis businesses and understood this emerging industry. In the future, hiring staff from jurisdictions with strong existing cannabis programs could help strengthen Hayward’s organizational capacity.
- Multiple licensees felt that there was a need to improve coordination between the various city departments involved in cannabis regulation in order to reduce duplication of activities/requirements and improve efficiency. For instance, interviewees explained that multiple sets of drawings were being requested by different City departments, sometimes out of sequence or with contradictory requirements. There was strong desire expressed for a clearer explanation of the overall approval processes, clarification of departmental responsibilities, development of integrated inspection checklists, and a flowchart showing the interaction of linked approval processes and expected timelines.

These licensee interviews reinforced the team’s initial findings that the two biggest areas of improvement for Hayward’s program are (a) strengthening internal organizational capacities and coordination across all relevant divisions, and (b) streamlining the entitlement process for cannabis businesses.

4. Feedback from Hayward Staff

To capture insights from City staff on their experience in the first years of running Hayward’s cannabis program, ICF convened a Work Session with 14 staff representing all of the key divisions involved in program implementation (i.e., Planning, Code Enforcement, Police Department, Fire Department, Hazardous Materials, Finance/Revenue, Economic Development, City Attorney). The goals of the session included: soliciting feedback on what is working well and what are the biggest challenges with the program; collecting specific recommendations on each of the main program areas; and soliciting commitments from staff to remain engaged in the program update process over the coming months.

ICF facilitated a discussion around six key program areas. These included the topics originally proposed for the work plan, an expanded discussion of land use entitlement processes (inspired largely by licensee feedback), and an added focus on measures to curtail illegal operations (based on guidance received from Council). For each of these topics, the group discussed the current approach being used in Hayward, the main challenges identified, and potential process improvements to consider going forward. This section summarizes the challenges and potential improvements discussed by city staff for each of the six program elements.

Refine Business Licensing (RFP, Application, and Review) Processes:

Hayward’s current approach to licensing commercial cannabis businesses is rigorous and objective. The key elements of this process include: issuing an RFP inviting businesses to apply for a local operator license; having applicants submit a detailed application with sections covering business plan and operations, management experience safety and security, community benefits, product testing and safety, environmental plan, and labor practices; blind review and scoring of



submitted applications; conducting interviews with the highest scoring teams; and recommending suitable businesses to the Council for award of operator licenses.

There is broad consensus, both among local licensees and policymakers, that Hayward's business licensing process is robust and impartial, and that it strikes a reasonable balance between rigor and efficiency. That said, there is a desire to learn lessons from the first round of licensing and streamline processes where possible.

Challenges with Current Approaches:

- The current process is quite time-consuming for both staff and applicants.
- There have been some complaints from applicants over application requirements, process (e.g., interviewing only the top scorers in each license type), shifting criteria for interviews (e.g., lowering point thresholds), etc.
- There has been no direct relationship found between the quality of written applications submitted and the quality of the proposer/applicant team. Applicants sometimes hire outside consultants to write robust plan documents but don't actually have needed skills and knowledge. Thus, interviews may be a better tool for selecting qualified licensees.

Potential Improvements:

- For future RFP rounds, consider proactively reaching out to larger, more established cannabis businesses and inviting them to apply. And/or understand why they aren't interested in seeking licenses in Hayward.
- Conduct pre-application review/screening to weed out non-serious applicants.
- Interview applicants at an earlier stage in the process.
- While some parties have suggested fast-tracking certain business types through a simplified licensing process, Hayward PD and FD do not support this suggestion.
- Don't have scoring threshold for written applications to determine who gets interviewed; instead, interview all applicants that meet minimum requirements.
- Defer to state licensing requirements wherever possible.
- Where applicants have site control, allow concurrent applications for BOP and CUP.
- For vertically-integrated firms that seek multiple licenses, don't require them to submit multiple applications. Rather, have them submit a single application that clearly addresses all of the substantive requirements for each of the desired license types.
- Update and Clarify Key Requirements: e.g., list all parties of ownership and their percentages, add disclosures re use of consultants, clarify requirements for building and site plans, etc.
- Highlight any revisions that will be needed to the current licensing process, e.g., RFP documents, scoring criteria and weighting, scoring thresholds, interview processes, etc.

Improve Land-Use Entitlement Processes

Following Council approval of a business permit, licensees are given six months (182 business days) to identify a project site and submit a planning application.

Challenges with Current Approaches:

- **Efficiency:** Many licensees have described Hayward's land-use entitlement process as a major impediment to getting their businesses operational (see section above).



- **Zoning:** Council has expressed concerns about over-concentration of businesses (Mayor said: “maybe we made a mistake”), and considering revising allowable locations and zoning.
- **Time Limit:** In some cases, applicants had pre-selected locations early in the process and were able to submit a planning application shortly after Council approval of their license. In other cases, applicants did not have a location pre-selected and had difficulty finding a site, developing a site-specific operational/safety plan, and submitting a planning application with all necessary documentation within the stipulated timeframe.

Potential Improvements:

- **Simplify CUP processes:**
 - Clarify what requirements need to be met up-front vs. those that can be handled during later operational compliance processes.
 - For instance, remove detailed operational requirements and shift those to later operational inspections; focus up-front more narrowly on basic land-use requirements, compliance with zoning requirements, etc.
 - Rely on State requirements where duplicated.
 - Eliminate unnecessary duplication between BOP & CUP.
- **Update Zoning:**
 - Revise overall zoning for allowable locations of cannabis businesses.
 - Revise boundaries for permissible locations for retail cannabis businesses.
- **Time Limit:** Given that some applicants have been unable to find a suitable location within the 6-month deadline required by the ordinance, consider increasing this time limit to 12 months.

Strengthen Auditing, Inspection, and Compliance Processes

While Hayward’s regulatory ordinance requires applicants be subject to background checks and provide financial records, there is no defined framework or responsible City division to ensure that compliance is obtained once an audit is completed. Staff recommends that any updated program provide options for building a more robust auditing and compliance reporting system to ensure that licensees are complying with relevant state/local regulations and following through on their stated intentions from their license applications.

Challenges with Current Approaches:

- There is some confusion regarding each department’s role. One participant stated that there has been a “responsibility breakdown between Code Enforcement and PD.”
- Another participant stated that it is unrealistic to assume that the state Bureau of Cannabis Control (BCC) will be able to handle statewide inspections and compliance, due to the high number of cannabis establishments and low number of “enforcement officers” throughout California. They asserted that the City of Hayward/ Police Department should take an active role to ensuring compliance with the City ordinance and State Law. This can be done through multiple compliance checks throughout the year.
- There are consistent discrepancies between the building plans being submitted by the licensees to the Planning Division vs. those being submitted to the Building Division. This causes confusion and multiple rounds of communication and revision. Requirements should be clarified.



- It typically takes multiple rounds of inspections to get applicants into compliance. Costly and inefficient.
- Applicants/licensees don't understand the various fees that they're being charged, and there is concern about potential duplication of fees.

Potential Improvements:

- Coordinate compliance inspection processes between the various divisions involved.
- Clarify systems, procedures and timing of various inspection processes (initial and periodic) for licensed cannabis businesses.
- Ensure ongoing compliance monitoring of key operational issues (e.g., new employee/workers background checks and clearances, parking, emergency access, waste disposal, security, lighting, storage of chemicals, product storage, etc.).
- Create integrated inspection checklists to ensure coverage of all key issues and division of labor.
 - Refer to the draft Inspection List created by the Code Enforcement division as one potential model.
- Clarify record-keeping requirements for businesses.
- Consider a potential range of penalties/incentives (beyond license revocation) for ensuring compliance and/or enabling corrective actions.
- Ensure that businesses are reporting the correct revenue and providing all necessary documentation regarding their finances to avoid under-reporting and money laundering.
- Incorporate a command central software application to ensure compliance with IP camera CUP requirement for inspections and incidents where follow-up will be conducted by Hayward Police Officers. Hayward PD has a sole source application in mind that would be equipped to handle the Police Department's needs (*waiting on budget cost for application)
- Coordinate compliance inspections with Alameda County (Health Department) and State inspectors. For instance, might an agreement between the City and County be required for the County to inspect all cannabis edibles businesses? (Note that the County has an agreement with Oakland to provide such inspections).

Enhance Measures to Curtail Illegal Operations

Since the illicit cannabis market in California remains strong and significantly undermines the viability of licensed cannabis businesses, cities such as Hayward are exploring approaches for curtailing illegal operations in their jurisdictions. While Hayward is currently conducting a limited number of such operations, Council has requested guidance on when and how best to expand these activities.

Challenges with Current Approaches:

- Illegal operations are occurring and undermining regulated businesses.
- Not much is being done to systematically curtail illegal operations around Hayward.
- Costs can be very high for these interventions. Hayward PD has estimated that it can cost the city ~\$10k to eradicate one illegal business. And Hayward PD has raised questions about the ongoing funding of "decoy operations."



Potential Improvements:

- Consider increasing fines for illegal operations to create a deterrent and help shift businesses into the regulated market. Related suggestions include:
 - Adopting a “per plant fee”. This would enable the City to go after unlicensed cultivators (either tenants or property owners) civilly.
 - Making property owners financially accountable and ensuring proper background of tenants
- Expand the HPD Narcotics unit to add an additional two Detectives to curtail illegal cannabis operations.
- Cut the water to suspected grows or confirmed grows. (Hayward PD will have to consult with the City Attorney’s Office on this matter.)
- Invest in community cameras throughout the Industrial Area to help deter illegal activity and aid in investigations involving illegal cannabis operations.
- Expand efforts around crime prevention through environmental design (CPTED).
- Provide information to community about compliant businesses that they should support.
- Provide accessible system (e.g., web links) for citizens to easily report illegal activity.

Strengthen Organizational Capacities, Improve Coordination, and Update Fee Schedule

Currently, there is no dedicated division or staff person in Hayward government responsible for centrally managing the cannabis program. And, while current licensing fees may be sufficient to cover the costs of basic inspections and audits, there is concern that the full costs of program implementation are not being covered by these fees. There is a need now to conduct a full inventory of City functions impacted by cannabis operations, and update the Fee Schedule to ensure full cost recovery.

Challenges with Current Approaches:

- No central point of contact for cannabis businesses and licensees.
- Burden on staff wearing multiple hats.
- Lack of adequate inter-departmental coordination.
- Need to improve coordination with relevant State agencies.
- Insufficient cost recovery to sustainably implement the cannabis program.

Potential Improvements:

- **Improve Internal Coordination:**
 - Need to strengthen coordination across Divisions (e.g., City Manager’s Office, Planning, Code Enforcement, Police, Fire, Utilities, Solid Waste)
 - Compile an inventory of all functions and map it. (*Led by Code Enforcement team?*)
 - Map approval processes and develop flowcharts including expected timeline and fees at each approval stage (initial application, CUP/AUP process, building TI, and final cannabis operational permit fee).
- **Strengthen External Coordination:**
 - Improve coordination with State regulators and inspectors.



- Improve coordination with Alameda County regulators (e.g., health inspections) .
- **External Communication/Access:**
 - Establish clear point(s) of contact for coordination of overall cannabis program and interface with applicants/licensees.
 - Improve website (currently hard to find information, site navigation issues, etc.)
- **Enhance Staffing:** Explore staffing enhancements for both short-term and longer-term.
 - In 10/19, Council discussed potentially adding 1-2 FTE for this function; but said that it did not envision creating a standalone cannabis department.
 - Given current fiscal uncertainties (e.g., the impact of Covid-19 pandemic), Hayward will likely need to explore program management solutions relying on existing staff in the short-term, while considering hiring additional staff in the long-term if/when budget issues improve.
- **Cost Recovery:** Update master fee schedule to ensure full cost recovery.

Revise Commercial Cannabis Ordinance and Sections of the Land-Use Ordinance

In October 2017, the Hayward Council adopted Ordinances 17-13 and 17-15, which established the City's regulatory and land use ordinances that apply to cannabis operators in the City. Since that time, several developments have led staff to recommend making selected revisions to the existing ordinances, including a number of updates to the state's regulatory systems as well as various implementation issues that have been identified locally.

Challenges with Current Approaches:

- Redundancies and inconsistencies with current state regulations. Need alignment and deferral to state requirements where possible.
- Internal textual ambiguities, inconsistencies, and omissions. Need clarification and cleanup.
- Tax/Revenue Collection Cycle: Ordinance requires paying monthly, by the 20th of the month, for previous month. Too burdensome, may lead to inaccuracy/fudging of numbers, and potential safety issues due to it being paid in cash.

Potential Improvements:

- Clarify disclosure requirements.
- Clarify the definition of “true parties of interest”.
- Update land use definitions and land use limitations.
- Better define Sustainability Plan components and minimum requirements.
- Update life/safety requirements including, fire protection engineer (FPE) requirements, hazardous material waste disposal protocols, and crime prevention through environmental design (CPTED).
- Align municipal code text with definitions and terms used in updated state regulations.
- Update tax collection practices as necessary. For instance, suggest collecting cannabis taxes on a quarterly basis, rather than monthly.
- Establish mechanisms for transfer of ownership.
- Add language on annual audits and record-keeping.
- Consider adding language on illegal operations.



- Consider requiring a physical location during application phase.
- Move to a pre-application / predetermination process to first determine zoning eligibility and conformity with land-use regulations.
- Eliminate duplicative processes in the cannabis business permit and additional land-use regulations.
- Defer to state regulatory language on all but time, manner, and use regulations.
- Clarify language in the RFP and ordinances on security standards. They are currently confusing to PD and applicants.
- The Hayward Police Department recommends adding the requirement for all employees of any cannabis business to be registered with the Hayward Police Department (Note that this is already done for cabaret permits, massage parlors, and the card club).
- General cleanup of ordinance text.

Overall, the work session with Hayward staff further validated the initial work plan endorsed by Council, while echoing many of the concerns voiced by licensees. Furthermore, it generated a range of initial ideas and recommendations for updating elements of the city's program, as well as an agreement to collaborate on refining and strengthening key processes over the coming year.

5. Review of Other Jurisdictions

To further inform Hayward's process of updating its cannabis program, ICF reviewed the practices of other relevant jurisdictions across California and other states (CO, WA, and MA) that are working to adapt their local regulatory strategies as the market develops. Examining the experiences of these other jurisdictions can provide valuable insight into both best practices and potential pitfalls to avoid.

ICF collected case study material around the six topics of concern discussed above. This initial review will be followed up by more in-depth study of good practices as ICF continues to support the City with analysis and program refinements across each of the topics to be addressed under Tasks 2-5. ICF identified eighteen cities that have either implemented innovative practices related to cannabis program management, or whose example could somehow inform Hayward's program updates. While ICF prioritized review of cities that are of similar size to Hayward, the review also included larger cities in the surrounding region with notable cannabis programs such as San Jose, San Francisco, and Oakland. [Error! Reference source not found.](#) below lists the 18 cities reviewed and indicates program areas of note that may serve to inform Hayward's cannabis program update going forward.

Table 2: Cannabis Program Case Studies

Jurisdiction	Licensing Processes	Land Use Entitlement	Auditing and Compliance	Curtailing Illegal Operations	Organizational Capacity & Fees	Ordinance Revision
Berkeley, CA					✓	✓
Chula Vista, CA			✓	✓		

Jurisdiction	Licensing Processes	Land Use Entitlement	Auditing and Compliance	Curtailing Illegal Operations	Organizational Capacity & Fees	Ordinance Revision
Denver, CO		✓	✓	✓	✓	
Fort Collins, CO					✓	
Goleta, CA	✓	✓			✓	✓
Grover Beach, CA	✓	✓			✓	✓
Kirkland, WA		✓	✓			✓
La Mesa, CA			✓			
Oakland, CA	✓					✓
Pacifica, CA	✓	✓	✓			✓
Pasadena, CA	✓					✓
San Bernardino, CA				✓		
San Francisco, CA	✓				✓	
San Jose, CA				✓		
Santa Rosa, CA	✓	✓		✓		✓
Shasta Lake, CA					✓	
West Hollywood, CA	✓	✓			✓	✓
Worcester, MA			✓			

Several of these communities serve as useful case studies for all-around good practice examples and are referenced in multiple places throughout the discussion below, while other communities may only be relevant to one of the six subject areas. Due to the often intertwined nature of the application, business licensing, and land-use entitlement processes, best practices related to the first two subject areas are discussed in tandem. Similarly, because practices related to auditing, inspection, and compliance are also measures used in curtailing illegal operations, these subject areas are discussed together.

Application, Licensing, and Land Use Entitlement Processes

Application, licensing, and land use entitlement processes are key to ensuring that the commercial cannabis industry develops in a safe and responsible way. Varying local interests make finding a one-size-fits-all approach on these topics difficult, however ICF's review illustrated



several themes and best practices from jurisdictions that maintain particularly successful cannabis programs.

Perhaps the largest commonality across jurisdictions with successful programs was an effort to condense and speed the application and licensing processes. One way this can be done is through a pre-application, or pre-screening process that provides a preliminary determination of eligibility before beginning the time and resource intensive full application review process. Though smaller than the City of Hayward, **Grover Beach, CA** (population ~14,000) has been extremely successful in implementing a working cannabis program. As of April 2019, the City had approved permits for 25 cannabis businesses. Seven businesses are currently operational, and several additional businesses are currently in the planning process. Like Hayward, the city has both a land use and regulatory ordinance, however the city has utilized a pre-application process in order to determine initial eligibility and narrow down the list of applicants allowed to submit full applications for formal review. Criteria includes the proposed dispensary site, qualifications and experience, neighborhood compatibility, preliminary operations and security plan, and degree of local enterprise. This has saved time and resources for both the applicants and the town (California League of Cities, 2019).

ICF found that, for many communities, having applicants secure a physical site is the first step in the application process. **The City of Sacramento, CA** (population ~508,000) requires applicants to first obtain a Conditional Use Permit (CUP) for the property, before applying for a Business Operating Permit for the business operation itself. The CUP process, which also includes a public hearing, is primarily used to confirm zoning eligibility, however it also speeds the application process and saves the city money by ensuring that only very serious applicants move forward with the process. Another benefit of requiring a physical location upfront is that it allows city staff to vet the location for community density concerns and other location specific issues early in the application process. **The City of Santa Rosa, CA** (population 175,000) has adjusted their application process by adding an initial pre-application phase designed to help inform applicants about requirements applicable to their project or to foster completeness of their application. This phase includes scheduling a neighborhood meeting (required for all conditional use permits for cannabis), a pre-application staff consultation meeting (if desired) and/or a concept design review (if required). Applicants are required to have a site when applying for a CUP. Once an applicant submits a CUP application, the city does an initial review for overconcentration where the location is mapped to confirm it is set back at least 600 feet from other pending or approved cannabis retail parcels.

Another way to enhance the efficiency and speed of the application and licensing processes in a safe and predictable manner is to defer to the state license regulations wherever possible. The **City of Pacifica, CA** (~39,000) is considering potential amendments to their marijuana regulations, including updating their marijuana use permit (MUP) process to more actively refer to state regulations (MAUCRSA) and defer to these requirements where possible. Additionally, Pacifica is integrating the existing police department process for pre-screening applicants' security plans into this updated MUP process to increase efficiency. The City of Hayward may be able to benefit from several of these successful practices. A deeper dive into these case studies will aid ICF in evaluating approaches for streamlining and enhancing the RFP and licensing process in Task 2.

Auditing, Inspection and Compliance Processes and Measures to Curtail Illegal Operations

As the number of operational cannabis businesses in California grows, effective auditing, inspection and compliance processes will become paramount in protecting public health and safety. Communities across California have begun apportioning greater resources to strengthen and build out these systems. Some communities such as the City of San Bernardino, CA (population ~217,000) and San Leandro (population ~90,000) have chosen to outsource annual



monitoring and compliance inspection services to outside consultants, while other communities like La Mesa, CA (population ~ 60,000) have opted to build out internal capacity by hiring dedicated compliance and monitoring or tax auditing staff.

Beyond devoting additional staff and resources to auditing and compliance, ICF's review found examples that demonstrate the importance of creating a culture of communication between businesses, city agencies, and the larger community. For example, the **City of Denver, CO** (population ~620,000) has identified the criteria each agency looks for when completing an inspection online. It also lists the required number of yearly inspections from each department by license type. The Denver Police Department has worked proactively with marijuana business owners to provide them with crime fighting tips. For example, the department runs an outreach program which allows industry members to meet the commander and officers in their district. These types of measures emphasize education, relationship building and voluntary compliance. The City carefully targets its resources to focus on the most non-compliant businesses. In addition to administrative citations for repeat violations and sanctions against business licenses, they consider a range of potential penalties including food disposals, recalls, facility closures, banning certain processes within a facility, or removing certain products and equipment.

Creating a culture of communication can also be helpful in curtailing illegal operations. For example, communities can enlist the help of community members in supporting compliant businesses. The **City of San Jose, CA** (population ~1 million) regularly updates a list and map of compliant businesses and encourages citizens to report any activity from businesses that are not included in the list. Many other cities like San Francisco (population ~883,000), Sacramento, CA (population ~508,000), and Chula Vista, CA (population ~270,000) also provide links for the community to report illegal activity or odors.

Because the illicit cannabis market in California remains strong, several communities have turned to more aggressive enforcement tactics to curtail illegal operations. For instance, the **City of Chula Vista, CA** has shut down more than 50 businesses over the last two years. The city initially went after illegal operations with civil fines and penalties; however, the city found this process to be arduous and time consuming. The city has since started bringing criminal charges against illegal cannabis operations (Solis, 2019). While it is too soon to tell, this approach may prove to be less effective and more expensive than education and voluntary compliance. A deeper dive into these case study examples as part of Task 3 will help provide Hayward with lessons learned and potential innovations to strengthen compliance among its cannabis licensees.

Organizational Capacities and Fee Structures

The cannabis industry has the potential to impact many systems and functions across government. For this reason, it is important for Hayward to ensure that it has the organizational capacity needed to sustainably manage its commercial cannabis program, as well as the appropriate fee structures to recover the costs of administering it.

ICF's review of relevant jurisdictions found that while large cities often have the resources to create dedicated cannabis departments, most communities of similar size to Hayward continue to operate their commercial cannabis programs through the planning department or city planner. Outside of hiring dedicated staff, a growing number of communities have created integrated cannabis taskforces or collaborative structures between agencies to oversee aspects of their commercial cannabis programs. For example, the **City of Fort Collins, CO** (population 165,000) convenes an interdepartmental task force with representation from the fire department, planning department, clerks, police, and other departments as appropriate. This task force monitors the marijuana environment both locally and at the state level. The task force makes recommendations to the city council on any changes needed to the cannabis code, ranging from upcoming state legislation to nuisance indicators. If an explicit task force is deemed unnecessary, many



communities map the various departmental responsibilities and communication channels using flow charts or other resources that enhance transparency for all parties involved.

Successful cost recovery is dependent on both an accurate forecast of all anticipated costs and revenue, as well as an effective fee structure that will allow the government to recoup the costs of administering the program. The **City of Grover Beach, CA** (population ~14,000) recently completed a detailed financial forecast that includes an estimate of anticipated cannabis, property, and sales tax revenue. They also carefully itemized various regulatory costs to determine expenses they will need to recoup through licensing fees. Because costs are spread across government departments, communities should clearly outline specific fees for all parts of the business application process, including time spent on appeals. Goleta, CA (population ~31,000), Shasta Lake, CA (population ~10,000), Santa Rosa, CA (population 175,000), and West Hollywood, CA (population ~37,000) all list transparent fees for each process step on their cannabis website pages.

These practices employed by other jurisdictions will be informative as ICF works with the City under Task 4 to assess the organizational capacities needed to effectively manage Hayward's updated cannabis program, and update its fee schedule to achieve full reimbursement of costs related to implementation of the program.

Updating Local Cannabis Ordinances

Given the shifting nature of the commercial cannabis industry, communities should be prepared to regularly monitor indicators and review their regulations. Two years after legalization, other "early adopter" communities like Hayward are also looking to make refinements to their commercial cannabis ordinances to address community specific concerns and state regulatory changes. ICF's review identified several common themes of these revision efforts, outlined below.

Many of the recent revisions have focused on the required setbacks from sensitive areas, the size of zoning districts, and the total cap on businesses. Given the slower than anticipated growth of legal sales, some communities are considering altering caps and setbacks to make them less restrictive. The **City of Pacifica, CA** (39,000) for example is considering altering their program by adding additional parcels to the existing marijuana overlay zoning districts and by reducing the setback requirements from sensitive use areas. The City of Pasadena, CA (population ~138,000) provides a cautionary tale after large initial setbacks (1,000 ft. from sensitive locations) left several districts without any feasible business locations.

Other communities are considering increasing setbacks after receiving criticism from citizens regarding overconcentration. The **City of Goleta, CA** (~31,000) is widening buffers around community centers, schools, residential areas and other shops after receiving 15 applications and a high density of proposed shops in the city's "Old Town" district. After receiving initial pushback from residents regarding the setbacks and overconcentration of facilities, the **City of Santa Rosa, CA** (population ~175,000) Council Policy Subcommittee voted to update the Conditional Use Permit process for all new Retail Cannabis applications. The new process added a pre-application phase, and a "review for overconcentration" first step that allows city staff to vet the application for zoning eligibility and density concerns before going through the full conditional use permitting process.

Other communities like the **City of Pacifica, CA** are considering updates to their ordinances to more explicitly refer to state regulations (MAUCRSA), and to defer to these requirements where possible. The City of Hayward has already discussed this approach and seems amenable to undertaking this update. The **City of Berkeley, CA** (~ 121,000), has established a Cannabis Commission that regularly reviews issues with the current cannabis regulations including updating current regulations to be consistent with state regulations.



The experiences of these local jurisdictions in updating their cannabis programs (and governing ordinances) provides lessons (both positive and negative) and specific program innovations that can inform Hayward's update process going forward. As the program update project progresses, ICF will agree with staff on appropriate case studies to explore more deeply and distill specific lessons to inform work in each of the remaining tasks of the work plan.

Conclusions

Overall, the Task 1 review indicates that, while Hayward's progress in operationalizing its cannabis program has been slow, it is performing roughly on a par with many other jurisdictions in Alameda County and across California. That said, cannabis licensees in Hayward identified two significant areas of potential improvement for the city's cannabis program: (a) strengthening internal organizational capacities and coordination; and (b) streamlining the entitlement process for cannabis businesses. Moreover, the work session conducted with Hayward staff validated many of the concerns voiced by licensees, generated a range of initial ideas and recommendations for updating the city's program, and forged inter-departmental agreement to collaborate on refining and strengthening key systems over the coming year. Finally, the review of recent experiences of other local jurisdictions in updating their cannabis programs highlighted lessons (both positive and negative) and specific program innovations that can inform Hayward's update process going forward.